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## Poor Records Keeping Costs Bank a Win

By: Magnus R. Andersson

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There is real value in keeping accurate and complete business records. That is true for any business, but these days it is especially true for banks and other lenders who find themselves embroiled in litigation. A recent decision out of the Washington State Court of Appeals illustrates what can happen when records do not fully support a bank's position or actions.

The case is *Estate of Brownfield v. Bank of America*. The central issue was whether the bank could prove, based on its business records, that it had properly distributed \$200,000 of Mr. Brownfield's money to one of his nieces upon his death.

### The POD Accounts

Vance Brownfield was by most measures a well-to-do man. He held accounts at five different banks and credit unions with a collective balance of \$800,000. Shortly before he died, Mr. Brownfield changed some of his accounts to Payable On Death (POD) accounts, naming his niece

as beneficiary. Two of those accounts were maintained at Bank of America. After Mr. Brownfield passed away, Bank of America disbursed approximately \$200,000 to his niece as the POD beneficiary shown in the bank's (electronic) records.

### The Challenge

The personal representative of Mr. Brownfield's estate looked into the disbursement and determined that Bank of America could not produce a signed contract of deposit (a "signature card") reflecting the change to POD accounts. Mr. Brownfield's estate eventually sued Bank of America and the niece to recover the money.

### The Win at the Trial Court

The trial court dismissed the estate's claims on summary judgment. The bank presented evidence showing that Mr. Brownfield had visited the bank with his niece on the day the bank's electronic records indicated the accounts had been

changed to POD accounts. The bank also presented evidence that the bank would not have inputted the change to POD accounts in its electronic records without a signature card from Mr. Brownfield—but the bank was not able to produce that signature card, or a copy of it. That would eventually come back to haunt the bank on appeal.

### The Reversal on Appeal

The Court of Appeals reversed the trial court and remanded for trial. The Court of Appeals held as follows:

1. The fact that the bank could not produce a written contract of deposit (signature card) was not dispositive. The Court of Appeals rejected the estate's position that, as a matter of law, the bank had to follow the last signature card it could find in its records, which was not a POD account.

2. Whether or not Mr. Brownfield had actually requested that his accounts be changed to

POD accounts, as reflected in the bank's electronic records, could not be resolved on summary judgment. This was a question of fact, which would require a trial.

The purpose of a trial is primarily to resolve factual disputes. When there are no factual disputes—when the only question is what the legal outcome should be based on a set of facts—courts can enter what is known as a "summary judgment". A summary judgment has the same force and effect as a judgment entered following trial. But obtaining a summary judgment is typically far less expensive than going through a trial. Therein lies the lesson from this case.

#### Lesson Learned

If there is any lesson to take away from the *Brownfield* case it is that there is real value in keeping accurate and complete business records.

Legally speaking, the outcome may not be any different

following a trial in the *Brownfield* case. Banks are required to maintain signed contracts of deposit for each account, but as with other contracts that have to be in writing to be enforceable (such as wills and deeds), the law also allows parties to prove the existence and content of a required writing if that writing has been lost or destroyed. That general principle applies to contracts of deposit as well, so the *Brownfield* court held. There was plenty of evidence to support the bank's position that Mr. Brownfield had in fact signed a contract of deposit changing his accounts to POD accounts on the day he visited the bank with his niece. A judge or jury hearing the trial may very well be persuaded by that evidence and reach the same decision as the trial court initially did on summary judgment, which is that there must have been a signed contract of deposit at some point, only it had been lost or destroyed.

However, practically speaking the outcome could scarcely be any different. Instead of a quick

success on summary judgment, the bank now has to devote precious resources in time, money and effort to prove that it properly disbursed the money to Mr. Brownfield's niece in accordance with his POD instructions. Any trial is a gamble, so even though the bank's evidence appears strong from the court's written opinion, there is no guarantee the eventual outcome will be in the bank's favor.

It is worth noting that at least one other bank also disbursed money to Mr. Brownfield's niece as his POD beneficiary. That bank, however, was able to produce a signed contract of deposit changing the account to a POD account, and so was not named as a defendant in the estate's lawsuit.

If you have any questions about banking or finance, please feel free to contact Magnus Andersson at (425) 894-4362.

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Magnus R. Andersson's practice focuses on real estate, construction and banking. He has over 10 years' experience handling property transactions, financing, construction, and leasing matters. Magnus has also resolved numerous disputes on behalf of property owners, contractors, banks and other businesses over the years. Many of Magnus' clients are small to mid-sized companies based in the Puget Sound region of Washington State, but he also works with publicly-traded companies as well as individuals who own real estate.