



COLORADO Banker

March/April 2012

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Bringing Back the Green

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Strategic Planning

Strategic and related work plans will help guide the organization's actions in 2012 and beyond.

Dear CBA Members,

The Colorado Bankers Association Board of Directors held a special planning session in October to discuss the association's strategic direction. Staff took the information gathered from this session and put a preliminary strategic plan together for the board's review at its December meeting. Staff published the final strategic plan in early January. I thought I would devote this message to providing you with a recap of this plan.

The board by consensus determined the general allocation of CBA staff resources as follows:

▪ Federal government relations	25%
▪ State government relations	25%
▪ Public education	20%
▪ Information to bankers	10%
▪ Education and products/services	10%
▪ Membership and administration	10%

Specific focus on the top three areas of focus can be recapped as follows:

- 1. Government relations** – in light of recent changes since 2008 (more issues, more complex issues critical to banks, more internal industry challenges, higher and more negative public profile for the industry (an easy target), increasing impact of federal government relations requiring more resources...), CBA will get more bankers involved in government relations, increased focus on federal issues, use allies on isolated targeted projects, target special effort where needed, increase the impact of political contributions, anticipate and act on bad ballot initiatives, build relationships with public officials by helping on their key issues and say “thank you” more formally to public officials.
- 2. Public education** – the two key elements in 2012 are the proactive assertive campaign (centered on banks facilitating job growth) and the audiences/messages that will drive it. That will be augmented by nimble actions and responsiveness, factoids for crisp communication and nonbanker allies to help carry our message.
- 3. Membership** – we will continually establish goals and deadlines, measure performance against those, target prospects, highlight strengths and benefits of CBA, use peer bankers to contact prospects and use show & tell opportunities to communicate value to prospects.

The strategic plan goes into a lot more detail on other items of focus. There is too much in this plan to share in this message. Beyond the plan, Don and the rest of the CBA staff have built a very specific work plan detailing specific actions they need to take to achieve the desired results. In the end, the strategic and related work plans will help guide the organization's actions in 2012 and beyond.

Please contact me at keith.dickelman@homestatebank.com with any comments or questions you have regarding CBA's strategic direction. Thank you for your continued support. ■

Keith Dickelman
CBA Chairman
Senior Vice President, Home State Bank

A Word From CBA...

Dodging Bullets & Forging Paths

So many banking issues; so little time; such limited resources. Like so many things these days we simply have to accept the challenges and work through them even though we dislike the situation. CBA works in the same frustrating environment banks do.

Dodging bullets

This seems to never end and won't end in the foreseeable future. Here are a few examples.

- We've escaped the ludicrous concept of establishing in Colorado a state-owned bank "to make loans banks aren't making, but it wouldn't need capital or reserves since it wouldn't make bad loans." Talk about a disaster. But we've dodged that bullet.
- We've avoided an enormous fight over a proposed Colorado Constitutional amendment affecting banking. Paperwork had been filed and a state hearing held in the process to get it on the November ballot. It would have

restricted national (but not state) banks in Colorado to 5% of the market. We're confident that even if adopted this would have been ruled in violation of the U.S. Constitution, but the threat was in voters signing the petitions not because the proposal made sense but because they are "angry at banks," voters supporting it at the ballot box for the same reason, and lastly that it would plant the idea that voters can dictate business practices (limit rates & fees...) this way in the future. Fighting this would have been a lengthy expensive battle. We've dodged that bullet.

- We believe we will prevail on two very damaging foreclosure proposals in the Colorado Legislature. One would require showing in court the original evidence of debt (the actual signed note) and each transfer of it before the lender could proceed with a foreclosure – adding expense and pushing up rates although the proponent acknowledges there isn't a problem of foreclosures by parties other than the lender now and that this would "protect the integrity of the system." The other proposal would create a statutory right for every homeowner to a loan modification of the mortgage regardless of any other circumstances and the lender would have the duty to do all of the legwork for the borrower by disclosing all relevant refi programs... It appears we've dodged these bullets.
- These are just a few. There are many more.

Forging paths

CBA will announce a big effort in early March to facilitate banks accommodating small business borrowers' financial needs by CBA 1)providing a lot of information to banks about partners (micro lenders, CDFIs... and details about them), and 2)providing a lot of resources to small business borrowers about what they need to do in the loan process. The intent is to facilitate lending (whether by banks or their partners) to assist job creation and the economy, and improve banking's image for doing this. Hopefully this will result in actual jobs, and an enhanced image for the industry.

These are just a few of our current efforts. CBA works for you. We welcome your ideas, criticisms and suggestions as we assist banks in this challenging environment. ■

Don Childears
CBA President/CEO



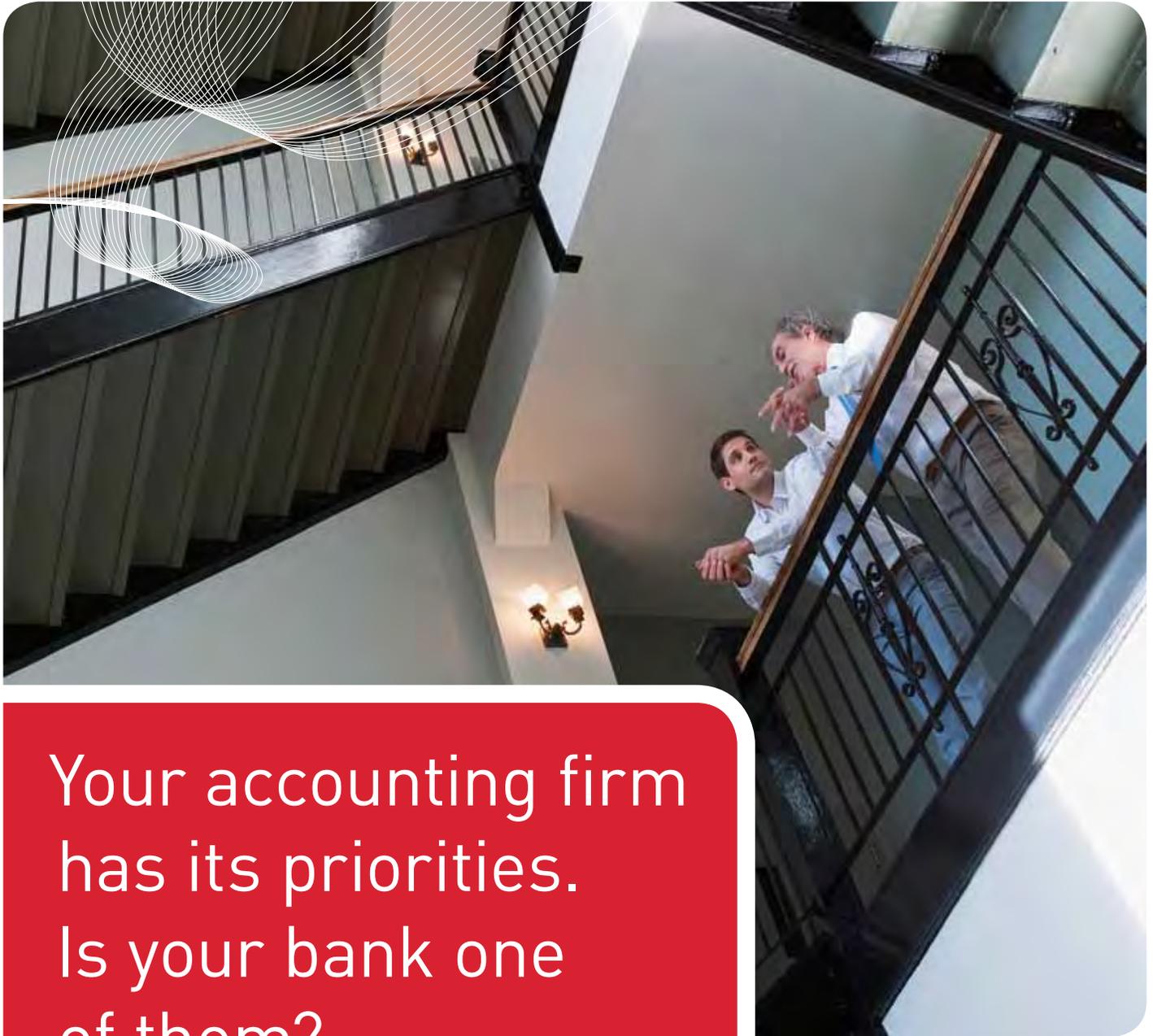
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FEATURE
ARTICLE

BY BRADY COOK

MCPD, MCITP, Security+, Project+
CoNetrix



“In addition to generic security tips, your bank should also include tips specific to your bank’s online banking environment.”

8

Simple Security Tips

for Your Internet Banking Customers

Customer awareness and education on Internet banking security was a point of emphasis in the guidance published by the FFIEC on June 28th of 2011 titled

Supplement to Authentication in an Internet Banking Environment. Increasing customer awareness of effective techniques for mitigating the risk of fraud should be a major part of your customer education program.

nically detailed descriptions of common attacks and techniques to avoid them. Providing simple and easy-to-understand security tips can be an effective alternative to detailed security information filled with information security jargon.

When developing educational material for your online banking customers, it’s important to keep in mind both the varying amount of technical knowledge and the amount of time an average customer will dedicate to reviewing the information. The majority of your customers are unlikely to spend hours of their time reading through educational materials containing tech-

The following sections outline common security tips that could be included in your bank’s online banking customer education material. The tips provided below are not exhaustive, but they should provide a good starting point.

General PC Security

- **Update your software frequently** to

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ensure you have the latest security patches. This includes your computer's operating system and other installed software (e.g. Web Browsers, Adobe Flash Player, Adobe Reader, Java, Microsoft Office, etc.).

- **Automate software updates**, when the software supports it, to ensure updates are not overlooked.
- **Maintain active and up-to-date antivirus protection** provided by a reputable vendor. Schedule regular scans of your computer in addition to real-time scanning.
- **If you suspect your computer is infected with malware**, discontinue using it for banking, shopping, or other activities involving sensitive information. Use security software and/or professional help to find and remove malware.
- **Use firewalls** on your local network to add another layer of protection for all the devices that connect through the firewall (e.g. PCs, smartphones, and tablets).
- **Require a password to gain access.** Log off or lock your computer when not in use.
- **Use a cable lock to physically secure laptops** when these devices are stored in an untrusted location.

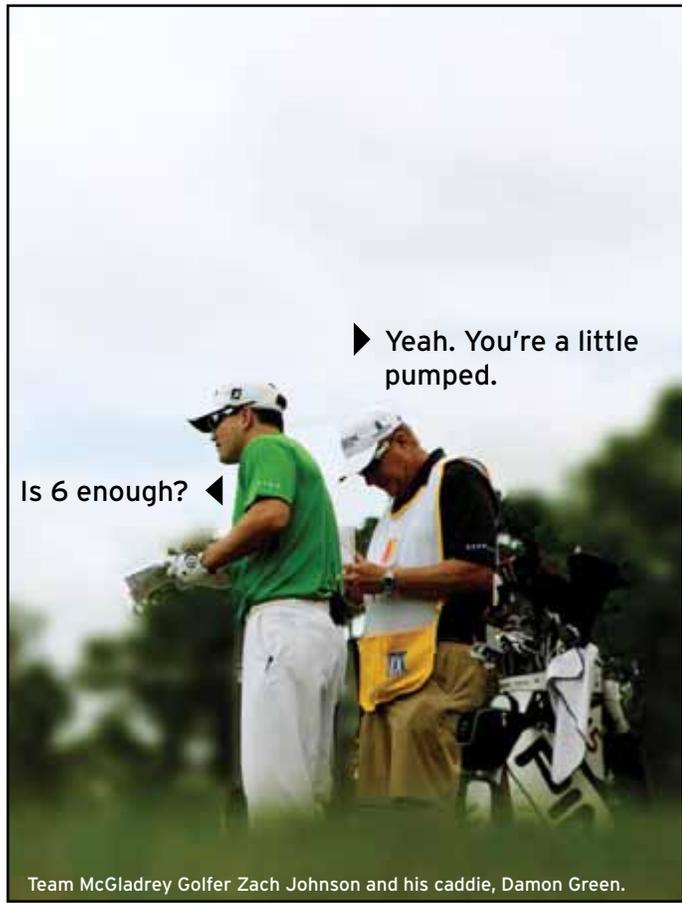
General Online Security

- **Never click on suspicious links** in emails, tweets,

posts, or online advertising. Links can take you to a different website than their labels indicate. Typing an address in your browser instead of clicking a link in an email is a safer alternative.

- **Only give sensitive information to websites using encryption** so your information is protected as it travels across the Internet. Verify the web address begins with "https://" (the "s" is for secure) rather than just "http://." Some browsers also display a closed padlock.
- **Do not trust sites with certificate warnings or errors.** These messages could be caused by your connection being intercepted or the web server misrepresenting its identity.
- **Avoid using public computers or public wireless access points** for online banking and other activities involving sensitive information when possible.
- **Always "sign out" or "log off"** of password protected websites when finished to prevent unauthorized access. Simply closing the browser window may not actually end your session.
- **Be cautious of unsolicited phone calls, emails, or texts** directing you to a website or requesting sensitive information.

■ **Security Tips** | continued on page 10



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SECURITY TIPS – continued

Password Best Practices

- **Create a unique password for all the different systems you use.** If you don't, then one breach leaves all your accounts vulnerable.
- **Never share your password over the phone, in texts, by email, or in person.** If you are asked for your password, it's probably a scam.
- **Use unpredictable passwords** with a combination of lowercase letters, capital letters, numbers, and special characters.
- **The longer the password, the tougher it is to crack.** Use a password with at least eight characters. Every additional character exponentially strengthens a password.
- **Avoid using obvious passwords** such as:
 - » your name
 - » your business name
 - » family member names
 - » your username
 - » birthdates
 - » dictionary words
- **Choose a password you can remember without writing it down. If you do choose to write it down,** store it in a secure location.

Institution Specific Information

In addition to generic security tips, your bank should also include tips specific to your bank's online banking environment. Information concerning multi-factor authentication solutions or other controls utilized by the bank would be useful to mention.

Your bank will also need to include contact information to be used by customers to notify the bank of suspicious account activity or information security-related events. Having this information easily accessible can speed up the process of your customers notifying the bank of fraud-related events. The FFIEC guidance also mentions outlining the circumstances and methods with which the institution will contact a customer on an unsolicited basis regarding their Internet banking account. ■

Brady Cook is the Director of Software Development for CoNetrix, a provider of security and compliance software, security testing, and IT consulting for financial institutions. Learn more at www.conetrix.com.

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FEATURE
ARTICLEJOHN M. (JACK) TANNER, Esq.
Fairfield and Woods, P.C.

“Unlike a bankruptcy, which is given substance and structure by the Bankruptcy Code, statutes regarding receiverships are scant. This flexibility, which is one of the greatest advantages of a receivership, comes with a price.”



PART I

Equitable Receivership as an Alternative to Bankruptcy

**When a receivership may be a good idea for a creditor,
and how to get a receiver appointed over a debtor.**

“If the only tool you have is a hammer, you treat every problem like a nail.” — Abraham Maslow

When a company gets into financial trouble, many creditors’ reaction is to seek to put the debtor into bankruptcy. An equitable receivership may be the better course of action for creditors, however. For purposes of this article, an “equitable receivership” is a receivership that is neither a simple care-taking pending foreclosure nor initiated by a governmental regulator.

There are two primary advantages of a receivership. First, it immediately replaces management with the receiver, whereas a bankruptcy entrenches management. If money

is really the problem, bankruptcy may a good course of action; but if money is just a symptom and the actual problem is management, then a receivership may be better for creditors.

Second, a receivership has greater flexibility than a bankruptcy. The individual or company best suited to serve as receiver may be appointed. A receivership judge can set out virtually any procedures that are appropriate.

Bases for Appointment of a Receiver

While most commercial Deeds of Trust provide for appointment of a receiver upon default, few asset-based loan documents do. As such, a creditor is left to seek appointment under Colo-

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radio law, which provides a receiver may be appointed whenever in fairness one should be appointed. Appointment is, however, considered an “extraordinary remedy” and done only when there is no other adequate remedy available. A receiver can be appointed for the company itself, for some or all its assets, or both. The appointment of a receiver creates an estate, similar to a bankruptcy estate.

The circumstances in which a receiver might be a good idea are limitless. There are, however, some recurring situations where an equity receiver is appointed:

Impotent Management of a Business

When management is not being effective and the usual methods of replacement do not work. For example:

- **Deadlocked shareholders or partners.** In many privately owned companies, the equity is owned equally by a small number of people, and if this number is even a deadlock may occur. A deadlock that is causing the company injury cries out for a receivership.
- **Bad management.** At times a controlling shareholder may not be doing what is best for the company, but is not susceptible to a shareholder derivative suit. He or she may be judgment proof, may have abandoned his or her role, or such a suit may just take too long to be effective.
- **Mistrusted management/limited receivership.** A receiver may be appointed for a limited function when there is concern about who really is management. In the Yellow Cab receivership, there was concern about voter fraud in the election of management, so a receiver was appointed to supervise the election.

Trusts

A trust may also give rise the appointment of a receiver. For example:

- **Intra-beneficiary dispute.** Where there is a dispute among actual or potential beneficiaries of a trust, appointment of a receiver may allow the trustee to satisfy the duty to distribute or otherwise maintain the status quo until the dispute is resolved.
- **Beneficiary/trustee dispute.** Where there is a dispute between the beneficiaries and the trustee, the appointment of a receiver may be in the interest of the beneficiaries so that the trustee cannot use the trust corpus to fund the litigation against the beneficiaries.

Domestic

During a divorce, issues may arise regarding ownership or management of a family business. A receiver may be advisable in such a situation.

After Judgment

A receiver may be appointed after judgment to dispose of the

property of the judgment debtor by way of a more orderly (and more profitable) procedure than a mere Sheriff’s sale, such as a sale as a going concern.

Mechanics of Appointment of Equity Receiver

A receivership action is commenced by the filing of a complaint seeking the appointment of a receiver. A verified motion is usually filed at the same time—this immediately brings the issue to the court’s attention.

Proposing a Receiver

The plaintiff must propose a specific receiver—there is no panel as there is for bankruptcy trustees. The receiver must be neutral and, once the receiver is appointed, the plaintiff has no legal control over the receiver’s actions. The receiver is an officer of the court and has fiduciary-like duties to the court and whoever the court ultimately determines are the proper beneficiaries (usually creditors and equity). The receiver does not and cannot owe the plaintiff any more duties than it owes others.

Even if the case is a proper one for a receiver, the plaintiff’s proposed receiver may be rejected by the court. The defendant may propose its own receiver, who also may be rejected by the court. The court can even select its own receiver.

One way the plaintiff may exert influence over a receiver is in funding. Often a receivership estate lacks sufficient cash-flow, so the receiver sells receiver’s certificates (liens against the estate—discussed in Part II in the next issue of Colorado Banker) to fund operations. As a practical matter, the plaintiff is the most likely the buyer of such certificates, and may decide to buy them only under certain conditions.

The Appointing Order

Unlike a bankruptcy, which is given substance and structure by the Bankruptcy Code, statutes regarding receiverships are scant. This flexibility, which is one of the greatest advantages of a receivership, comes with a price: the powers of a receiver are limited to those set out in the court orders. As such, the Order Appointing Receiver needs careful thought and consideration, and should be as broad and detailed as possible. ■

END PART I. In the next issue of Colorado Banker, the author discusses how a receivership proceeds, how assets are distributed to creditors and other claimants, and how the receivership is concluded.

About the author: Jack Tanner is a commercial litigator with Fairfield and Woods, P.C., with considerable experience in the area of receiverships and other litigation relating to troubled companies. He can be reached at 303.894.4495 and jtanner@fwlaw.com.

FEATURE ARTICLE

BILL EVERS

Director of Business Services
Computer Services, Inc.



Bringing Back the Green

Three easy-to-implement strategies for a more profitable and eco-friendly bank

“Consumers, employees and businesses all have a responsibility to reduce consumption and contribute toward the preservation of the environment. And when we play our part, there’s sure to be more green for us all.”

Technology has everyone talking about new channels, expanding opportunities and growing market segments. The eco-friendly benefits don’t seem to be discussed

as prominently, but that could be because many of us think that “being green” is a given. If that were the case, then why does the United States Postal Service estimate that banks and other businesses send nearly 50 billion pieces of mail to customers annually?

Earth Day occurs April 22 and now seems like an appropriate time to bring green back into the discussion. Your bank may need to refocus on green initiatives, so here are three strategies for becoming a more profitable and eco-friendly bank.

Go Mobile

Mobile banking is a buzz word, for sure. The rise of the smartphone and other mobile devices has spiked consumer demand for instant account access. And many banks are focused on expanding channel access through enhanced mobile offerings. If you’re not, then you should be: Celent research indicates that banks receive a 10-20 percentage point increase in client

retention for mobile users. The report also suggests that banks acquire up to 2 percent of new customers due to mobile availability.

Mobile banking offers advantages to banks and consumers alike, but let’s not forget the eco-friendly aspects either, which sometimes get lost in the shuffle. Through mobile offerings, banks can send alerts and account notifications, cutting both paper consumption and postage premiums. Mobile payment options and other services also help cut back on fuel consumption and greenhouse gas by reducing customer travel to and from branches.

Customers want mobile banking, but banks can make it even more appealing by promoting the Earth-saving benefits it delivers as well.

Push Electronic Statements

Paper statements will probably always exist. However, here is a real opportunity to achieve

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savings for both your bank and the environment. According to Javelin Research, the suppression of paper statements alone can earn banks about 50 cents per customer per month. This can add up to significant savings, so it's a wise strategy to focus on shifting customers' attention to electronic statement delivery.

The quandary many banks face—and yours may be one of them—is that customers are slow to go totally paperless. Many elect to receive both paper and electronic statements. In fact, paper consumption for some of the top 10 global banks has risen between 50 and 100 percent according to the New York environmental consultancy Green Research. One key strategy for moving customers to a truly paperless model is to simplify the process for them to discontinue paper statements: make continuing to receive paper statements an opt-in criteria, not opt out, when customers sign up for electronic statements.

Many customers are eager to adopt paperless practices, so making their options easier equals increased adoption rates, significant savings and less paper.

Implement Online Portals

Paper plays an essential role in every business. In fact, the Environment Protection Agency (EPA) estimates that the average office worker uses 10,000 sheets of paper each year. When

you consider the costs associated with such a high volume of paper consumption, it's easy to recognize that opportunity still exists to be more eco-friendly at work. Online portals such as employee intranets and board portals provide a leading alternative for reducing paper, postage and printing costs.

When it comes to intranets, banks can capitalize on several advantages, all related to being more fiscally and environmentally responsible. Intranets simplify document sharing so that you can minimize hard copies, mailed documents and employee commuting. This also can lead to enhanced knowledge sharing and improved productivity since employees have a more streamlined way for interacting with one another across departments and locations. What's more, this solution provides a number of human resource functions such as time and attendance, vacation tracking, policy management and more.

A board portal provides a secure, simplified platform for communicating with your board of directors, anytime and anywhere. No longer do board packets have to be printed and mailed; they can be shared electronically so that board members can access them at their convenience. They also facilitate secure information exchange such as online voting and discussion threads.

■ **Bringing Back the Green** | continued on page 17

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FEATURE
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Trusts, Estates, and Inherited IRAs

Most people who establish an IRA name a spouse, child, or other individual as beneficiary. But sometimes an entity other than a person inherits

the IRA assets, either by being named beneficiary or by default under the terms of the IRA document.

Although charities or other nonindividuals can be named as IRA beneficiaries, the two most common nonindividual beneficiaries are trusts and estates. Trusts are generally established either to limit tax consequences or to control the disposition of a deceased person's assets after death. If an estate becomes an IRA beneficiary, the IRA assets become part of the estate probate process of determining the ultimate disposition of the assets. (This could vary depending on the jurisdiction.) Too often, however, an IRA owner fails to consider the consequences of naming or not naming certain beneficiaries, and IRA assets that could have passed unimpeded to beneficiaries end up in an estate or a trust.

Trust and estate beneficiaries are now more frequently requesting IRS permission to establish inherited IRAs to hold IRA assets they have inherited through a trust or estate. They want to rewrite the history of the IRA and have options similar to those that would have been theirs if the IRA owner had named them as direct IRA beneficiaries. Individuals do this by applying to the IRS for a private letter ruling (PLR) which, if granted, may approve the action that an individual wishes to take.

Typical Trust or Estate Beneficiary Treatment

The payout options for IRA beneficiaries are generally life expectancy payments or the "five-year rule." The latter, available only when an IRA owner dies before RMDs must begin, has but one requirement: all IRA assets must be distributed before December 31 of the fifth year

following the year of the IRA owner's death. The life expectancy form of IRA payout is available in some circumstances for either a trust or an estate. If the trust is a qualified trust, the life expectancy of the oldest trust beneficiary can be used to determine the rate of IRA payout to the trust. If the original IRA owner dies after the date he must start taking RMDs, then an estate or a trust can use the deceased IRA owner's life expectancy to determine a rate of payout from the IRA to that trust or estate.

Note that all of these types of payments are made to the trust or estate—not to the estate or trust's beneficiaries.

Why Request IRA Beneficiary Status?

There are practical reasons why the beneficiaries of an IRA-funded trust or estate might ask the IRS to be allowed to establish inherited IRAs. Simplicity is one. If the IRS grants this status, there is no need for the underlying beneficiary to deal with the personal representative of the estate or with the trustee in order to receive IRA assets. Also, the privilege of transferring a beneficiary IRA from one custodian or trustee to another is reserved for the trustee or personal representative when a trust or estate is the direct IRA beneficiary.

Timing may be another reason. Estate settlement is typically a short-term proposition, and few personal representatives will want to keep an estate open beyond a typical 12–18 month probate period. IRA payouts can last for many years. Some trusts are created for a particular purpose, such as trusts that are set up to govern the transfer of assets to minors who may have reached adulthood by the time the trust's grantor

"Trust and estate beneficiaries are now more frequently requesting IRS permission to establish inherited IRAs to hold IRA assets they have inherited through a trust or estate."

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dies. If an estate's or a trust's beneficiaries can be given the same status as an IRA beneficiary, there is no need to keep an estate or a trust open to receive assets from the IRA.

What the IRS Has Permitted

There is no official guidance that permits the beneficiaries of an IRA-funded estate or trust to establish inherited IRAs. The IRS has stated in PLRs that "neither the Code nor the regulations promulgated under Code section 401(a)(9) preclude the posthumous division of a deceased IRA into sub-IRAs or the distribution of such IRAs from a trust to the trust's beneficiaries." But nowhere in statute or regulations are provisions that specifically support—or even mention—the concept of "sub-IRAs." Nonetheless, the IRS has ruled in favor of such actions in PLRs (e.g., PLRs 200850058, 200740018, 200634070, 200538034, 2005380031, 200538033).

What the IRS Has Not Permitted

Although the IRS has allowed the creation of inherited IRAs for individuals who were not named direct IRA beneficiaries, the IRS has not allowed them to stretch out payments beyond the period that could be used by the trust or estate to receive the assets. So whether the beneficiaries are paid directly, or through the trust or estate, the tax paid to the IRS is the same. Even if these distributions were paid to the estate or trust, the trustee or personal representative of the estate would file IRS Form 1041, U.S. Income Tax Return for Estates and Trusts, and give a Form K-1, Beneficiary's Share of Income, Deductions, Credits, etc., to each of the underlying beneficiaries of the trust or estate for each share received. These underlying beneficiaries would be required to include the IRA distributions as ordinary income on their personal income tax returns, just as they would when they receive payouts from their "inherited IRAs."

Can Anyone Do This?

The standard legend appearing on PLRs issued by the IRS states that "[t]his letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent." This means that another taxpayer cannot rely on it to take the same actions, and the IRS is not bound to arrive at a similar finding for another taxpayer.

How to Respond to Such a Request?

If a bank is asked to set up inherited IRAs in trust/estate beneficiary scenarios, it may consider the following options and consult with its legal counsel. The bank could take a conservative approach, and only allow this transaction if an IRS PLR has been granted. (According to 2011 IRS guidance, most PLRs will cost roughly \$10,000 in filing fees.) Or the bank may permit an underlying beneficiary of a trust or estate to create an inherited IRA after providing a hold harmless statement indicating that the taxpayer has sought and received competent legal and tax advice, and that the IRA custodian or trustee is acting only upon that taxpayer's direction. ■

BRINGING BACK THE GREEN – continued

With online portals, banks can facilitate paper-free communication that better serves both the bottom line and the environment.

These are only three of the many strategies that can help your bank become more profitable and eco-friendly. Consumers, employees and businesses all have a responsibility to reduce consumption and contribute toward the preservation of the environment. And when we play our part, there's sure to be more green for us all.

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- Offer and promote mobile banking as a time-, money- and Earth-saving service for customers
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- Provide employees with an intranet that connects them across branches and reduces the need for paper to be faxed, emailed and/or scanned
- Convene your board members online through a board portal, eliminating the cost of paper, postage and travel ■

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Celebrate the Challenges

Banks have long played a critical role in local economies and we continue to do so in every corner of the country each and every day. While the past few years have greatly challenged the banking industry, we, as community banks and locally-focused large banks, have a tremendous opportunity to set ourselves apart from the large-scale banks and investment firms of the world and reposition ourselves with a collective voice.

A recent ABA Banking Journal article entitled, "If Steve Jobs had run a bank..." made a brilliant point about the importance of banks which, I believe, cannot be overstated. "Banks take people's money, yes, and they keep it securely; make it available virtually any place any time; let people bank on a smartphone or in person; and, most importantly, lend the money out to people to buy homes, to run, expand, or start a business. These are strong positives, but they have come to be taken for granted—or as entitlements."

I believe it is incumbent upon all of us, at this juncture, to help reestablish the reputation of community banks and remind

the public of the essential role we play. We have a tremendous opportunity to refresh our image and promote the value of our services as we continue to help businesses and people prosper.

This year's CBA conference gives us an occasion to come together to celebrate the challenges we've faced and survived. We can now assemble as individuals, as bankers and as representatives of the industry to discuss, educate and refocus our efforts on the future.

The fact that we are open for business, lending and competing in this marketplace are achievements worth celebrating. I encourage you to join me at the 2012 Colorado Banker's Association Tri-State Summit this June for what promises to be a valuable and informative experience. ■

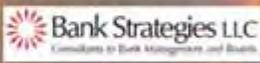
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When it comes to banking, we've seen it all. Well, pretty much...



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