

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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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: Our customer's account has been compromised – someone has been forging the drawer/customer's signature on his checks and cashing them. How long does the customer have before he bears the burden of the loss? What is the bank's liability?

A: As a general rule, it's the drawee bank's responsibility to recognize the signature of its customer (see our discussion below) – if your bank doesn't return the check before midnight of the banking day following the banking day of presentment, it's your bank (not the customer) that will bear the burden of loss.

Under N.D.C.C. § 41-04-37(6) (UCC § 4-406(f)), your customer has one year to report the forgery to the bank. This subsection places a duty on the customer to examine his bank statement and notify the bank. Under this subsection, a customer is “precluded” or prohibited from making a claim against the bank if the customer doesn't discover and report the unauthorized signature or any alteration within one year from the time the statement is made available to the customer. Check your account agreement, because the bank and the customer may have agreed to a different time frame within which the customer has to notify the bank. The account agreement typically shortens that time frame so the bank is off the hook sooner.

Q: How long a hold can be placed on a foreign check drawn off a foreign bank? Where do we find information on best practices for foreign checks?

A: To our knowledge, Federal Reserve Operating Circular No 3 and Regulations CC and J do not apply to banks outside of the United States, so there is no specific time limit. The *first* best practice is to only credit the customer's account when good funds are actually received. The Federal Reserve should be able to offer you guidance on best practices.

Q: We have a customer who has lost his checkbook or let criminal elements have access to it while they have been out drinking. This has happened more than once. He's also given out his account information to telephone scammers. He adamantly refuses to close the existing compromised account and open a new one. Can we close it?

A: You can close his account. After all of the problems, your bank is an easy target for claiming that it knew or reasonably should have known that his account could be emptied by fraudsters and the bank should have guarded against it. Send him a letter saying it's going to be closed, and close it.

SIGNATURE CARD BEST PRACTICES.

Your bank uses signature cards to identify authorized signers and verify a customer's signature to both personal accounts and business accounts. Generally, the information contained on a signature card is basic identifying data - the account number, the type of account (checking, savings, etc.), the account

holder's name, date of birth, home or business address, and social security number or EIN. Collect accurate identification and verifying documents, both for your bank's security and also to avoid violations of the Patriot Act.

Each authorized signer is required to sign his or her legal name on the signature card. The signature card document is signed by the account holder when an account is opened and by new account holders when they are added to the account; it's often kept on file as a physical document, but bank signature cards are now created, signed, and managed electronically. Obviously, signature cards should be stored electronically if your bank has even one branch so the signature card is available in more than one location. This little document is more important than most of us realize:

a. It establishes a record of account holders. *All* account holders must have their signatures and other identifying information added to the signature card to create a single record of just who has access to and is liable on the account. If new account holders are added *after* the account is opened, their information will be added to the signature card associated with the account when they are added to the account.

b. It verifies the account holder's signature. When a check is deposited or a withdrawal is made, the endorsement on the back of the check or the withdrawal slip can be compared against the signature card. This protects both the customer and the bank from fraud.

c. It indicates the number of necessary signatures. With both personal and business banking, more than one signature may be required for a transaction. Including information on the number of signatures required on the signature card makes it easier for staff to ensure each account's signature requirements are followed.

Signature card changes. If changes are made to signature cards, don't just assume that all of the information on the card is still up-to-date or accurate. If the customer has a name change because of marriage or divorce, for example, be sure that the card is endorsed using the new name. The bank is within its rights to ask for a marriage certificate, divorce decree, or updated driver's licenses for name changes, and a copy of the death certificates for removal of signers due to death. In making any changes to the card, check that the address and phone number haven't changed, and update that information as well.
