

Selected Subjects

Guru Chatter* on **Fiduciary Accounts**



Representative Payee Accounts

Question: On Representative payee accounts, can the person who the funds are for, have access to a history of the account?

Answer by Ken Gollhofer:

In its Guide for Representative Payees, <http://www.ssa.gov/pubs/10076.html> SSA answers many questions regarding these types of accounts. However, they do not answer yours.

Please note that, in its appointment of a representative payee, SSA has indicated its belief that the person entitled to the benefit is legally or mentally incapable of handling the payment. However, I don't believe that rises to the level of a prohibition against giving the payee information regarding the way the funds have been spent.

If the person has not been declared mentally incompetent by a court, I would give it to him. Another Guru may follow this with a post saying why he or she would not give out the information. It's a judgment call either way.

Clarification Needed on Trusts as Beneficiaries

Question: After reading some postings regarding trusts as beneficiaries, I still need some clarity. On a sole ownership account can a condo trust be designated as the beneficiary? A customer has made this request and I've gotten several conflicting answers as to its legality.

Answer by Ken Gollhofer:

This is purely an issue of state law and may be addressed in "new accounts" or "deposit documentation" programs offered by your state bankers association. You should look to the resources provided there for specific guidance.

If you allow it, the customer's reasonable interpretation of your action is that it will work. Accordingly, you need to be certain of your position before you allow it.

Check Payable to Trust

Question: Just recently, I received a check that was payable to Jane Doe Trust. Can Jane Doe cash this against her personal account or does she have to deposit the check and write a check to receive the cash back?

Answer by John Burnett:

If a check is payable to a trust, we look to section 3-110(c) of the UCC to determine who may negotiate it. There, we find 3-110(c)(2), which reads, in relevant part:

"If an instrument is payable to ... a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named."

In the case you describe, the check is payable to the trustee of the Jane Doe Trust. Because you cannot infer from the name of the trust that Jane Doe is the trustee, the check should not be cashed for Jane Doe. It should be deposited to an account of the trust.

Trustee Makes Trust Check Payable to Self

Question: If the owner of an account is a legal trust and the trustee of the trust makes a check payable to him- or herself from the trust, would this check be considered a third party check for excessive activity?

Answer by John Burnett:

Absolutely yes. The individual and the trust are separate persons under the law.

The Whole Trust?

Question: I have a question concerning the documentation requirements for opening trust accounts. When a financial institution opens a trust account is it legally required to collect the entire document or are only certain pages of the trust document allowed to still be in compliance?

Answer by Ken Gollhofer:

Documentation required by banks is generally a policy, not a legal issue. Your choices are:

- * a complete copy of the trust,
- * the first and last pages and any pages naming successor trustees, or
- * a certification or synopsis of the trust.

Letter of Guardianship Supersedes Trust Agreement?

Question: I have a customer who has several accounts under a revocable trust. The trust appointed two trustees who are to act for the benefit of our customer even when this individual becomes incapacitated. We have just received a letter from the state Superior Court stating that the trust department of a certain bank has been appointed guardian of our customer's estate. Does this letter of guardianship supersede the trust agreement? Is the trust no longer in effect?

Answer by Ken Gollhofer:

The appointment of a Guardian does not automatically revoke anything. It simply puts the guardian in the shoes of the trustor, the person who established the revocable trust. Whatever that person could do, such as to revoke the trust or move the funds to another bank, the guardian is now empowered to do. Under normal circumstances, a guardian would not revoke a trust.

Living Trust and a "Pour-Over Will"

Question: I'm going to set up a living trust and was told by a friend who set up a living trust that I should have a "Pour-Over Will" too. What is a "Pour-Over Will" and why would I need one?

Answer by Ken Gollhofer:

An attorney accustomed to drafting trust agreements would normally draft a will in the same sitting. If you do not have an attorney prepare your trust, it's worth less than any amount you pay for it and you will not find competent legal advice here.

The pour-over provision will be a single element of your will, not necessarily the focal point. Its purpose is to collect anything of value not previously transferred to the living trust and transfer it to the trust after your death (it's the safety net for something you might have forgotten or something that you were not entitled to at the time the trust was established). Having a living trust does not eliminate the need for a will.

Setting Up a Memorial Fund Account

Question: What are the regulations regarding opening a memorial fund account? Does it need a separate TIN, and should proof of death be required?

Answer by Ken Gollhofer:

The best resource I know of on this point is a recently updated [BOL Article](http://www.bankersonline.com/operations/donations.html).
<http://www.bankersonline.com/operations/donations.html>

Handling Checks Payable to a Memorial Fund

Question: A customer comes in with checks payable to the John Doe Memorial. This person is a family member of the decedent. They have received these checks from friends. What options do we have for the customer to do with these checks? Do we have to open a new account with a TIN under "John Doe Memorial," can a personal account be set up by the holder of the checks with a sub title of John Doe Memorial, or do these checks become part of the estate?

Answer by Ken Gollhofer:

The law does not provide any special rules for funds used to establish memorials or for the relief of victims of a tragedy. You will handle the check as you would if it were payable to a person or a business. In essence, since the "Memorial Fund" will never be across the counter from you, you will require the check to be deposited into an account in the same name as the payee of the check. There's a very good article on establishing these types of accounts <http://www.bankersonline.com/operations/donations.html> It is suggested that you only open this type of account for established customers.

Titling and Ownership of Minor Account

Question: I have an account that is court blocked for a minor. The lawyer was the guardian *ad litem* at the time the account was set up, but the court papers say that she is discharged as soon as the funds are deposited to the account. The minor is to have no access to the account until he turns 18, at which time the court will send papers to discharge the account to him. Until then, I am having trouble titling the account and figuring out the ownership. It would appear to me that there are no signers, but then who has authorization for things like address changes? Unfortunately, this is an account that was opened incorrectly 2 years ago.

Answer by Ken Gollhofer:

There are nuances of state law that cannot be resolved without knowing what state you are from. Your best source of advice is the order itself and clerk of the court that established the account.

In general, the minor owns the funds. Interest earned should be reported on his or her SSN. The account should be titled consistently with the court order with the minor's name first in the account title. If the original instruction was to use the minor's address (rather than the court's) it's open to interpretation, but I would say that written notice from the minor's legal guardian should suffice to implement an address change.

Disbursing Funds from UTMA Accounts

Question: My question is regarding withdrawals on UTMA accounts. What is the proper means of disbursing funds from these accounts? My bank's policy is to

allow the Custodian to withdraw by bank check and then cash the check. Are there any laws/regulations/guidelines that prohibit or discourage these withdrawals as cash?

Answer by Ken Gollhofer:

There are no rules, regulations, etc. that guide your actions. Your method, issuing the check the way the account was titled and then allowing the custodian to endorse it and transfer it to the beneficiary, is the "best practice."

Non-citizen UTMA Account

Question: Can an UTMA be established for a non-us citizen?

Answer by Ken Gollhofer:

While there is a model version of the UTMA which has no restrictions regarding the beneficiary's citizenship, you need to review your state's particular version of the law to find the answer.

Requiring Custodian's SSN on the Custodial Account

Question: A nonresident alien (mother) has a custodial account for her child. The child has an SSN, but the mother doesn't. The account is already established, but the bank (Bank A) said the mother must have an SSN or the account will be closed. Another bank (Bank B) said the mother's SSN is not required. Who's right? Is this a matter of bank policy or required by government regulation?

Answer by Ken Gollhofer:

For CIP purposes, the mother is the "customer" and the bank must obtain an identifying number for her. It is not required that it be a Social Security number.