

# 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.

## Revisiting the UCC Basics

### 1. What defines a "default" under the Uniform Commercial Code?

- A. Common Law
- B. The agreement between the parties
- C. The UCC

**Answer: B.** N.D.C.C.Ch. 41-09 does not define what constitutes a default, but instead leaves it up to the parties.



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**2. A creditor may go onto the Debtor's property to repossess collateral without a court order if**

- A. The debtor is in default
- B. The Sheriff goes along
- C. There is no breach of the peace
- D. All of the above
- E. A & B, but not C
- F. A & C, but not B.

**Answer: F.** A default is necessary. Bringing a law enforcement officer along suggests that the creditor expects trouble or is meant to intimidate the Debtor. Don't bring along a deputy! N.D.C.C. § 41-09-106 provides that after default, the bank can get its collateral without a court order so long as there is no breach of the peace.

**3. You have extended a loan to AllSystems, Inc., which has a trade name of Paul's Best HVAC. Do you file your financing statement against Paul's Best HVAC?**

- A. Yes – that's the business name
- B. No – that's not the Debtor's name

**Answer: B.** Tradenames alone are not sufficient for a financing statement, so A is incorrect. Also, though it seems logical to file against the Debtor as "AllSystems, Inc. d/b/a Paul's Best HVAC", don't do that, either. Our concern is that it could make the UCC filing ineffective depending on whether the filing office's search logic would pick up that particular UCC filing when searching the exact legal name (AllSystems, Inc.). The better way to include a trade name if the bank wants it on the UCC-1 is to use only the Debtor corporation's legal name in the first debtor box in the UCC Form, and use only the trade name in the second debtor box.

**4. Where does a bank file a "fixture filing" on a new cemented-in grain bin?**

- A. Online, with the Office of the Secretary of State
- B. Nowhere, because North Dakota law does not permit liens upon grain storage units
- C. In the Recorder's office of the county where the grain bin is located

**Answer: C.** Under N.D.C.C. § 41-09-72(1), one would file in the applicable real estate recording office for as-extracted collateral, timber to be cut, or if the financing statement is filed as a fixture filing.

**5. Where does a bank file a UCC-1 for an LLC with its executive office located in Mandan but whose articles of organization were filed in South Dakota?**

- A. In North Dakota, because the executive office is located in this state
- B. In South Dakota, the state of the Debtor's formation

**Answer: B.** The filing must be made in the location of the Debtor. An entity that is organized/ created under the law of a state is located in that state. N.D.C.C. § 41-09-27(5). If you filed in both states – not wrong, but an unnecessary belt-and-suspenders approach - you'll be secured because of the South Dakota

filing.

### **Amendments to Regulation CC Regarding Funds Availability**

The amendments to Reg. CC result from a requirement in the Expedited Funds Availability Act to make cost of living increases to the amount of funds depository institutions must make available to their customers. It also included a requirement to adjust the dollar amounts under the Act for inflation every five years, starting July 1, 2020. (The next dollar-amount adjustment will occur on July 1, 2025 and on July 1 of every fifth year after 2025.)

Effective **July 1, 2020**, inflationary adjustments will be implemented by the amendments to Reg. CC, affecting how check holds are placed in banks. The increase in long-time threshold amounts that relate to funds availability may cause some initial confusion for employees, namely because the new threshold amounts do not round well and aren't as easy to calculate as the previous threshold amounts.

The adjustments to the thresholds include:

- \* The minimum amount of deposited funds that banks must make available for withdrawal by opening of business on the next day for certain check deposits is \$225, up from \$200.
- \* The amount a bank must make available when using the EFA Act's permissive adjustment to the funds-availability rules for withdrawals by cash or other means is increased from \$400 to \$450.
- \* The amount of funds deposited by certain checks in a new account that are subject to next-day availability is \$5,525, up from \$5,000.
- \* The threshold for using an exception to the funds-availability schedules if the aggregate amount of checks on any one banking day exceeds the threshold amount is \$5,525, up from \$5,000.
- \* The threshold for determining whether an account has been repeatedly overdrawn is increased from \$5,000 to \$5,525.

Banks should take note and plan on teller training on new Reg. CC amendments; additionally, funds availability policies, disclosures, and posters must be in compliance with the updated dollar amounts. Reg. CC requires at least **30 days' advance written notice** to holders of consumer accounts before making any changes to the bank's funds availability policy. 12 C.F.R. § 229.18 (e).

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