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: Our customer has a corporate and a limited liability company checking account with us. On more than one occasion he has endorsed a check with the corporate stamp and asked to deposit that check written out to (payable to) the corporation into his LLC account. He's the sole shareholder of the corporation and the managing member and sole owner of the LLC. We haven't complied with his requests yet, but can we do this because he is the sole owner of both entities?

A: Do not comply with the request to deposit checks payable to one entity into the account of the other entity as you have described. They are separate legal entities or "persons" and you wouldn't do that for individual people.

If depositing corporate checks into the LLC is something he wants to do for some reason, your bank can request authorization from the two entities allowing the sole shareholder and the managing member (the owner of the two entities) to indorse checks payable to each entity to the other entity. Then, the bank could accept a check payable to the corporation for deposit to the LLC if it is indorsed *by* the corporation *to* the LLC and then indorsed for deposit by the LLC (and vice versa). If the bank doesn't want to do that (and it's entirely up to bank policy, level of risk, etc. - we wouldn't recommend it), your customer can deposit the checks to whichever entity they are payable to and then issue checks from one entity to the other to get the funds where he wants them like a sensible person would do.

Q: A long-time customer has a grandson who is interested in farming with grandpa. He would like to own his own land, and grandpa would like to help him. Can we make a real estate loan to a 16-year-old boy if his grandfather is the one who approached us for the loan, would mortgage some property as security, and is the co-signer? Would there be a problem because the grandson is still a minor?

A: There would be a problem. The age of majority in North Dakota is 18. N.D.C.C. § 14-10-01. The law specifically provides that minors *cannot* enter into a contract relating to real property or any interest therein. N.D.C.C. § 14-10-09. This would rule out loans secured by real property – the grandson cannot enter into loan agreements for the purchase of real estate.

Q: Can a person revoke or retract a UTMA account that she set up for a minor? Apparently, the aunt has had second thoughts about giving money to a rather wayward nephew.

A: N.D.C.C. §47-24.1-09 provides for the ways in which transfers are made under the Uniform Transfers to Minors Act. Section 47-24.1-11(2) provides that a transfer made pursuant to section 47-24.1-09 is *irrevocable*, and the custodial property is indefeasibly vested in the minor. She *can't* rescind the transfer made to the nephew when the UTMA account was created and funded. "Irrevocable" means it can't be

reversed, so the aunt who transferred the money into the account can't transfer it back to herself and close the account. The bank cannot not allow this unless it's ordered to do so by a court.

Q: If a check is made payable to the minor *or* the UTMA custodian on behalf of the minor, can the custodian cash it?

A: No. The check should be endorsed by the custodian and deposited to the minor's UTMA account. N.D.C.C. § 47-24.1-12 describes the custodian's care of custodial property, and a custodian taking cash for a check for who knows what is not an approved transaction. Asking the bank to cashing the check for the custodian or to deposit it into the custodian's personal account should put the bank on notice of a breach of fiduciary duty by the custodian under § 41-03-33.

Q: Is it ever permissible to use a United States taxpayer identification number for the account of a nonresident alien?

A: No. If it is a nonresident alien from a country in the tax information exchange program and the account is interest-bearing, your bank will need a foreign taxpayer identification number (FTIN). An FTIN is a taxpayer identification number issued by a country other than the United States, and is used by foreign persons to identify themselves for tax purposes.