community BANKER

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Welcome to the January/ February issue of the COMMUNITY BANKERS' ADVISOR.

The ADVISOR 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: We have a Certificate of Deposit owned by a husband and wife, with a "primary" and a joint owner with rights of survivorship. The "primary" owner, the husband, recently passed away. The joint owner wants to keep the same CD open and switch ownership so she is "primary" owner. Do we have to get a Form W-9 (Request for Taxpayer Identification Number (TIN) and Certification) and update the CD signature card?

A: Just to clarify, calling one of the joint owners a "primary owner" makes it sound like one of the joint owners has more "ownership rights", which is not how it actually is. Typically, the first-named of the joint owners is the party whose tax identification number is used for interest reporting to the IRS. Be clear that that person has no higher ownership status.

With rights of survivorship, ownership of the CD vests by contract and/or by operation of law in the surviving joint owner immediately upon the death of the other owner. See N.D.C.C. § 30.1-31-09. Because she is already on the signature card, you don't need to get a new signature card from her, though you should note the death of the other owner on the current card. If you did not obtain a W-9 certifying the TIN of the now-surviving owner at account opening, do that now and update the record so that tax reporting will be done under her TIN. While taking care of that, it's also the time to remove the decedent's name from the CD account title and make necessary changes to the mailing address.

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Q: A customer brought in a check payable to a trust. She wants to deposit it into her personal account, and showed the trust papers, proving that she is the trustee, to the teller. She wasn't happy when we told her she needed to open an account in the name of the trust.

A: She may not be happy, but the bank was absolutely correct. A bank may not deposit a check made out to a trust into a personal account - not even if the trustee shows the trust papers to the teller. If a trust exists and there are checks payable to that trust, your customer needs to open an account in the name of the trust.

Q: Our customer is a small limited liability partnership (Henny Penney, LLP) doing business under a registered fictitious name (Chicky Cakes). The bakery used to be named Henny Penney, the same as the LLP name, but changed its business name to Chicky Cakes. Unfortunately, it still gets a lot of checks written out to Henny Penny. Is there any law or regulation saying we cannot accept checks for deposit into the Chicky Cakes account that are made payable to Henny Penny?

A: A limited liability partnership using a fictitious name in the transaction of business must file a Partnership Fictitious Name Certificate with the Secretary of State. A fictitious name is a name *other* than the limited liability partnership name - it's not actually a separate entity, it's just the name the partnership uses for the business. There is no law or regulation providing that the business can't accept checks payable to either its real name or to its fictitious name; however, we think it's confusing for bank employees to deal with. If the business is getting a number of checks payable to Henny Penny and a number payable to Chicky Cakes, urge it to get an endorsement stamp that includes both its legal name and its DBA name.

Q: We have had several disputes between account holders in the past year or two. Some cases have been joint account holders, a couple were signers on an account, and one case was a person claiming to own or control a business. We try to avoid taking sides. What are our options?

A: You may be asked to take sides - don't. If you pick the wrong side, your bank may liable for its actions, including potential wrongful dishonor claims. Banks may handle disagreements between account holders in different ways. The bank may suggest that one of the parties, who is an authorized signer on the account, furnish it with instructions to stop payment on all checks, withdrawals, and transfers from the account - freezing the account until the dispute is settled. N.D.C.C. § 41-04-43(1) (U.C.C. § 4-403(a)). More commonly, many banks have a clause in their account agreement authorizing the bank, in its discretion, to (a) require all authorized signers to act together, and/or (b) require proof, satisfactory to the bank, of each signer's continuing authority to act. Finally, some banks have a protective clause in their account agreement that gives it the right to freeze an account whenever the bank has a valid concern as to anyone's ownership interest in, or right to control, an account. Check your account agreements whenever there is a dispute to see what your options are.

Is Your Bank Ready for the New Integrated Disclosure Rules?

As you know, revisions to the Dodd-Frank Act require that mortgage disclosures required by the Truth in Lending Act and the Real Estate Settlement Procedures Act be combined into a single disclosure. The Consumer Financial Protection Bureau (CFPB) published final rules to implement the new integrated disclosures on November 20, 2013; these rules are effective on August 1, 2015. Your compliance countdown is well on.

The first new form (the Loan Estimate) combines the current Good Faith Estimate and Initial Truth-in-Lending disclosure and must be provided to consumers within three business days after they submit a mortgage loan application. The second form (the Closing Disclosure) combines the current HUD-1 and final Truth-in-Lending disclosure; this form generally must be received by consumers at least three business days before they close on the mortgage loan. You will notice that the forms use clear language and are intended to make it easier for borrowers to find key information, such as the interest rate, monthly payments, and costs to close the loan. The forms are also meant to provide more information to help borrowers decide whether they can afford the loan and to compare the cost of different loan offers, including the cost of the loan over time.

The integrated disclosures must be provided in a closed-end consumer credit transaction secured by real property, whether the real estate has a dwelling upon it or not. Vacant land, land with a residence, land with a commercial property - if the lender gets a mortgage on the land, if the borrower is a consumer, and if the primary purpose for which the proceeds will be used is a personal, family, or household purpose, the transaction is covered by the new requirements. The revised rules apply to *any* consumer purpose transaction, including purchase, second mortgages, refinance, and more; even construction loans and other temporary financing situations will require disclosures if they are consumer purpose transactions.

The integrated disclosures do not have to be used for home equity lines of credit (which are also not subject to RESPA), reverse mortgages (which continue to be subject to RESPA), mortgages secured by mobile homes or by dwellings not attached to property (if the mobile home or dwelling is "attached" and considered real property, integrated disclosure forms must be used), a creditor that makes five or fewer mortgage loans in one year, certain narrowly-defined subordinate liens *(see* 1026.3(h) of the Final Rule), and loans that are not "consumer loans", such as commercial or business purpose loans. These transactions must continue to use current disclosure forms required by TILA and RESPA separately.

What should lenders do now?

Visit with your title company/settlement servicer about:

a) Who will prepare and deliver the Closing Disclosure form?

b) If your bank wants the title company/settlement agent to deliver the form, what method of delivery will be required?

c) The new time lines and when final information must be received in order to prepare and distribute the Closing Disclosure 3 days before closing.

Lenders and/or title company/settlement servicers need to visit with real estate agents about:

a) New time lines and when information must be finalized in order to prepare and distribute the Closing Disclosure 3 days before closing.

b) New requirements for scheduling closings in advance – and sticking to the scheduled closing day and time.

Lenders need to visit with settlement software providers about when will the updated software be ready, and whether that is enough time to prepare.

Lenders need to plan for implementation:

a) Make a list of customized documents you will need.

b) Create a reasonable timeline for implementation.

c) Consider time needed for training and testing on sample loans.

d) Start educating those who need to know about the integrated disclosures.

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