



Combined Bank Statements and Privacy

Answer by John Burnett, BOL Guru

[Guru BIOS](#)

Question: We are considering combining bank statements. We may do this without the customer's request or approval. This would include, for example, a deposit account held by A and B as well as a loan held only by A. Is this a privacy concern?

Answer: Yes, I believe it is. A's loan is not B's business unless A wants it to be. In general, it's not a good idea to combine statements unilaterally unless there is identical ownership.

Corporate Funds & Ownership After Death

Answer by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: If a corporation has a deposit account at your bank and has two officers, one of the officers dies who owns the funds? Does the account need to be probated or do the funds go to the other officer?

Answer: The corporation still owns the funds. It is an entity that doesn't die.

Documentation Required to Open Account

Answer by John Burnett, BOL Guru

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Question: What legal documents are required for a non-profit corporation to open an account?

Answer: Essentially the same documents required of a for-profit corporation. You need to verify the existence of the entity (CIP), so you'll want some form of documentation of corporate status. From there, you'll need a certification of the vote taken by the corporation's governing body authorizing the opening of the account(s), and naming those persons authorized to do so for the corporation. This will often include a certificate from the corporate secretary or clerk as to signatures of the authorized persons.

You may or may not require ID information from the individuals signing for the corporation (CIP).

If the corporation is asking for a NOW account, you'll want documentation of its non-profit status.

Notice of Deposit Account Closure

Answer by John Burnett, BOL Guru

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Question: Is there a compliance requirement on how many days we need to give the customer before we can close their checking account (for example, due to continuous overdrafts)?

Answer: There is only one specific requirement of which I'm aware -- 30 days' notice if the customer is receiving federal recurring payments via the ACH. Otherwise, there may be a state rule where you work. Failing that, it's a matter of contract. You should have in your agreement with customers some sort of account-closing language. Often, this allows the customer to close all but CD accounts without notice, and the bank to close accounts for any reason with as little as

10 days' notice (or less). And most include language allowing the bank to close an account without notice in the case of fraud.

Closing an Account on Federal, Not State Law

Answer by John Burnett, BOL Guru

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Question: We have opened an account for a business that cultivates "medical marijuana". While this is legal based upon California law, (where we are) it is clearly not legal based upon federal law. My understanding is that federal law supersedes state law in almost all cases. Further, even though we are a state-chartered FDIC bank, our primary regulator is still the FDIC, which is federal. To further complicate things, the legal counsel for this company is a member of our board (although the board member did not refer this party to our bank for business). I would like to know that I have the "legal" foundation through which I may close this account. Any advice is sincerely appreciated.

Answer: You absolutely need no legal "excuse" to close the account. Banks do it all the time. All you have to have is a desire not to continue doing business with this company. Your letter requesting the company to close its accounts should merely state that the bank elects not to continue doing business with the customer. No other reason is needed, nor should it be offered.

Closed account signature card filing

Answer by Andy Zavoina, BOL Guru

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Question: Is there a certain filing requirement for closed account signature cards? Two of our branches pull the closed signature card from the active file and place in the closed account signature files. Another branch pulls the closed signature card and places it in the CIF file with all other account paperwork. I want all branches to handle the same way, but didn't know if there were any requirements by the regulators or examiners.

Answer: I believe you can do this any way that works for you, so long as retention requirements are met. Whether you find them in drawer A or Box B in the storeroom, it doesn't matter.

These systems may be established for security reasons or the space is needed. In either case, if it is significant for some reason, perhaps one branch sharing with another as to "why" may allow bank-wide improvements.

Privacy, Customer Account Number On Back Of Checks

Answer by Andy Zavoina, BOL Guru

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Question: We are getting flak from our customers about writing their account numbers on the back of checks that they cash or deposit. They don't want this information going out to other banks or other people and think that it's against the privacy regulation. How are others handling this and does this in fact present a breach of privacy?

Answer: A similar question was asked and is in the [InfoVault for research](#).

Please refer to [Privacy & Customer Account Numbers On Back Of Checks](#)

Confidentiality of Account Information

Question: A CD is set up as Mother and Daughter, POD Son. If the son calls and inquires regarding the CD (i.e., value, etc.), should any information be disclosed to him as POD beneficiary only?

Answer by Ken Gollhofer, BOL Guru
[Guru BIOS](#)

Answer: Regulation P and its parallel regulations are not a source of authority for prohibiting a disclosure other than an account number. They are also not a source of authority for making a disclosure.

I would not make the disclosure because he is not an owner on the account. That answer reflects personal judgment, not guidance provided by a law or regulation.

Answer by John Burnett, BOL Guru
[Guru BIOS](#)

Answer: In many cases, the owners of an account have not informed any named beneficiaries of the account's existence. It is the owner's right to change or completely remove any beneficiary notation up to the last moment.

The beneficiary has no legal rights in the account. It would not be appropriate to divulge the facts of the account to the beneficiary without written consent from the account owner.

Is a FACT Act Notice Required?

Answer by Andy Zavoina, BOL Guru
[Guru BIOS](#)

Question: Does the FACT Act's negative information notice requirement apply to checking account information provided to credit reporting agencies such as ChexSystems?

Answer: Yes. ChexSystems is a credit reporting agency by definition and the funds owed to you by virtue of an overdrawn account is a debt owed to you. Disclosure would be required.

Can the FBI Supersede the RFPA via USAPA

Question: Does the bank need a subpoena prior to giving customer data to the FBI if the issue relates to suspected terrorist activity? Doesn't the Right to Financial Privacy Act require a subpoena or is this an exception under the USA PATRIOT Act?

Answer by Jim Bedsole, BOL Guru
[Guru BIOS](#)

Answer: The SAR process gives you safe harbor to notify law enforcement of suspected criminal activity including suspected terrorist activity. File a SAR and in connection also place a phone call to the FBI to notify them that you have filed a SAR related to suspected terrorist activity. They can then have access to the supporting documentation for the SAR and get a subpoena for any additional information they need.

Answer by Ken Gollhofer, BOL Guru
[Guru BIOS](#)

Answer: Section 3414 of the Right to Financial Privacy Act recognizes very limited circumstances where law enforcement may require customer information from a bank in the absence of legal compulsion; e.g. a subpoena. They must relate to espionage, the "protective" role of the Secret Service or terrorism. Only the provision regarding terrorism was added by the USA PATRIOT Act. (To generalize, there must be an overwhelming concern and time must be of

the essence.)

That same section of RFPA includes the procedures that must be followed. In brief, the agency must provide the financial institution with a certification. It must also report the use of this process to the appropriate court within five days afterward. This is a formal process, more than just an agent flashing a badge.

Are Business Accounts "Levy-able"

Answer by John Burnett, BOL Guru

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Question: Can an incorporated account have a levy for DHS child support?

Answer: Unless they have changed the laws of biology, a corporation cannot be compelled to pay child support, in my opinion.

Account Styling for a DBA

Answer by John Burnett, BOL Guru

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Question: I need the proper documentation needed and account name styling on a corporation or LLC borrowing money using their assumed name. (Assume they are registered and in good standing with the Secretary of State, for both). Does the borrower's name need to be ABC, Inc. dba Money Maker?

Answer: There's actually no need to use the fictitious name in your loan records. The name you need to use is the legal name of the entity (ABC, Inc., in your example). If you and the borrower wish to add the d/b/a "title" as a matter of convenience, that's permissible.

Using a DBA

Answer by Andy Zavoina, BOL Guru

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Question: Is there a legal and/or regulatory basis for a bank to require a business customer (i.e. John Doe DBA Smithville Bike Shop) to provide a fictitious business name statement, or is it just a "prudent practice"? I am NOT asking this in terms of CIP. Our bank required this prior to the CIP implementation and we continue to require it in addition to CIP.

Answer: Some of the answer is -- it depends on your state law. In Texas, as an example, filing a "DBA" assumed name certificate basically gives the owner the right to do business under that name, and it prevents anyone else from using that name. Working under a DBA is a matter of law and it is a crime to do so, without filing this. So from the bank's standpoint, it tells you this person or company has the right to operate under that name. It should be a requirement in the bank. If your state is similar, your policy is more than a best practice.

In your case, look to the requirements of the California Business and Professional Code Sect 17918. "No person transacting business under a fictitious business name contrary to the provisions of this chapter, or his assignee, may maintain any action upon or on account of any contract made, or transaction had, in the fictitious business name in any court of this state until the fictitious business name statement has been executed, filed, and published as required by this chapter. For the purposes of this section, the failure to comply with subdivision (b) of Section 17917 does not constitute transacting business contrary to the provisions of this chapter."

How Do I Title a Husband/Wife Sole Proprietorship?

Question: What is the proper way to title a husband-wife sole proprietorship for both a DDA account and a loan?

Answer by John Burnett, BOL Guru
[Guru BIOS](#)

Answer: You can title it like a joint account of the individuals, adding a "d/b/a" line if you wish.

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Answer by Ken Gollhofer, BOL Guru
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Answer: John has graciously answered the question posed and, if you live in a state, such as Oklahoma, that recognizes such a thing as a husband and wife joint/sole proprietorship, I agree with his suggestion regarding titling on a deposit account. On a loan, I would just make it to the individuals and leave the DBA name out of it.

However, your bank first needs to decide if the concept is recognized in your state. If you do not live in a state where there is statutory recognition of this idea, I would encourage you to follow the concept that two people involved in a business for profit constitute a partnership - the marital relationship, even in community property states, does not alter that. Pretending that it does leaves the bank with unanswerable questions; for example, if the couple who owned the joint/sole proprietorship got a divorce, but remained in the business relationship, would the business account still be a joint/sole proprietorship? Whatever your answer, it is unlikely that you can find it in case or statutory law.

Customers requesting joint/sole proprietorships are generally those who have done no business or estate planning. One spouse, generally the wife, may come out with the short end of this stick and the bank is facilitating it. The bank's potential problems deal with account administration, rights of survivorship (some multiple party account statutes exclude business accounts) and whether one party can withdraw all the funds with a check payable to himself or herself.

Sometimes, "giving them what they want" is the worst possible form of customer service.

Is an Assumed Name Certificate Needed to DBA

Answer by John Burnett, BOL Guru
[Guru BIOS](#)

Question: Is it general practice for an LLC to obtain an assume name certificate? Our bank currently requires one on a general partnership, should the same apply to an LLC?

Answer: Your state law probably requires anyone doing business under an assumed name to register that name someplace. In Florida, it's with the state (I believe the secretary of state). In Massachusetts, it's with the city or town clerk.

That law would apply to an LLC that uses an assumed name, too.

Title Convention of an LLC

Answer by John Burnett, BOL Guru

[Guru BIOS](#)

Question: Does an LLC have to have part of the owner's name in the title?

Answer: One need not use one's name as part of the name of one's LLC.

However, if dealing with a single-member LLC that uses its member's SSN for IRS purposes, you should include that member's name in your account titling, to match the SSN for reporting purposes.