

# 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.

## 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.



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## **Olson & Burns P.C. Announces Two Attorneys Have Joined the Firm**

Olson & Burns P.C. is pleased to announce the addition of two attorneys to its statewide practice representing community banks.

**Attorney Nici Meyer** is a lifelong resident of North Dakota who grew up farming and ranching throughout western and central North Dakota. Ms. Meyer graduated from Rugby High School and obtained her Bachelor of Science degree in political science from Moorhead State University in 1998, and her Juris Doctorate from the University of North Dakota School of Law in 2001. Her law career began in southwest North Dakota where Ms. Meyer served as the elected state's attorney for both Bowman and Slope Counties, as well as working as a sole practitioner with a general practice focused on real estate transactions and title, probate law, collections, and civil litigation. Ms. Meyer also has extensive experience in contract drafting, review, and negotiations, as well as risk management.

Prior to joining Olson and Burns, PC, Ms. Meyer served as an Assistant Attorney General in the North Dakota Attorney General's Office within the Civil Litigation and Natural Resources Division where she worked on the regulation of oil and gas production, civil litigation, and various administrative law cases.

In addition to her law career, Ms. Meyer has continued her passion for ranching alongside her husband and partnering with her parents in a cow/calf operation. In her spare time, Ms. Meyer enjoys training and working with her horses and rodeoing with her family; she also enjoys hunting and a friendly game of golf.

Licensed in North Dakota, South Dakota, and Minnesota, Ms. Meyer is now accepting new clients.

**Attorney Loni Bryantt** is a Minot native and is pleased to return to practice law in her hometown. Ms. Bryantt obtained her Bachelor of Arts degree in Journalism and Mass Communications from Arizona State University's Walter Cronkite School of Journalism and Mass Communications in 2017. In May 2020, she received her Juris Doctorate from the University of North Dakota School of Law and earned an Indian Law Certificate, which recognizes those students who take at least 15 credits in Indian Law and Tribal Law.

Ms. Bryantt has broad experience in legal research, legal writing, and courtroom procedure and protocol. While in law school, she participated in Moot Court, was the Outside Articles Editor for the North Dakota Law Review, worked as a legal intern on the U.S. Senate Committee on Indian Affairs with Senator John Hoeven, worked as a law clerk for a Grand Forks law firm, and served as a judicial law clerk for the Northeast Central Judicial District Court.

Ms. Bryantt will be writing the North Dakota Bar Exam on July 28<sup>th</sup> and July 29<sup>th</sup>, 2020.



## YOU ARE ASKING . . . .

**Q: Can our bank accept a check for deposit that is missing the amount written in words? Suppose the check has the amount in numerals, but the written-out amount section is blank?**

**A:** Interestingly, there's no regulatory or UCC requirement for a both a dollar amount in words *and* an amount in numerals. The written-amount space is there as a control to make an alteration of the intended dollar amount more difficult; it's also there because it's custom. If your bank has a policy that a check must have *both* written words and numerals, then you don't have to accept the check. If there is no policy, see our first sentence.

We've heard the written-word amount referred to as the "legal" amount of the check, which is not strictly correct. The written-word amount is the "legal" amount of the check only if it is different from the amount in numerals - that's when the amount in words controls. N.D.C.C. § 41-03-14 (U.C.C. 3-114) says that if an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

**Q: When we mail bank statements for a UTMA account, is the mailing address the address of the custodian or the minor/beneficiary? We're pretty sure that it's the custodian, but does anything have to be mailed to the minor?**

**A:** You are correct that the statement is to be mailed to the custodian. For a custodial account under the UTMA, the custodian, *not* the minor, is the account customer. The minor may be the beneficial owner of the funds in the account, but not of the account itself. You are not required to send statements or anything else to the minor; if the custodian wants to inform the minor about the contents of the account, that's his or her decision.

**Q: Can a lender require a consumer to sign and return the TRID Loan Estimate or Closing Disclosure?**

**A:** That depends. As you know, the TILA-RESPA Integrated Disclosures (TRID) provides for the disclosures for fees in the "Loan Estimate" document and "Closing Disclosure" document for most (not all) closed-end consumer mortgages. TRID is designed to help borrowers understand the terms of their loan more clearly before closing.

Nothing in the TRID regulations require a consumer borrower to sign the Loan Estimate or Closing Disclosure; however, lenders have the option to include a line for consumer signatures to acknowledge receipt. A lender may include the signature line and require the consumer to sign the disclosure, but *only if* the consumer receives a copy of the disclosure that he or she may keep.

According to the regulations, a lender may require a consumer to return a signed copy of the disclosures, but it must ensure that the borrower receives at least one copy of the disclosure in a form that the consumer may retain, no later than three business days before consummation. "Consummation means when the borrower is contractually obligated to repay the loan – in other words, when the borrower signs the promissory note).

If the borrower receives only one copy of the TRID disclosures and the lender requires the borrower to sign and return that copy, then the borrower has *not* received the disclosure document in a form that the consumer may keep.

If a lender requires consumer borrower signatures to the disclosures, we recommend that there be in place a means of documenting the fact that the borrower was given a copy *to keep*.