

community BANKER

SEPTEMBER/OCTOBER 2026

Welcome to the latest issue of the COMMUNITY BANKER.

The Community Banker is prepared by attorneys at Olson & Burns P.C. to provide information pertaining to legal developments affecting the field of banking. In order to accomplish this objective, we welcome any comments our readers have regarding the content and format of this publication. Please address your comments to:

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The attorneys at Olson & Burns represent a wide range of clients in the financial and commercial areas. Our attorneys represent more than 30 banks throughout North Dakota.

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COMMUNITY BANKER is designed to share ideas and developments related to the field of banking. It is not intended as legal advice and nothing in the COMMUNITY BANKER should be relied upon as legal advice in any particular matter. If legal advice or other expert assistance is needed, the services of competent, professional counsel should be sought.



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YOU ARE ASKING

Q: We have several Uniform Transfers to Minors Act (UTMA) accounts at our bank. What happens if there is only one UTMA custodian and that person dies?

A: If a custodian dies (or becomes ineligible or incapacitated) without having designated a successor and the minor is at least fourteen, the minor may designate an adult member of his family, his conservator (if he has one), or a trust company as the successor custodian.

If the minor is *younger* than fourteen or fails to act within 60 days after the death of the custodian, the conservator of the minor becomes successor custodian. If the minor has no conservator (or the conservator declines to be custodian), the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian. See N.D.C.C. § 47-24.1-18(4). One of the reasons it's good to have two persons as custodian (joint custodianship) is to save the trouble and expense of appointing a new custodian. See N.D.C.C. § 47-24.1-10.

Q: A young man who has recently turned 21 has money in an UTMA account, but he is no longer a "minor". He also has an individual account in his own name. Because he has reached the age for release of the UTMA funds, can we use the money in the UTMA account to set-off an overdraft in his own account that he set up when he was 18 and sold some cattle?

A: No. The statutes in Chapter 47-24.1 do not appear to provide for a set-off against the UTMA account as long as it exists as a UTMA account, even if the minor has reached the age for release.

Q: John Smith has a personal account. He also has a business, John Smith Properties, LLC and that business has an account with us. What are your thoughts on permitting customers to access their business and personal accounts within one single online banking login/password? We don't think this is appropriate.

A: Do not permit this – you are dealing with two separate persons here. Your account agreement with John Smith the individual is one account agreement. Your account agreement with John Smith Properties, LLC is a separate account agreement with a separate "person."

If John Smith had a sole proprietorship, the single login/password/access would be permissible because in a sole proprietorship, total control of the business operations, profits, and liabilities are *personal* to the owner.