

community BANKER

JULY / AUGUST 2018

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:

Community Banker
c/o Olson & Burns P.C.
P.O. Box 1180
Minot, ND 58702-1180

olsonpc@minotlaw.com
Also, visit our web site at:
www.minotlaw.com

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.

You are asking

Q: Is there any law against our prohibiting personal cell phones at work? Some of our employees text during work; can we require them to keep them in their desks or lockers unless the employee is on break?

A: There is no federal or state law giving employees the “right” to carry cell phones at work. You can require employees to place phones or other electronic devices in a closed desk drawer, in the car, in a locker, or anywhere that they are inaccessible during work hours.



OLSON & BURNS P.C.

17 FIRST AVENUE S.E. • P.O. BOX 1180 • MINOT, NORTH DAKOTA 58702-1180
TELEPHONE (701) 839-1740 • FACSIMILE (701) 838-5315 • E-MAIL: olsonpc@minotlaw.com

Q: Generally, what are the basics about loans and flood insurance for commercial lenders?

A: The Flood Disaster Protection Act applies to any loan secured by improved real estate - and that includes commercial real estate. Basically, the requirements are to *1)* obtain a Special Flood Hazard Determination; *b)* provide notice to the applicant; and *c)* for properties in a flood zone, obtain from the loan applicant flood insurance that meets the minimum required amounts, which is \$250,000 for residential property and \$500,000 for nonresidential property. It might take a city or county a long time to redraw flood maps, but if you're lending money secured by land that is not in a flood zone but has flooded three times in recent years, you can require flood insurance. This is a credit risk matter and not a compliance risk matter.

Q: What is the required wording for a Representative Payee account for an SSI beneficiary account?

A: The account title must show the beneficiary ownership of the account with the Representative Payee as the financial agent. Do not use joint accounts! The Social Security Administration recommends two ways for accounts to be titled:

- No. 1. "Barbara Beneficiary by Randall Representative, representative payee," or
- No. 2. "Randall Representative, representative payee for Barbara Beneficiary."

If the account earns reportable interest (and it should), and your system needs the SSN to be reported to match the first-named individual, you will likely have to use Style No. 1. Be aware that that format has a risk of someone misreading system information and thinking that the beneficiary has access rights to the account.

So, you need to know how your system works to determine whether tellers are alerted to the limitations on beneficiary access (the beneficiary must never have direct access to the representative payee account) and how interest gets reported before you decide which of the two styles to use.

Q: Is it permissible for someone to deposit checks into an account made payable to that someone when he is only an authorized signer on the account? And, if the check came back, do we have right of offset to charge that check back to the owner's account?

A: We can't know for sure without reading your account agreement, but it's unlikely that you have the right of offset for an item that was not deposited by the account holder. Your account agreement contract is with the person who *opened* the account, not the authorized signer. An authorized signer cannot deposit a check payable to the authorized signer unless it's endorsed over to the owner, and the funds become the owner's funds. You can and should refuse to accept items for deposit that have not been endorsed by the account holder.

Q: Is it a requirement for a business corporation to use either "Corp" or "Inc." or a word like that in its account title?

A: It is in North Dakota because the corporation *legal name* must include the words "company", "corporation", "incorporated", "limited", or an abbreviation of one of these words.

In North Dakota, the various entities have requirements of certain words in their legal names; account titles must be in the entity's legal name. For example, a limited liability partnership must have "Limited Liability Partnership" or the abbreviations LLP or L.L.P. as a part of its name.

Q: We're wondering if we are handling certain checks appropriately. We often receive checks payable to "William Jones Life Estate." Is it permissible to deposit these funds into William Jones's personal account? (We have been.) Does he actually need a "William Jones Life Estate" to deposit these? And how or when will the right of survivorship change?

A: These checks are often seen when royalties from mineral rights are paid. An owner of the real estate reserved a life estate for William Jones (he has rights in the property only while he is alive), and when he dies tittle to the minerals will pass to someone else. There will no longer be any William Jones Life Estate checks.

The bank may properly deposit them into William Jones's personal account, but should ensure that they are properly endorsed over to William Jones. For example, the endorsement may read

"William Jones Life Estate
by William Jones."

Q: How long do we have to keep our Suspicious Activity Reports?

A: Banks must retain copies of SARs and the supporting documentation for five years. These may be stored electronically.

DISCLAIMER

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.