community BANKER

JANUARY / FEBRUARY 2019

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.

YOU ARE ASKING. . . . .

Q: **A long-term customer bought a cashier's check from us, and sent it to some company to invest in real estate. Long story short, it was a swindle and she would like to stop payment on the check. We have told her she cannot, but she seems to think that because she was tricked, there's some exception under federal law.**

A: There is no exception for being tricked or scammed under federal law. Payment can't be stopped on a cashier's check.

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Q: **The out-of-state personal representative for the estate of our former customer has called us. He would like to make the final disbursement via two cashier's checks, one to each heir, dividing the rather large amount that remains in the deceased's account (there was no P.O.D. designation). The personal representative opened an estate account at another bank but never moved these funds to the estate account. We told him he needs to transfer the money into the estate account, close the deceased's account, and make the payments from estate account. He emailed copies of his PR papers and heirship information. Should we just send the heirs the money? These two are the only heirs and they are going to get the money anyway?**

A: No, you should not. Your refusal to do this is not unreasonable; banks should follow the UCC (you can't just empty someone's account and give it to two strangers), probate law, and proper probate procedure. For whatever reason, the personal representative didn't move the money into the estate account, but that's not your problem. The money in the account belongs to the estate and to the estate it must go. He needs to transfer the funds to the estate account and *then* make his disbursement to the heirs.

Q: **May we let a person deposit checks made payable to her into an account when she is only an authorized signer on the account? And, if the check comes back NSF, does the bank have a right of offset to charge that check back to the owner's account?**

A: We need to review your account agreement to be sure, but here's what we think. Your contract is with the customer who opened the account and signed the account agreement; it is not with the authorized signer. We can't think of a reason that would give you a right of offset for an item that was not deposited *by the account holder*. You can and you should refuse to accept items for deposit that the account holder has not endorsed.

Q: **A customer has died and a personal representative has been appointed by the court. His checking account had a great deal of money in it and contained a P.O.D. designation to four adult grandchildren. The personal representative came in and opened an estate account; she also asked "in her role as the personal representative" that we transfer the checking account funds to the estate account. We're pretty sure that we pay out the funds to the beneficiaries; are we mistaken in this case and are obligated to make the transfer?**

A: The personal representative is the one who is mistaken. An account with a P.O.D. designation is a nonprobate transfer under Chapter 30.1-31 of the North Dakota Century Code, which means that the money does not go into the estate to be probated, nor does the personal representative have any power or duty with respect to these assets. You may pay out the funds directly to the beneficiaries. *See* N.D.C.C. § 30.1-31-09.

Q: **Question about Bank Secrecy Act record retention requirements – if a business has a certificate of deposit and the individual who is authorized to sign for the business presents that certificate, do we keep a record of the customer/business name, address, and TIN? *Or,* do we keep a record of the name, address, and SSN of the authorized signer of the business?**

A: Your customer is the business, not the authorized signer, so you are not obligated to keep records on him or her.

Q: We've been thinking about whether self-service safe deposit boxes should be offered by our bank. We are still in the very early stages, but what are your thoughts?

A: Our thoughts are that there are too many opportunities for your bank to be sued with self-service safe deposit boxes – is the bank liable if the customer loses a key and someone else accesses the box? Is the self-service area restricted? Will the bank or can the bank maintain access records? Does the bank have a duty to question the authority of any person to open or take property from a box if that person has the keys? These are only a few of the issues that come to mind, so we do not recommend self-services boxes.