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MEMORANDUM

To: Our Escrow Clients and Friends

From: Michael Haas

Date: May 18, 2011

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# CHANGING BANKS?

## WHAT TO LOOK FOR IN MOVING FORWARD

Over the course of time in the life of an escrow company, it is more than likely that the company will change its banking relationship at least once. And in doing so, there are certain steps to follow to make the process as efficient as possible.

Some of the concerns are related to making sure the company's existing escrow documentation and trust accounting software are coordinated with the new bank. For example, in today's world of technology, many systems will download the day's trust accounting activity to the bank for use in coordinating with the "positive pay" program put in place by the bank.

Further, if the company has an outside company reconciling the escrow trust account, there should be communication with this service provider so they can adjust their reconciliation process to look for and integrate the new bank accounts.

The first item of concern is the amount to transfer to the new bank. There should be enough left in the old account to cover the outstanding checks waiting to be paid. The starting point in determining the amount to transfer is the trust accounting control balance at the time of the transfer. Usually this would be the ending control balance from the day before if the transfer is being done at the beginning of the day.

But one may have to take into consideration a couple of other factors in coming up with the actual amount to transfer. If there are any interest-bearing accounts that make up the total escrow liability balance, these account balances need to be subtracted before arriving at the amount to transfer. Also, one needs to consider any trust accounts at other banks – perhaps a dormant account from a prior bank change – so that too much is not transferred to the new account.

The goal is to leave enough funds at the old account to allow the outstanding checks to clear.

When it comes time to make the transfer, the best way to do it is by wire transfer. However, it is permitted to write a check from the old account to the new account. When the transfer takes place, there should be an accounting within the trust accounting system of the transaction. There should be a trail as to the wire out or the check from the old account and a receipt into the new account. It is easy to forget this by doing wire transfers between accounts, but the need still exists to reconcile the funds out of the old account and into the new account.

What happens if too much is transferred to the new account? It creates an uncomfortable situation when the old bank calls saying that the old account is overdrawn and checks are being rejected for payment. It is an easy answer just to transfer an arbitrary amount back to cover the shortage, but one really needs to be able to understand how much the over-transfer is so that the right amount is returned to the old account. That way the accounts are put into balance with the right amount at each bank to cover the outstanding checks.

In addition, there are certain transactions that take place after the transfer that may cause the need to transfer funds back to the old account or to transfer more funds to the new account. For example, it is possible for a deposit that was made to the old account in the immediate few days prior to the transfer to be returned as NSF. This causes a withdrawal from the old account of funds that had been included in the amount transferred to the new account. If this happens, the company can take one of a couple courses of action: 1) if the funds are to be redeposited, replace them into the old account; or 2) if the funds are not going to be replaced by the depositor, then return the funds from the new account to the old account.

Once the transfer is made, there is a remaining balance at the old bank to allow the outstanding checks to pay. What happens when one of the checks needs to be canceled and then reissued? While the check could be reissued out of the old account, in all likelihood it will be issued out of the new account as one would have to override the software system that is tracking the check number of the check stock in the printer and then put an old account check into the printer, etc. The best answer is to issue the check from the new account. The old check would be canceled in the normal fashion and then the new check would be issued off the new account. At the same time, the funds to pay the check – which were in the old account – would be transferred from the old account to the new account.

After allowing a moderate amount of time for the current outstanding checks to clear, the old account should be closed entirely and the remaining balance transferred to the new account. The amount of time to wait can be anywhere from one month to six months. The urgency to depart the old bank would influence this decision. For example, if the old trust account is being subjected to service or analysis charges, there would be a need to close out the old account as quickly as possible.

When it comes time to close out the old account, the remaining outstanding checks need to be addressed. There are a few different approaches that can be taken. All or some of the checks could be canceled and immediately reissued to payees. This could depend on how recent the checks were issued so as to avoid calls coming in when the payees try to cash the checks against the old account. Another option is to cancel the checks back into the original escrows and wait for reissuance once the payee makes contact looking for a new check.

An acceptable and more convenient option would be to cancel the outstanding checks into a holding escrow. The escrow would be labeled appropriately so as to indicate that it is a holding ground for the old outstanding checks from the prior bank. Depending on the trust accounting system, a special escrow number could be assigned to it rather than just the next number in the regular sequence. In addition, again depending on the accounting system in place, rather than having to cancel each check that was still outstanding, the company could issue a receipt for the total of the outstanding checks into the holding escrow.

In the escrow folder, a list would be maintained of all the checks included in the balance in this escrow. As checks are reissued to payees, they would be reissued out of this holding escrow and not out of the original escrow from which they were issued. It is important to remember not to cancel the checks before reissuing as they already were canceled at the time they were put into the holding escrow.

As checks are reissued from the holding escrow, the original list of the remaining outstanding checks that were transferred from the old bank account would be amended to show the old check was reissued and the funds are no longer in the holding escrow. There would be a monthly reconciling of the balance in the escrow showing on the escrow trial balance and in the status report or ledger card to the list of remaining outstanding checks from the old trust account. It is important that all reissued checks include a reference to the original check number and escrow number.

Another convenience of using the holding escrow for old outstanding checks from prior bank accounts comes at the end of three years when it is time for escheating. As outstanding checks remain unpaid after three years from date of issuance, the funds become eligible to be escheated to the State Controller's Office. Outstanding checks from current bank accounts are easily tracked from the current outstanding check list. However, the remaining outstanding checks from an old bank account are not as easy to trace once the account is closed and the outstanding checks canceled.

If these checks are canceled back to the original escrow, one would have to monitor the escrow trial balance to track what makes up the balance in the old escrow files and from what time period. The funds are escheatable three years after date of issuance in the case of outstanding checks and not from the date of cancellation of the check back to the original file. The escrow trial balance would show a last activity date relating to when the check was canceled and not to when the check was issued. This could make it harder to track the funds as to when they should be escheated.

However, if the old outstanding checks were canceled into a holding escrow, it would be easier to monitor the balance in the file and to determine when funds should be escheated. There would be a list of the old outstanding checks maintained in the file that would show the original issue dates of the checks. From this list, one would know when checks are eligible for escheating. Using the holding escrow also makes it easier to do the escheating as only one check would have to be written to the State representing the old outstanding checks to be escheated that year rather than individual checks from each escrow had the checks been canceled back into the original escrows from which they had been written.

The service provider that reconciles the trust account or who does the escheating process for the company should be able to help track and reconcile this holding escrow on a monthly basis to make sure that the balance always ties back to the remaining outstanding checks from the old account. This person will need certain information to be able to do this. For instance, they would need a copy of the ledger card for the holding escrow or a copy of the status report and copies of the checks that were reissued during the month.

Another question has come up regarding the need to issue stop payments on the old outstanding checks. This is a question to take up with the bank. It would seem that there would be no need for stop payments on the old account once it is closed, however, this should be something to be discussed with bank management to avoid any surprises.

If a stop payment is issued on an old outstanding check and the check is reissued, a question has come up as to if a stop payment fee is allowed to be charged to the payee before reissuing. It should be in the escrow instructions making the principals aware of the charge at the beginning of the escrow. The DOC has frowned upon taking stop payment fees where there was not an authorization to do so in the original instructions. This notwithstanding, companies have created an amended instruction release form getting the principal's permission to take the stop payment fee out of the check being reissued.

There should be the same type of release form for other payees getting their authorization to subtract the fee from the amount of the check before reissuance.

The above discussion relates to moving the trust account to a new bank. The same general principles apply for the transferring the operating account. One would leave enough checks at the old bank to cover the remaining outstanding checks. However, there is not as much of a need to keep a balance at the old bank for as long as for a trust account. One reason is that it does not take as long for the open outstanding checks to clear the bank. Another reason is that it is a lot easier to replace checks as necessary from the operating account than from the trust account.

These are just a handful of suggestions when it comes to moving to a new bank. Please call with any questions or if any other concerns come to mind not addressed above.