

Selected Subjects

Guru Chatter*
on Account Styling



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Styling an Account for a Class Reunion

by Ken Gollhofer, BOL Guru

[BIO AND CONTACT INFO](#)

Question: What would be the best way to set up an account relationship if a customer wants to open an account for her Class Reunion but has not applied for an EIN for the account and wants to use her social security number? Should this account be opened as a personal account since we are using her social or as a business account for an unincorporated organization with no TIN?

Answer: The customer needs to obtain an EIN in order to open the account. There are no costs involved and, by following the instructions on the EIN application, the number can be obtained by phone or fax.

When banks use nonconforming name/TIN combinations for information reporting they receive a form called a "B Notice" and potentially owe a \$50 penalty. One of examples of a common error described in the B Notice is the use of a Social Security Number on a "club" account.

In short, using an SSN on an entity account is a common but obvious mistake that may cause your institution future problems. The customer's saying, "It's OK," does not make it OK.

First published on BankersOnline.com 1/20/03

Account for Institutionalized Customer

by John Burnett and Ken Gollhofer, BOL Gurus

Question: Our bank currently handles accounts for a mental institution which tracks accounts for its clients. It sort of serves as the custodian. The account is opened using the client's SSN, but he does not have access to the account and is not a signer. There has been a debate as to whether the client should be listed as an owner because we are using his Social. But my feelings are that if he is listed as an owner, he is automatically a signer, therefore having access to the account. Can you clarify the difference between owner and signer for us?

Answer by John Burnett:

[BIO AND CONTACT INFO](#)

Welcome to the world of gray!

If funds are deposited to an account by a fiduciary or agent and the bank knows who the true owner of the funds is, I would call the true owner of the funds the "owner" for my account records. I would call the fiduciary or agent a signer.

Some owners will be signers. Others will not. For example, in an UTMA account, the minor is the beneficial owner of the funds, but the minor is not a signer. This creates the cozy little paradox where funds in the account cannot be attached without extra court maneuvering, since the funds don't belong to the custodian (so you can't attach in the custodian's name) and the funds can't be reached by the minor (so you can't attach in the minor's name, either).

With a POA, principal and attorney-in-fact are signers but only the principal is the owner.

With a corporate account, the corporation is the owner, but the corporation cannot sign anything. Therefore, it appoints agents who are signers but not owners.

If a court appoints a custodian/guardian for an incompetent, the ward is the owner, but cannot sign, and the fiduciary is a signer but not an owner.

If a lawyer sets up an escrow account for a specified client (not an IOLTA), the lawyer (your customer) is the signer/owner of the account but not the owner of the funds, but the client is the beneficial owner of the funds.

Someone with a clearer understanding of beneficial ownership can split the lines more finely, but this will serve to show that this is not a black and white question.

Answer by Ken Gollither:

[BIO AND CONTACT INFO](#)

John has done a good job of cataloging a number of situations where ownership and access do not coincide. A representative payee account would be another example, as would the patient accounts nursing homes are required to establish.

In your case, I would list the patient/inmate as owner with the understanding that does not mean he or she has access to the funds.

First published on BankersOnline.com 07/07/03

Estate Set-up with TINs

By Mary Beth Guard, BOL Guru

[Guru BIOS](#)

Question: If an estate or trust has a Employer Identification Number, rather than a Social Security number, how should the short name be set up? For the purpose of finding the account, it seems to make more sense to use the last name for the short name, but this seems to go against the idea of the EIN. Can the IRS match the EIN using the last name or does it need the actual name of the entity for the IRS name control – for instance, John Doe Estate?

Answer: The IRS TIN Matching Process guidance states that the IRS develops the name control for a decedent's estate from the decedent's name on the first name line on the information return. The decedent's name may be followed or preceded by the word "Estate." The TIN used should be the one that was assigned to the estate. They provide the following examples:

Frank White Estate
Cynthia Greene, Exec.

Estate of Frank White
Gail Black, Exec.

First published on BankersOnline.com 5/31/04

Styling Tenancy by the Entirety Accounts

By John Burnett, BOL Guru

[Guru BIOS](#)

Question: When a customer requests we title an account tenants by the entirety, do we use "and" or "or" between the names?

Answer: A tenancy-by-the-entirety (T-by-E) is simply (!) a joint tenancy with right of survivorship that's held by a married couple. Use an "or."

It's very unusual to style a deposit account as a T-by-E. Usually this form of ownership is reserved for real estate.

First published on BankersOnline.com 05/17/04

"Joint" Sole Proprietors

by John Burnett, BOL Guru

[Guru BIOS](#)

Question: Legally, are we able to place more than one individual on a sole proprietorship account? If so, is the account treated as a "joint" account allowing all listed individuals the same rights and privileges, even though the account is attached to one SSN?

Answer: Let's start by divorcing the words "sole proprietorship" from "account." Sole proprietorship describes a form of business; the type of account you place it in (assuming eligibility standards are met) is immaterial.

Without trying to insult anyone's intelligence, let's recall that the word "sole" suggests that the business is owned and operated by an individual, and not by more than one. Some states' laws will require that any business owned by two or more persons be classed as a partnership. These, then, would not be eligible for sole proprietor status.

However, there are still some states that recognize a "unity of marriage" concept from common law, and these states may permit a married couple to own and operate a business without coming under partnership statutes.

You need to know what the law is in your state.

I am not aware of any other combination of two or more owners that can be called a sole proprietorship.

All of the preceding really only affects whether the account in question could qualify as a NOW account, since a SP qualifies as owner of such an account.

If we restrict our discussion to a garden-variety non-interest demand deposit account (I know that's redundant, but for clarity . . .), John Doe can hold a joint account with another individual, and John can be a SP that runs his business's transactions through that account, all without violating any law of which I'm aware. This is because SPs can commingle personal and business funds without running afoul of any tax rules.

First published on BankersOnline.com 01/19/04

Titling of An Inherited IRA

by Ken Gollhofer, BOL Guru

[BIO AND CONTACT INFO](#)

Question: We need clarification as to how to handle the titling of IRAs after the owner has died and the beneficiary is electing to take distributions from the IRA instead of closing it out and treating it as their own. In the past, we completed the Election of Beneficiary Form for IRS reporting. The confusion comes in because some think the IRAs "must be closed out" and I don't think that is necessarily true. I think in some cases they just need to be retitled, especially in

situations where, for example, a spouse would elect to take life expectancy payouts.

Answer: There is a longstanding IRS Revenue Procedure that controls the titling of an inherited IRA. For example, the correct title would be Jane Doe, Beneficiary John Doe IRA. (Jane's SSN would be tied to the account.) Begrudgingly, I would acknowledge that some banks do simply file maintenance the name, address and TIN fields to effect the change. This saves a little work, but eliminates an audit trail, assumes the beneficiary cannot name a beneficiary, and can cause information-reporting problems if both the decedent and the beneficiary make withdrawals from the account in the year of death.

The preferred practice is to set up a properly titled new account, allow the new owner to name a beneficiary (check state law on this point) and transfer the funds from the decedent's account to the beneficiary's account. The transfer is not subject to information reporting. All distributions coming from the beneficiary's account are "distributions due to death."

First published on BankersOnline.com 08/11/03

Renters' Security Deposit Trust Accounts

by Ken Gollhofer, BOL Guru

[BIO AND CONTACT INFO](#)

Question: What can you tell me about a trust account, similar to an IOLTA account, that is used by real estate or property management companies to hold renters' security deposits. The funds in this account cannot be commingled with operating funds and my understanding is that they can be interest bearing. My concerns lie in the account titling and what happens to the interest.

Answer: Landlords rarely establish such accounts unless required by law. The applicable law is often referred to as the Uniform Residential Landlord Tenant Act. It can be a state statute or a city ordinance so you need to check both as the terms can vary between jurisdictions.

As for the account title for individual accounts: Jane Doe, Tenant Escrow Account, by Simon Legree (You need Jane's certified SSN, the landlord will need to bring you a W-9 equivalent for every one of these he opens.)

For commingled funds (may not work in some jurisdictions) "Living Well Apartments, Tenant Escrow Account." You would use the apartment complex EIN and they would be responsible for any 1099-INT reporting to the tenant.

First published on BankersOnline.com 3/10/03

Can We Open a Partnership Account with the Partner Being Another Business?

by John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Can we open a partnership account with the partner being another business? For example: ABC Landings, Ltd. and the name of the partner listed on the resolution is ABC Management?

Answer: These are often referred to as joint ventures. Do not consider these accounts as joint accounts for FDIC insurance purposes, however, since a joint account must be owned by human beings to be considered for separate insurance coverage by the FDIC.

But the direct answer to your question is, yes, a partnership can be legally created between two non-natural entities such as other partnerships, corporations, etc. Law firms, which are often partnerships or LLPs, often have members that are corporations themselves, for example.

First published on BankersOnline.com 04/21/03

Account Styling: Title Company Escrow Accounts

by John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

Question: We have a title company that wants to open an interest bearing "escrow" account for a subcontractor that they are acting as escrow agent pending completion of a government job by a subcontractor. They want to use the subcontractor's tax ID number on the account, but the subcontractor will not be a signer. What is the appropriate way to title such an account?

Answer: Something like --
ABC Title Company, Escrow Agent
XYZ Construction Company
address

. . . if you can make sure the interest reporting will pick up the XYZ Construction Company name line and EIN.

If you have a "first line only" system, try:
Escrow for XYZ Construction Company
ABC Title Company, Agent

Just be certain that your staff understands the construction company cannot access the account without court order. You may need to put some kind of administrative block on the account (not for check clearing Reg. CC fans, for tellers) to make sure XYZ doesn't get to the money.

First published on BankersOnline.com 04/07/03

LLC: TIN or SSN?

by Mary Beth Guard and John Burnett, BOL Gurus

Question: I have a customer who has an LLC set up with one owner. They would like to use their own social security number. Would I set this up any differently? Do I use his name or the name of the LLC first on our computer system? I was concerned with the interest reporting.

Answer by Mary Beth Guard:

[BIO AND CONTACT INFO](#)

You can set up the LLC account with the owner's social security number as the TIN if there is just one owner. To get a match for IRS purposes, you would need to style the account, "John Doe, Member, Doe LLC"

Answer: by John Burnett

[BIO AND CONTACT INFO](#)

Your closing statement concerns me: "I was concerned with the interest reporting." Please be certain you are not opening a NOW account for this LLC. A one-member LLC is very much like a one-person PC (professional corporation). It's not a sole proprietorship (and using the member's SSN doesn't change the facts).

First published on BankersOnline.com 04/07/03

How should a signature card read when opening a trust account?

by John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

Question: How should a signature card read when opening a trust account? Name of trustees first or name of the trust first?

Answer: A lot depends on the attributes of your system. Some will only use the first name line for 1099 reporting. In general, the account should be in the name of the trustee if it is a revocable (donor) trust that uses the trustee's SSN. In other cases, there should be an EIN, and you should title the account using the name of the entity to which the EIN was issued - the trust.

First published on BankersOnline.com 3/17/03

Number of Joint Tenants

by Ken Gollhofer, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Is there any limit to the number of people that can be listed on a joint tenants with right of survivorship account? Is it just two people, or can there be three or four, for example?

Answer: This is an issue of state law. I have worked with the statutes in several states and none had a limitation on the number of owners. However, I would encourage you to look at your state's multiple party account statute to see if your state does.

In general, I would say the number of joint owners is limited only by your patience and the size of your signature card.

First published on BankersOnline.com 1/6/03

Joint Account for Individuals and POA

by Ken Gollhofer, BOL Guru

[BIO AND CONTACT INFO](#)

Question: What about a person designated as POA setting up a joint account between himself and the individual for whom he has POA? The POA document does not contain durable POA language, is from another state and only states that the "attorney" can "do and perform all and every act...as she would do as present." The individual did not sign the signature card, only the person having POA. Is this legal?

Answer: The answer could vary among the states or come down to simply whether your bank would allow it to happen.

Florida law prohibits an attorney-in-fact from establishing accounts with survivorship provisions unless the POA specifically authorizes it. Other states may have similar restrictions.

However, some institutions just say, "We're not going to be a part of that sort of thing." With an understanding that an attorney-in-fact is a fiduciary and therefore is prohibited from doing anything that would benefit himself, they refuse to do it unless the POA specifically authorizes it.

Enforcing such a policy will take some grit, so it should be reviewed by counsel and signed off on by senior management. (People often get very angry when their plans for personal enrichment are thwarted, particularly when the refusal even implicitly acknowledges they are self-dealing.) However, such a policy is particularly valuable when the principal has a number of heirs that include the attorney-in-fact in their number. If you allow it, he has just upped his percentage of the estate.

First published on BankersOnline.com 12/16/02

Account Styling For Joint Ventures

by Ken Gollhofer, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Two established companies are forming a joint venture. They want to establish a "joint venture" business checking account. How should we style the account, what documentation should we require and should the "joint venture" have its own tax ID number?

Answer: Let's assume the project is the "Eastland Strip Mall" and the parties to the joint venture are "Amcore, Inc." and "Flexan, LLP." Also, please note a joint venture is not a legal entity, just a temporary arrangement between multiple entities.

My suggestion for the account title is "Flexan, LLP and Amcore, Inc., Eastland Strip Mall, joint venture." You will need EINs from both organizations, but set the account up where Flexan's would be used for any information reporting. (Amcore, as a corporation, is probably not subject to information reporting, but information reporting would be an unlikely event anyway as a joint venture is not eligible for a NOW account.)

You need a resolution from each entity authorizing the opening of the account, with the specific account title, and naming the authorized signers. They do not each name their own; they each name all signatories, including those who are employed by the other organization. You would also need documentation from each entity; e.g. evidence of existence, as if they were opening an account in their own company's name.

Implicitly, I am saying the joint venture does not need its own EIN, or more accurately, I am saying you should not insist upon it. I lack the expertise to help your customers make that determination. If there is any doubt, they need to resolve it by talking to their tax preparers. If they come in with an EIN unique to the joint venture, retitle the account with the name of the joint venture first and the names of the entities second.

First published on BankersOnline.com 12/2/02

Account Styling: Corporation to LLC

By Mary Beth Guard

[BIO AND CONTACT INFO](#)

QUESTION: A corporate customer has changed to an LLC. All signers are the same and they would like to keep the same account number. Do we run any risk allowing the account to be revised with the same account number? The Tax ID number has changed, but the account does not earn interest.

ANSWER: If it is truly just a conversion in the form of legal entity from a corporation to an LLC and the ownership of the entity has remained the same, I would question why the Tax ID number had to be changed. (Probably because LLCs are taxed differently than corporations, so it would need to be identified in a new way now.) If the tax ID number was changed, it's probable that the entity will have to file a close-out tax return under its old number and new ones thereafter under the new number. They may need a distinct trail that shows transactions of the old entity and transactions of the new, and that is best accomplished with a new account and new account number.

First published on BankersOnline.com 8/6/01