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## ASK KENNEDY

### January 4, 2022

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### **Member Question: Check-Signing Hypothetical**

A bank customer is no longer able to sign their name on checks. A family member of the customer is asking how to handle the account. They are not interested in getting a power of attorney and do not want to get a joint checking with the customer. The customer can only sign their name with an X and then the family member signs her name on the check. The Bank informed the family member that this current practice is forgery and is asking for insight moving forward.

#### **1. Can an X count as a valid signature under the North Dakota Century Code?**

##### **Applicable Law & Analysis**

A signature may be made by any word, mark, or symbol executed and adopted by a person with the present intention to authenticate a writing. N.D.C.C. § 41-03-38(2). The word “mark” is included in this section of North Dakota law which means that a full signature is not necessary. Therefore, an “X” would qualify as a signature for authentication and signing purposes, as long as the person making the “X” has the present intention to authenticate the check.

Other sections of North Dakota law also provide a definition for “signature.” N.D.C.C. § 1-01-49(16), states that a “signature” includes a “mark” when the person cannot write, the person’s name being written near it and written by a person who writes that person’s own name as a witness. This section also includes a mark as a means of signing, but case law indicates that the witness requirement has to do with the valid execution of testamentary documents, like a will. I included the second definition of signature because it also includes “mark” which means that North Dakota legislators enacted this section for the purpose of safeguarding signatures by mark. In re ESTATE OF McKEE, 72 N.D. 86, 92, 4 N.W.2d 652, 656 (1942).

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Therefore, the customer can sign a check by simply putting an “X” on the signature line as long as they intended for it to authenticate the check. In the situation described, the son contacted the bank asking how to handle the account. Before accepting any checks with the “X” as the only signature, the bank should contact the customer directly and ask if what the son is saying is true. Additionally, having the customer come in and sign a check with just the “X” would be good practice because then the bank has verified that the customer does in fact have the present intention to authenticate the check. After that there is no issue accepting checks from this customer with the “X” only, **having the son sign the customer’s name next to the “X” is not necessary and should not be done.**

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### **FINCEN Update**

FinCEN is setting forth proposed regulations regarding access by authorized recipients to beneficial ownership information (BOI) that will be required to be reported to FinCEN. The proposed regulations would implement the strict protocols on security and confidentiality required by the Corporate Transparency Act to protect sensitive personally identifiable information reported to FinCEN. The proposed regulations aim to ensure that: (1) only authorized recipients have access to BOI; (2) authorized recipients use that access only for purposes permitted by the CTA; and (3) authorized recipients only re-disclose BOI in ways that balance protection of the security and confidentiality of the BOI. The disclosure of BOI to authorized recipients in accordance with appropriate protocols and oversight will help law enforcement and national security agencies prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity, as well as protect national security.

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### **Potential Banking Bills of the 68<sup>th</sup> Legislative Session**

#### **Uniform Money Transmission Modernization Act**

The Uniform Money Transmission Modernization Act, also known as the Money Transmitter Model Law, is a single set of nationwide standards and requirements created by industry and state experts which was approved by the CSBS Board of Directors. Implementation of the model law would provide regulators with the tools needed to regulate money transmitters of all sizes, including those who operate globally or small businesses that operate locally. The model law would enable multistate licensing and ensure that the benefits of the Multistate MSB Licensing Agreement can be expanded and enhanced. Additionally, implementation would facilitate the development of technology and data analytics necessary to supervise at scale with local accountability.

#### [Uniform Money Transmission Modernization Act](#)

#### **Article 12 & Revisions to Articles 1-2-3-4-8-9**

Over the past several years it has become apparent that US state law governing the transfer of property rights in certain assets that consist of, or are evidenced by, electronic records has lagged behind both the technological developments and commercial practices. To address these issues, the Uniform Law Commission and the American Law Institute established a committee to begin working on drafting proposed amendments to the

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UCC. The amendments would create a new Article 12 of the UCC and revise the other related provisions listed above.

[White Paper Article 12 and Amendments - Link to Summary Provided by Uniform Laws Commission](#)

### **Forced Access Legislation Stability and Security**

Many states have introduced bills that would restrict banking contracts with financial institutions that “boycott” fossil fuel energy companies. For example, Senate Bill 262 in West Virginia allows the state treasurer to refuse to enter or remain in banking contracts with any financial institution that take any action, “intended to penalize, inflict economic harm on, or limit commercial relations with a company” simply because the company participates in fossil fuel-based energy activity.

SB 262 would enable the state’s treasurer to disqualify certain financial institutions from the competitive bidding process and require the treasurer to remove a restricted financial institution only if they provide information demonstrating that it is not engaged in a boycott of energy companies.

Similar bills have been introduced in other states and generally they do not allow any financial institution to deny the fossil fuel companies access to financial services based solely on their lawful engagement in the fossil fuel industry.

### **RON Update**

Revised Uniform Law on Notarial Acts (RULONA), which the ULC approved in 2010 and most recently revised in 2021. Amendments to the RULONA, including a new Section 14A on remote notarization, were approved by the ULC in 2018, resulting in RULONA (2018). The ULC approved further amendments to the uniform Act in 2021 to accommodate remote ink notarization and to Page 7 of 7 establish that a notary may administer an oath or affirmation remotely via communication technology. North Dakota enacted RULONA in 2011 and enacted the 2018 amendments in 2019.

[Revised Uniform Law on Notarial Acts](#)

### **North Dakota Credit Unions: Legislative Proposal**

New legislation may be proposed for the upcoming legislative session that would alter the language in NDCC 6-06-07 and expand the geographic range of credit unions in the state. Specifically, the proposed legislation would expand the current membership radius of 75 miles from the home office of a credit union to 250 miles from any office. Further, all credit unions would no longer be restricted from expanding their field of membership, whether through a merger or the opening of a new location. Lastly, under these provisions, the state credit union board would be able to authorize a state credit union to operate with the same field of membership as a federal credit union.

[CU Field of Membership Legislation.pdf](#)

### **Proposed Changes to the North Dakota Escrow Account Laws in Chapter 47-10.2**

Our Friends at ICBND are proposing changes to the North Dakota Escrow Account laws to lower the amounts required by Banks to be held in Escrow. The full proposed bill is linked here: [CHAPTER 47-10.2.pdf](#)

### **OCC: Semiannual Risk Perspective**

The OCC's Semiannual Risk Perspective addresses key issues facing banks, focusing on those that pose threats to the safety and soundness of banks and their compliance with applicable laws and regulations. This report presents data in four main areas: the operating environment, bank performance, trends in key risks, and supervisory actions. The OCC publishes the report twice a year, drawing on midyear and year-end data; the report for Fall 2022 is linked below:

[Semiannual Risk Perspective from the National Risk Committee](#)

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### **FraudWit: Fake Same Maker Check Scams**

FraudWit, a popular site for colorfully explaining different types of banking and financial fraud, has released a blog explaining a unique type of checking fraud. At its core, “Same Maker” scams cover both check-making and deposit fraud by scamming two different, and unaware people, at the same time. Attached below is a link to the blog; while humorous, the issue being examined is serious and remains something for banks and financial institutions to be aware of.

[FraudWit Explains Fake Same Maker Check Scams](#)

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### **Upcoming NDBA Events**

The North Dakota Banker’s Association has many exciting and informational events planned for 2023. Below are some special dates to mark on your calendars –

- **January 18, 2023: Bankers Day at the Capitol**

Registration Link: [2023 Bankers Day at the Capitol Registration Form](#)

- **January 19, 2023: Bank Management Conference & Legislative Dinner**

Registration Link: [2023 Bank Management Conference and Legislative Dinner Registration Form](#)