

# 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: We're thinking of offering a free safe deposit box for new Certificate of Deposits over a certain dollar amount for the time that the CD is with our bank. Thoughts?**

**A:** Perhaps a nice coffeemaker or cool Yeti cooler would be better. The free box would require a box agreement with crystal-clear, specific language making it clear that the fee-free lease is effective only while the CD is with your bank, and *exactly* what happens once the money is withdrawn. Otherwise, if a lessee is given a free box and even if he doesn't use it, the box will never be delinquent (so it can't be drilled and used by someone else). Theoretically, you could end up with a free, empty box in your vault for eternity.

**A: Can the newly-appointed conservator of our customer access the customer's safe deposit box?**

**A:** A conservatorship is a matter of state law and will be created under the order of a state court judge. It is generally like a guardianship, and the conservator may be given the responsibility to manage the finances ( the estate) of the person that the court has found to be incapable of managing his or her own affairs, or to manage the estate, or the estate and the person. No matter which, the conservator would generally stand in the legal position of, and have the same legal access to the box as the lessor of the box has. However, for specific questions about the court order for the conservatorship, consult with your bank counsel before allowing access.

## Coming for a Customer Near You: The Corporate Transparency Act

Small business owners are the lifeblood of community banks, and those small business owners need to know about a new reporting obligation. Deliberate non-compliance or providing false information to FinCEN can result in penalties up to \$500 for each day of the violation; criminal penalties can include imprisonment for up to two years and/or a fine up to \$10,000. What is this reporting requirement that can turn your honest small business borrower into a criminal?

The Corporate Transparency Act goes into effect on January 1, 2024, and will require small businesses to file a Beneficial Ownership Information (BOI) Report with Financial Crimes Enforcement Network (FinCEN) at the U.S. Department of Treasury. The Act doesn't apply to sole proprietorships and general partnerships, but it *does* apply to any other entity that is created by the filing of a document with the Secretary of State or Native American tribe, including corporations, LLCs, LLPs, LLLPs, LPs, non-profit corporations, and business trusts. These entities that have been created in the United States and are not exempt (and therefore have to file a BOI report) are referred to as "domestic reporting companies" under the law. Additionally, any foreign company doing business in the United States with a physical location in this country will also need to file ownership information under the Act.



The stated purpose of the new law is to detect and prevent (and punish) money laundering, terrorism financing, drug trafficking, and white-collar crime by providing beneficial ownership information for certain business entities to law enforcement. For the purpose of the Act, a “beneficial owner” is an individual who directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise exercises "substantial control" over a reporting company or owns or controls 25% or more of the "ownership interests" of a reporting company.

Twenty-three categories of entities are *exempt* from the reporting requirements and are not considered a “reporting company”, including banking. Business entities in already heavily-regulated industries such as insurance, banking, financial brokerages, exchanges, clearing agencies, public accounting firms, political organizers, investment advisors, investment companies who pooled investment rewards, accountants, and Commodity Exchange Act registered agencies, are generally exempt, as are large domestic corporations with at least 20 employees and tax returns showing more than \$5 million in gross receipts or sales.

Reporting companies must report the legal name, trade name, DBA, taxpayer ID, and street address. Beneficial owners will have to report their name, date of birth, their *residential* street address – not the entity street address, and provide a valid state-issued photo ID (i.e., driver's license or passport). Companies owned by a trust will have to report the name of the trustee and any beneficiaries designated more than 25% benefits – basically, anyone who has authority to dispose of trust assets.

The good news is that reporting companies created before the end of 2023 will have until January 1, 2025, to file beneficial ownership information. Companies registered with the Secretary of State or “created” after January 1, 2024 have 30 days after receiving notice of their creation or registration. (However, FinCEN has proposed to extend the initial filing deadline for BOI reports from 30 to 90 days for entities created or registered in 2024, with the 30-day reporting period going into effect January 1, 2025.) Reports must be updated within 30 days of a change to the beneficial ownership, such as through the sale of a business, merger, acquisition, or death, or 30 days upon becoming aware of or having reason to know of inaccurate information previously filed.

Other good news is that beneficial ownership information submitted to FinCEN portal will not be publicly available for anyone to look at and there is no filing fee.