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CANCELLING CASHIERS AND TELLER'S CHECKS

Some states (including Missouri and Illinois) have provisions in their Uniform Commercial Code that lets the purchaser or payee of a lost cashier's or teller's check to "cancel" the check. Either the payee or drawer of the check may deliver an affidavit of loss to the bank. If the check IS NOT presented for payment less than 90 days after the check was issued, the issuing bank may pay the amount of the check to the person making the claim. If the check IS presented for payment less than 90 days after the date of issuance of the check, the bank must pay the check even if a notice of loss has been received. If someone presents a check to the issuing bank after the check has been refunded, then the issuing bank does not have to pay the check. The holder of the check must go to the person who got the refund from the bank and collect from that person. Because the bank has no liability to the holder of the check it is not necessary to obtain a bond from the person to whom the refund is made.

Although this procedure is helpful to someone who loses a cashier's check, it can create real problems for a bank to which a check is presented for deposit or for cashing. If the bank accepts the check for deposit or cashes the check, and if the check has been refunded to the drawer or payee, the issuing bank will return the check to the depository bank. If the depository bank cannot collect the check back from its customer, the depository bank will have to try to collect the check from the payee or drawer to whom the refund was made. Depository banks need to decide whether they can safely accept for cashing or for deposit cashier's checks that are 90 days old (or even less than 90 days to give time to present the check to the issuing bank). In particular, the depository bank needs to determine whether it can recover the payment from its customer if the check is returned by the issuing bank. Banks that print expiration dates on cashier's checks should consider an expiration date of 85 days from the date of the check.

Banks should work with their counsel to establish procedures to deal with this law.

The contents of this Update are for general information only. Consult your legal counsel before taking actions in reliance on anything contained in this law update. To cancel receipt of the Banking Law Update, send an e-mail to mforster@spvg.com and request "Cancel Update".

***Members of the SPVG Financial Services Group: Michael Forster, Scott Greenberg,
Keith Price, Tom Addis and Clayton Kuhn.***

**DOES YOUR LOAN AGREEMENT
DO YOU ANY GOOD?**

Just because a document has the title “Loan Agreement” does not mean that it does the bank any good. A loan agreement should be a guide for how a loan will be administered and should establish clear conditions on which the lender may terminate advances or demand payment before the borrower stops paying. The ability to cut off a line of credit or a construction loan before the lender experiences a serious loss can depend on how good the loan agreement has been written. If a lender is going to use a loan agreement it should do it right. The standard form of LaserPro “Business Loan Agreement” adds nothing beyond what is in the note or deed of trust unless the lender adds its own covenants and warranties. Lenders who use this standard form usually add nothing of value to their documentation package. Loan agreements take a lot of work to do right. They need to be customized to the type of loan. For example, representations, warranties and covenants for a commercial loan are completely different from those needed for a construction loan.

**CHANGING LOAN TERMS CAN
RESULT IN LOSS OF SUPERIORITY OF A DEED OF TRUST**

A first deed of trust or mortgage may become subordinated to a second deed of trust or mortgage if the terms of the loan secured by the first deed of trust or mortgage are changed in such a way as to adversely affect the ability of subordinate lender to be repaid. One court identified changes that could result in subordination to include an increase in the principal amount of the loan, an increase in the interest rate, or an extension of the term of the loan. A change in terms might not result in a subordination where the first deed of trust is a future advance deed of trust on property in Missouri. Lenders should consult with their counsel about ways to avoid this potential problem.

Holders of first deeds of trust should take care when changing the terms of their loans if there is a subordinate mortgage or deed of trust and should always consult with counsel. It is safest for the first lender to prohibit subordinate encumbrances or to require the holder of the subordinate encumbrance to waive its rights to contest the change in terms of the loan secured by the first deed of trust or mortgage. It is an open question whether the holder of a second mortgage or deed of trust can claim subordination of the first lien when the first mortgage or deed of trust prohibits second liens.

This rule can work to the advantage of the holder of a subordinate lien. If the holder of the first deed of trust or mortgage is foreclosing, the holder of the second should find out whether there has been any change in the terms of the first loan that could result in a subordination of the first lien.

LOAN REVIEW SERVICE

Sandberg, Phoenix & von Gontard offers a loan review service to lenders that document their own loans. SPVG will review the loan proposal and make recommendations as to the forms of documents to use, special documentation requirements, and special issues or risks involving the collateral for the loan. The service is available at a fixed fee. For information contact Michael Forster at (314) 446-4203 or mforster@spvg.com.