

community BANKER

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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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YOU ARE ASKING . . .

Q: A safe deposit box in our vault has no joint owner on the lease agreement and the owner died a year ago. The rent is now past due and we are preparing to drill the box. A daughter was the beneficiary on a certificate of deposit and redeemed the CD shortly after the father's death. It appears that she had no knowledge of the box because we've never received anything from a personal representative or heir. Before we drill the box and record the contents for safekeeping, are we permitted to contact the daughter regarding the box?

A: We recommend you try to contact the daughter to determine if there is an estate representative who could address this issue. Because your customer is deceased, we don't think you have customer privacy concerns here. You do have a need to get the box leased out again to someone else, a need to get the lease payment current, and a need to get any property inside it legally removed before consigning it to abandoned property. Inquiring about a personal representative is an appropriate way to start this process.

Q: The safe deposit box of an active-duty member of the military is almost two years in arrears. Can we enforce a lien on the contents and drill the box, or does the Servicemembers Civil Relief Act apply to safe deposit boxes?

A: The Servicemembers Civil Relief Act (SCRA) provides legal and financial protections to those serving in the military, and it **does apply to safe deposit boxes**. A safe deposit box is considered a leasehold in North Dakota and, like any other lease, it's protected under the SCRA. The bank may claim a storage lien on the property if your agreement provides that it may, but don't get hasty in enforcement of the lien. 50 U.S.C. § 3958(a)(1) provides that "A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement." There are significant fines for a violation; more importantly your bank doesn't want the extremely bad press that it violated the rights of a member of the military.

Q: Mr. Jones's trust has a safe deposit box leased by the trust; he now wants to add successor trustees to the contract for authorization to enter the box before or after a death. We've never seen something like this before - what procedure should we follow for this?

A: Successor trustees are just that – successors – and they have no authority to act under a trust *until* they actually succeed to the position of Trustee. Your bank can have the names of the designated successor trustees in its files if they have already been designated in the trust instrument, but the bank cannot allow those named persons access as trustees until they become trustees. They become trustees under the conditions set down in the trust instrument itself. If a safe deposit box is leased to a trust, your bank must deal with the trustee based on who is the actual trustee, not based on who is dead or who is alive.

Q: Dad is going to co-sign the loan for his son, but only the son will be on the deed. What disclosures is Dad entitled to?

A: As a cosigner, Dad is a borrower and he should receive all of the same disclosures that the son receives.