

Selected Subjects

Guru Chatter* on Miscellaneous Account Issues

Time Frame for Closing Accounts

Question: If you reserve the right to close an account for any reason is there a specific time frame you have to follow by law or can you close the account right away?

Answer by Andy Zavoina:

I am aware of no time requirement except that you may have one specified in your agreement, or when a federal direct deposit benefit (such as social security) is being received. Here is an excerpt from a post by John Burnett referring to the "Green Book":

Termination by the Financial Institution

Financial institutions may close an account to which benefit payments are currently being sent thereby revoking the enrollment authorization by providing a 30-day written notice to the recipient prior to closing the account. In cases involving fraud, accounts may be closed immediately.

The financial institution cannot revoke the enrollment authorization by notifying the Federal agency and not the recipient.

The 30-day written notice should remind the recipient to make other arrangements for the handling of his/her payments. The financial institution must credit to the recipient's account any payments received during the 30-day notice period. The financial institution must also immediately return to the Federal government all payments received after the 30-day notice period. A financial institution that closes the account without properly terminating the enrollment must make the funds available to the recipient until proper notice is provided.

Providing Information on Closed Accounts

Question: If a merchant and/or institution calls to verify funds on a returned NSF item and since the receipt of that item, that account has been closed by the account holder or originating bank - can this information be disclosed? Can the

merchant re-present this item, and at that point should the originating bank, stamp the check as "account closed"? Is there any legal action that could be taken against the originating bank if they disclose "account closed" to the presenter?

Answer by John Burnett:

If the account is closed, the account is closed, and I don't recommend trying to "put rouge on the pig" here. The payee is entitled to know the account is closed in such a case.

Law that Prevents Removal of Joint Account Owner?

Question: What law prohibits a bank from removing a name (living person) from a joint checking account? I have been asked by senior management. I think there would be audit issues, inheritance tax issues, and contract issues, but what specifically makes it prohibited?

Answer by Ken Gollhofer:

It is not prohibited by law or regulation. It probably will not be specifically "prohibited" by contract terms. Fortunately or unfortunately, not every poor banking practice is against the law. It is simply inconsistent with the nature of the relationship and, in the case of checking accounts, it fails to recognize the evolution of banking practices regarding signature verification.

If two individuals open a joint account with your bank you have a three party contract; i.e. any changes should be agreed to by all three of you. Generally, the contract will say that any party, including the bank, may close the account. However, it says nothing about two of you collaborating to remove the third.

Your bank is in complete control of the contract language. Would it be logical to include such a provision? Would it be something your customers, who owned the money jointly, would expect to find buried in 4 point type? Would it be okay with the individual members or your senior management if someone removed their names from their joint accounts today?

Although those same three parties to the contract could agree to amend it and remove the name of one signatory, banks are decades past the time where signatures on all checks are verified prior to payment. In general, if the MICR line is right and the money is there, the check will be paid. If a bank has allowed for the removal of a signatory and then pays a check signed by that signatory, only a mirror, not a law book, is necessary to find the party who is liable for the error.

The only argument in favor of allowing customers to remove signatories is "convenience." In the long run, that's a featherweight issue outweighed by any one of the issues you mention, all of which belong on the opposite side of the scale.

Handing the Account after the Death of Joint Owner

Question: With a JWOROS account if one of the owners dies are we as the financial institution required to divide the funds between the living owner and the estate or do we freeze the funds and wait for probate to order the division?

Answer by Ken Gollhofer:

This is purely an issue of state law and should 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.

In general, "freezing" an account is not something you do unless there is a specific statutory directive to do so. At least half of the money in the account belongs to the survivor and state law may entitle him to access to all of it.

Handling Funds When Non-Spousal Joint Owner Dies

Question: When an account is held in joint names, but not spousal, and one owner is now deceased, do the funds have to be held until death certificate and consent to transfer is obtained?

Answer by Randy Carey:

No - marital status is not a factor on joint accounts. It depends on state law and how the joint account is established. If the account is a joint account with right of survivorship - the money passes to the other party automatically.

Returning Deposited Payroll Checks of Decedent

Question: I know that we are required to return any federal government deposits going into an account of a deceased customer after the date of death. However, is there any regulation which refers to the decedent's payroll check? I feel that the money belongs to that customer. A payroll check is usually for time previously worked. Are we required to return it as well?

Answer by Randy Carey:

While I am not an attorney, it would be my opinion that the bank would have no responsibility to return a payroll deposit. If the payment was determined to be made in error, the payor would have to file a claim against the decedent's estate.

What Is the Proper Way to Disburse CDs to PODs?

Question: We have a customer who is recently deceased. He owned several CDs with different PODs (children). Can we disburse the CD money by Cashier's check to the beneficiaries who live out of town, or does the CD need to be retitled in the PODs' names before they endorse them to be cashed?

Answer by Ken Gollhofer:

This is purely an issue of state law and should 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.

CD Signature Cards

Question: Is a signature card required for time deposits? If not, is a signature card advisable nonetheless?

Answer by Andy Zavoina:

I do recall that the FDIC insurance coverage does not require a signature card on a certificate of deposit. These are often not done because the terms of the CD are already spelled out in the agreement and it need not be as long or have as many conditions as other accounts.

As to being advisable, that will depend on individual bank requirements but I'd look at what is involved and what is gained.

Can Signer Withdraw Funds after Account Owner's Death

Question: If a person is just a signer on a deposit account and the single account holder dies, are the fund frozen, or can the signer still withdraw funds?

Answer by Ken Gollhofer:

In general, the powers of an authorized signer, convenience signer, or agent (whatever the relevant term is under state law) end upon the death of the owner.

Joint Owners Who Won't Sign the Signature Card

Question: What are our options when joint owners will not come in to sign the signature card on checking and savings accounts? Can we remove them from the account? Can we close the account?

Answer by Randy Carey:

Yes, you can exercise either option.

Signer Withdrawing Funds from Business Account

Question: Can you withdraw funds from a business account to cover a personal account negative balance, if the owner of the personal account is a signer on the business?

Answer by Jim Bedsole:

Are you talking about as a matter of offset or as a matter of a requested transfer by the signer? With regard to offset, I would say absolutely not. The fact that the person has signing authority does not establish ownership and that's what would be necessary for offset purposes. With regard to a requested transfer - that would be a poor business practice and your internal operating policies ought to prohibit the mingling of funds from business accounts and personal accounts.

Disclosures for Adding a New Signer to an Account

Question: When adding a new signer to an existing account, what disclosures must be given?

Answer by Andy Zavoina:

Following Reg. DD at §230.3(d) you may provide disclosures to one consumer, if there is more than one. You would have already provided this to the existing accountholder. While additional disclosures are not required to the new owner, they won't hurt. But it is your choice.

Notifying Joint Owner of Removal from Account

Question: When removing an owner from a joint account does that person need to be notified?

Answer by Ken Gollhofer:

When a joint account with two owners is opened, there are three parties to the contract, the two customers and the bank. No two of those parties can agree to change the terms of the contract without involving the third. Unless your contract specifically provides that one customer can remove the other, it cannot be done. So, the issue of notice is moot.

Presumably, your contract acknowledges that any one of the owners can close the account. The much preferred banking practice is to allow either owner to close the account and then re-open an account in that party's name if he so chooses. If the account is to be closed with an official check, it should be made payable the way the account was payable; e.g. "Owner #1 or Owner #2."

Cashing Savings Bond Made Payable to Living Spouse

Question: A customer claims she can cash Savings Bonds made payable to her living husband only. We are trying to find documentation indicating otherwise.

Answer by John Burnett:

Banks are not authorized to redeem savings bonds under a power of attorney, which is the only relationship under which I could conceive of a wife having a "right" to cash a bond issued to her spouse. If there is a power of attorney, provide your customer with contact information for the Federal Reserve Bank

handling savings bond redemptions for your bank. Otherwise, you cannot assist the customer.

Bank Wants to Add Authorized Signers to HSAs

Question: Last week during the HSA BOL webinar, Deborah mentioned that HSAs only have one owner and one account signer, no authorized signers. This is not stated specifically in the regulation and is being challenged by the new product committee here at the bank. They want to allow another individual to be an authorized signer. They stated they have talked with other banks and they allow authorized signers. I am trying to figure out if this can be accomplished through a POA and if the POA needs to specify the HSA.

Answer by Randy Carey:

As far as your question regarding authorized signers, I did a lot of research on that on the old MSA accounts and found that the IRS is silent on the issue. I do not believe that they broke their silence when any of the HSA regulations or guidance was published. I would recommend that you visit with your legal counsel and after that, it really becomes a business decision. The other option is to petition the IRS for a ruling on the issue.