

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:

Community Banker
c/o Olson & Burns P.C.
P.O. Box 1180
Minot, ND 58702-1180

olsonpc@minotlaw.com
Also, visit our web site at:
www.minotlaw.com

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: An employee's conduct at work has become detrimental to her job performance and to job performance of her coworkers. Are we able to require that an employee receive counseling or treatment because her behavior is threatening or bizarre?

A: You cannot require your employee to obtain medical treatment as a condition of keeping her job, not even for addiction or for mental illness. However, even if she has a mental illness that meets the definition of a "disability", you don't have to keep her on as an employee though she may be protected by the Americans with Disabilities Act. The employee is still subject to discipline, including firing, if she violates bank policy on misconduct or other bank policy. As in all situations of employee discipline, discipline should be undertaken in a fair and impartial manner and with careful documentation.



OLSON & BURNS P.C.

17 FIRST AVENUE S.E. • P.O. BOX 1180 • MINOT, NORTH DAKOTA 58702-1180
TELEPHONE (701) 839-1740 • FACSIMILE (701) 838-5315 • E-MAIL: olsonpc@minotlaw.com

Q: One of our customers deposited a check for \$250 into his account without endorsing it; we accepted it and sent it through the check processing system. Now, the drawer of the check has been in and says that he wants his money back from us because the check wasn't endorsed.

A: Your bank is not obligated to give the drawer his money back. A bank is protected under N.D.C.C. § 41-04-17 when it accepts an unendorsed check from the payee. N.D.C.C. § 41-04-17(1) provides in relevant part that "The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, *whether or not the customer endorses, . . .*"

Q: The Joneses, a married couple came in together and Mrs. Jones deposited \$9,000 into her sole personal account. She also deposited \$1,500 into their joint account - the account she shares with her husband. Do we fill out a Currency Transaction Report just for her because she is the one benefitting and she is the one who made a \$10,500 deposit? Mr. Jones didn't conduct either transaction and is only benefitting from the \$1,500 into the joint account - he's below the threshold, right?

A: A CTR is required when a cash-in or cash-out transaction or transactions is completed on the same business day *by* or *on behalf of* a person. A deposit to a jointly-owned account is considered made on behalf of *each* of the joint owners, so the \$1,500 deposit was made on behalf of both the husband and the wife. Mrs. Jones was the one conducting both transactions, which means that both deposits were completed *by* her. Because you have to aggregate or total the deposits to determine whether to file a CTR, and the grand total was \$10,500, a CTR is required. When filing a CTR, the bank must provide information on each identified person conducting the transactions and on each person on whose behalf the transactions are conducted. The bank will complete the CTR to report that Mrs. Jones *conducted* the transaction and that it was conducted on *behalf* of Mr. and Mrs. Jones -- *both* of them are named in the CTR.

See www.fincen.gov/frequently-asked-questions-regarding-fincen-currency-transaction-report-ctr.

Q: A check is payable to Jack B. Nimble. Ellen Nimble brings it in to cash and endorses it "Jack B. Nimble by Ellen Nimble." Jack doesn't appear to be our customer, and we don't know if Ellen has authority to sign for Jack. Should this check be cashed?

A: No. If you are not in possession of a valid Power of Attorney document giving Jack's poa to Ellen, the endorsement is worthless because she has no authority.

Q: Can we give Bison football tickets to local realtors?

A: No. Sports tickets have been the subject of prior enforcement actions because the tickets are a "thing of value" under RESPA, 12 C.F.R. § 1024.14(b). This section provides that "No person shall give and no person shall accept any fee, kickback or other *thing of value* pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person."

Q: What are my record keeping requirements when I file a Currency Transaction Report electronically?

A: After submitting a report via the BSA E-Filing System, filers are required to save a printed or electronic copy of the report in accordance with applicable record retention policies and procedures. Generally, you are required to keep copies of your filing for five years.

Q: If a check is payable to two different people with an "&" between them, as in brothers Bill Nelson & Joseph Nelson, do *both* payees have to sign the check to deposit it?

A: Yes. N.D.C.C. § 41-03-10(4) provides that

If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

In plain English, the “alternatively” means “or”, so if it were Bill Nelson or Joseph Nelson, either one of them can endorse and deposit or cash the check.

“Not alternatively” means with an “and”, and they both must sign the check. The ampersand - “&” - is more casual than use of “and”, but it still means “and.”

If a check payable to two or more people is *ambiguous* as to whether it’s payable alternatively, it *is* payable to the payees alternatively. In other words, a check payable to "Bill Nelson/Joseph Nelson" or "Bill Nelson, Joseph Nelson" is payable to either one just as if the check were payable to “Bill Nelson or Joseph Nelson."

Q: A customer wants to set up an account for benefit monies to be donated to a citizen of our town who is battling cancer. She would like the husband of the patient to be the authorized signer, but we’re not comfortable with only one signer on the account and want her to also be an authorized signer. We think this is a sensible way to proceed, but others think that we are somehow showing mistrust to the patient’s husband.

A: You are within your rights to request this and you are absolutely right to request this. What happens if the authorized signer becomes incapacitated, dies, or becomes unavailable? It’s not unheard of for this to happen on these types of accounts, leaving no one with authorization to withdraw funds.

The account should have more than one authorized signer or a contingent signer in the event the authorized signer is not available or becomes incapacitated. It has nothing to do with the husband personally nor is it a statement on his trustworthiness.

DISCLAIMER

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.