

# community BANKER

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Welcome to the September/October 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: Bob's Car Business, LLP wants to open a new account for the limited partnership and have three doing-business-as businesses on the account, too. The account would look like Bob's Car Business, LLP, d/b/a Bob's Car Cleaning and d/b/a Bob's Towing and d/b/a Bob's Radiator. Thoughts?**

**A:** The Limited Liability Partnership can conduct business under as many dbas as it wants - that's its decision. Your Bank has the power to decide how it permits a customer to open an account and deposit checks into that account. We suggest that it require a separate account for each dba, otherwise it may be difficult for tellers to verify payees and endorsements at the time of deposit. In short, reduce the opportunity for human error.

**Q: Can ABC Corporation sign loan documents as the president of DEF Corporation?**

**A:** No. The officers of a corporation are individual natural persons - real flesh-and-blood people - not other corporations. If you need the signature of DEF Corporation, that corporation must authorize an individual natural person, a real living person, to sign on its behalf.



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**Q: Account styling question - XYZ is a corporation opening an account with us. Is it required for a corporation's account to include either "Inc." or "Co." or "Corp." on the account titles?**

**A:** Yes. That's because one of those abbreviations is part of the entity's "legal name"; you should always use the name stated in its Articles of Incorporation filed in the office of the Secretary of State. How do we know that one of those abbreviations is a part of the corporation's legal name? Because North Dakota has a statute saying what must be included (or may not be included) in a corporation's legal name. A North Dakota corporation name **must** contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words. A North Dakota corporation name **must not** contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words. N.D.C.C. § 10-19.1-13.

**Q: Please advise the correct way to title an account for a "doing business as" account. Sheila Shaw has a Shoeshine stand. Should it be titled Sheila Shaw d/b/a Sheila Shaw's Shoeshine or titled as Sheila Shaw's Shoeshine, Sheila Shaw d/b/a? Is there a proper way?**

**A:** There is a proper way. Sheila Shaw, the individual, should be first on the account because the business Sheila Shaw's Shoeshine doesn't own the account - it doesn't have a separate legal existence from Sheila Shaw. The Social Security Number on the account is registered to the individual Sheila Shaw, not to the business name.

**Q: We are to procure a "Secretary Signature" for all business checking accounts. Which of our departments has oversight of this, Compliance or Operations?**

**A:** Obtaining a "Secretary Signature" is

obtaining a certification of board (or whatever the governing body of the entity is called) resolutions that appoint authorized signers for business accounts. If it's a corporation, the governing body is typically a board of directors. For some non-profit corporations and organizations, the governing body will be it's board of trustees. If it's a partnership, it's a vote of the partners or of the managing partners, etc. The certification of the structure's resolution(s) is normally signed by the secretary (or clerk) of the governing group. It's not a compliance requirement unless your bank's CIP requires such a document as part of its identification verification program. It *is* a practice that is *always* recommended so a bank can identify who has been given authority to act on the entity's behalf; further, the resolution should be signed by all of the necessary parties. We'd say that this is the duty of the employee who opened the business account.

**Q: When filing a UCC-1 Financing Statement, is it permissible to use "a/k/a" for multiple names on one form? Our borrower Jerome Wayne Smith has commonly used the names Jerome W. Smith and Jerry W. Smith to do business. His driver's license has Jerome W. Smith on it. Could we fill out "Field 4b. First Name" as: Jerome aka Jerry?**

**A:** The form clearly says only one debtor name, so use the driver's license name. For covering Jerry W. Smith, use the UCC-5 Overflow Sheet. On the Overflow Sheet, Jerome W. Smith is the name in Field 1; the name of the "additional debtor" Jerry W. Smith will go into Field 2b. If, for example, he also commonly does business as J. Wayne Smith, that name would be the "additional debtor" name in Field 3b.

**Q: About a year ago we made a large loan to Fairly Decent Co. a North Dakota corporation. We did our homework, named Fairly Decent Co. as the debtor in Field 4a. on a UCC-1, filed it, and obtained a priority lien. Two days ago we saw in the business section of the newspaper that Fairly Decent bought out another company and has changed its name to Above Average, Inc. What do we do?**

**A:** You should amend your existing UCC-1 financing statement in order to preserve your priority lien. A change in the debtor's name has occurred; if another lender conducts a UCC search for Above Average, Inc. under its new - and therefore current and correct - name, your existing financing statement may not be revealed by North Dakota's standard search logic. A new lender doing a UCC-11 search using the company's current name may not see your existing UCC-1 and would conclude that there

are no liens on the personal property collateral of the debtor. Your UCC-1 filing is now "seriously misleading" because it is un-locateable by lenders searching under the debtor's new name. Under N.D.C.C. § 41-09-78 (U.C.C. § 9-507), an existing financing statement that becomes seriously misleading as to debtor name triggers the obligation to file an amendment. Your financing statement is rendered ineffective *four months* after it becomes seriously misleading unless an amendment is filed within that four month period.

#### **DISCLAIMER**

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