

# 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: Can a bank add a minor to an account as a POD beneficiary?**

**A:** Yes – but as with most legal issues the answer isn't a simple "yes". Payment to a minor who is an account beneficiary on a checking, savings, or CD is authorized under the Uniform Transfers to Minors Act. This means that the POD designation must comply with the Act, and if the account holder dies while the minor is still a minor, the bank will make payment under the Uniform Transfers to Minors Act.

The account owner must name a custodian to manage the account for the benefit of the minor until they reach the age specified in North Dakota. See N.D.C.C. chapter 47-24.1. Customers should be aware that payment will be made to a custodian on *behalf* of the minor if the account owner dies while the POD beneficiary is a minor. In North Dakota, a minor is someone under age 21, so the customer should consider whether he or she wants the beneficiary to be legally entitled to the money outright at age 21. If not, a minor as POD is not the appropriate transfer arrangement.

**Q: How should the account be titled if a customer wanted to add minor children as POD designation to an account?**

**A:** The account will be titled as usual. However, the POD designation in the bank's account paperwork must contain the " \_\_\_\_\_ as custodian for \_\_\_\_ under the North Dakota UTMA" language – those are the magic words. For example:

"John Smith as custodian for Harriet Jones under the North Dakota Uniform Transfers to Minors Act." See N.D.C.C. § 47-24.1-03; N.D.C.C. § 47-24.1-09(1)(b) for the language requirement.

**Q: We have done this in the past, but have now been told it is not recommended.**

**A:** It's the bank's call – does the bank want to be responsible for making sure that the designation is done properly, and then making the payout properly? Does the bank feel comfortable with the possibility of paying out a lot of money to a 21-year-old person to spend as he or she likes? Wouldn't a trust be a better vehicle? Has the customer who wants to set up the account with a minor as POD thought about these things or spoken with a lawyer to figure out a better way to leave money to the minor?

And while it's permissible under North Dakota law, if it sets up the account the bank must ensure that the custodian designation is correct in order to create a valid POD designation for a minor. If the customer dies while the beneficiary is still a minor, a new UTMA account must be set up with payment made to the custodian on behalf of the minor.

**Q: Can the funds be paid out to a minor upon death of the account holder?**

**A:** No. The funds must be paid to the custodian on behalf of the minor in a new UTMA account.

**Q: What if they have other instructions in their will?**

**A:** This is separate from the will. An account with a POD designation is “nontestamentary” and is not disposed of by a will; neither is it part of the estate. An account with a POD designation is a nonprobate transfer under N.D.C.C. § 30.1-31-01 and the money in the account will be *transferred according to the POD designation*. On occasion someone will name a child as the POD designation with the expectation that he or she will divide the money in the account with all of the children. However, the POD beneficiary is *not* obligated to do that and using a POD designation as estate planning to avoid probate is not a good idea.