

community BANKER

JULY / AUGUST 2021

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: We know we have to be cautious when garnishing accounts containing federal benefits payments. Things change fast - what is the rule about the coronavirus payments?

A: Economic impact payments under the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (the second round) are *exempt* from garnishment. These economic impact payments are generally treated in the same manner as federal benefit payments that are exempt from garnishment, but there may be some differences. Banks should be very careful and consider visiting with legal counsel before garnishing these funds.

Q: With the final rule in Reg. D in effect regarding limits on withdrawals from savings accounts, is it still in the bank's discretion on whether it will have a withdrawal limit or whether there will be no limit?

A: As you know, the old Federal Reserve Board Regulation D said a customer couldn't make more than six withdrawals or transfers per month out of a savings account or money market account.

With the change to Reg. D, banks are free to maintain their old withdrawal limit rules *or* they may now have no limit on transfers or withdrawals from savings or money market accounts. In other words, banks are not *required* to make changes to their withdrawal limit rules. Some banks are leaving things as is because this change was made to give customers more access to savings during the pandemic and those banks reasonably think it'll revert back in a year or two. However, according to the Federal Reserve Board's FAQ, the Reg. D change is considered permanent. It's your choice.

Q: Several sibling customers created a Farm Limited Liability Company, and opened a FLLC account. They wanted a POD on the account, which didn't sound right to me, and were not terribly happy because I refused to do this. What's a better explanation than "our software won't let us." Did I miss something?

A: You did not miss anything.

In fact, N.D.C.C. § 30.1-31-03(1) states that the POD/nonprobate transfers statutes do not apply to an "account established for a partnership, joint venture, limited liability company, or other organization for a business purpose." The explanation is that "POD" stands for "pay on death" and these directions are only used for natural persons, also known as "real live people." Because the FLLC is a legal "entity" that was established under North Dakota law, it is not "alive" and it won't "die" so as to effectuate a POD transfer. It can be dissolved, but that's not a death.

Q: I know a Currency Transaction Report (CTR) is required for a customer who used \$12,000 in cash for a certificate of deposit. What is the category for this on the CTR?

A: Correct - a CTR, used to help prevent money laundering, is to be filled out by a bank representative whenever a customer attempts a currency transaction of more than \$10,000. The

\$12,000 in cash for a certificate of deposit would be reportable as a "deposit" on the CTR because it doesn't actually fit into any other category.

Q: We somehow overlooked a stop payment and paid an \$85 check two days ago. Might we be able to still return it?

A: Unfortunately, you may not. Your bank's opportunity to timely return that check ended at midnight on the business day after it was presented for payment.

Q: Can we or should we accept a check for deposit or cashing that has no payee name written on the payee line?

A: You can, but don't do it. Our advice is that a bank should not accept a check lacking a payee. Under N.D.C.C. § 41-04-37(6), the customer has up to one year to claim that a check has been altered (and the payee name removed). If you are unable to collect from your customer on a deposit or if you've cashed the check for a non-customer, you'll most likely lose the amount of the check.

Clearly, without a payee name your bank has no way of honoring its presentment warranty under N.D.C.C. § 41-04-20 that the right person received the proceeds from the check.

Q: Our customer would like a POD designation added to her safe deposit box agreement that kicks in only after her death so her daughter can have access. I've never heard of such a thing, I'm sure it's not appropriate, and our software won't do this. She is a sweet lady and thinks perhaps we can just manually type something into her safe deposit box lease. What do I tell her, nicely?

A: Please tell her that Chapter 30.1-31, North Dakota's law on nonprobate transfers, does *not* include safe deposit boxes in those accounts or agreements that may be transferred subject to a Pay on Death designation. Tell her that even if you typed it in to help a nice customer, such a clause in a box lease agreement would be void at the outset and would not be honored on her death.