

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Division of Banking TITLE NUMBER: 106

CITE AUTHORITY WV Code §31A-4-33 and §31A-2-4(c)(11)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: Notice and Treatment of Joint Accounts

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Shaw & Leo

5.20



DIVISION OF BANKING

Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • FAX: (304) 558-0442

COMMISSIONER OF BANKING LEGISLATIVE RULE PERTAINING TO NOTICE AND TREATMENT OF JOINT ACCOUNTS

Statement of Circumstances

This legislative rule is required by the passage of HB 4129 which amended W. Va. Code § 31A-4-33 as to the notification required to be given to joint account holders on their rights and liabilities.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Notice and Treatment of Joint Accounts

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Banking

Address: State Capitol Complex
Bldg. 3, Room 311
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

To amend rule to conform with legislative change under which notice to one of the joint account holders of their rights and liabilities is considered notice to all.

Rule Title: Notice and Treatment of Joint Accounts

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None. Despite changes to rule, the existing notice forms and procedures can continued to be used by banking institutions.

C. Economic Impact on Citizens/Public at Large.

None

Date: June 21, 1994

Signature of Agency Head or Authorized Reprerentative

Shawn S. Bis



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COMMISSIONER OF BANKING LEGISLATIVE RULE PERTAINING TO NOTICE AND TREATMENT OF JOINT ACCOUNTS

Summary of Proposed Rule

This legislative rule is required by the passage of HB 4129 which amended W. Va. Code § 31A-4-33 as to the notification required to be given to joint account holders on their rights and liabilities.

The rule is amended to delete the special notice provision to existing joint account holders not previously notified before January 6, 1994; and to conform the rule to legislative amendment whereby notice to one of the joint account holders of their rights and liabilities under this code provision, is considered notice to all other persons to that joint account.

TITLE 106
LEGISLATIVE RULES
COMMISSIONER OF BANKING

SERIES 17
NOTICE AND TREATMENT OF JOINT ACCOUNTS

§ 106-17-1. General.

1.1. Scope-- This rule establishes procedures for the notice to holders of joint deposit accounts opened on or after July 1, 1994 regarding their rights and liabilities as to those accounts. In addition, this rule pertains to the treatment of joint deposit accounts in the event of receipt of written notice by a bank from one of their joint deposit account holders informing the bank not to pay, pledge, or encumber the account upon the demand or request of another named party to the joint account.

1.2. Authority-- W. Va. Code §§ 31A-4-33 and 31A-2-4(c)(11).

1.3. Filing Date-- ~~May 5, 1994~~

1.4. Effective Date-- ~~June 6, 1994~~

§ 106-17-2. Definitions.

2.1. "Joint Account" means a federally insured deposit account at a bank which is held in the name of two or more individual persons, wherein any one of the named account holders may, without the signature or approval of any other persons to the account, obtain account funds, close the account, or otherwise withdraw the whole amount in the account. Such accounts include, but are not limited to, joint checking accounts, joint savings accounts, joint passbook savings accounts, joint Christmas/Vacation club accounts, and joint certificate of deposit accounts.

2.2. "Bank" means any state-chartered or federally-chartered banking institution authorized to conduct the business of banking in West Virginia, including any savings bank, or savings and loan association.

§ 106-17-3. Notice.

~~3.1. Existing Joint Account Holders-- If a bank has not notified its existing joint account holders by January 6, 1994 of their rights and liabilities under a joint account by using forms and procedures previously approved by the Commissioner of Banking, then that bank is required, within thirty (30) days of the effective date of this rule, to send a special separate mailing to each and every of its joint account holders using the forms and procedures approved by the Commissioner of Banking pursuant to this rule.~~

~~3.2.~~ 3.1. Opening New Joint Accounts-- Upon the request of a customer to open a new joint account, a bank shall provide notice to the joint account holders that the joint account may be paid out to, pledged by, or otherwise encumbered by each and any of the individuals to the joint account-- unless prior written notice is given by one of the account holders not to permit it. The wording of the notice provided by the banks to their customers must be approved by the Commissioner of Banking and printed in a clearly legible type size. A bank may comply with this subsection by:

~~3.2.1.~~ 3.1.1 Obtaining the signature of each at least one joint account holder on a separate document containing the required disclosures and approved for such use by the Commissioner of Banking, and then maintaining this signed separate document either together with the joint account's signature card, or in another manner whereby the document is easily retrievable as to each joint account;

~~3.2.2.~~ 3.1.2. Incorporating the required and approved disclosure notice within the signature card or the account opening agreement with the bank. ~~which card or agreement is signed by all the joint account holders; or~~

~~3.2.3.~~ 3.1.3. Establishing a procedure for ensuring that ~~all persons~~ a person opening a covered joint account is given the required notice in a form approved by the Commissioner of Banking, and that fact is recorded by a checkbox marked upon the signature card or the account opening agreement accompanying that joint account. ~~which card or agreement is signed by all the joint account holders.~~

~~3.3.~~ 3.2. Notice Forms-- The form of the notice, including the wording contained in the disclosures, shall be approved by the Commissioner of Banking together with any restrictions or specific use of a particular form that the Commissioner may establish. In addition to any other notice form which may be, from time to time, approved by the Commissioner of Banking, banks may use the forms set forth in Appendix A and B of this rule as prescribed in this subsection:

~~3.3.1.~~ 3.2.1. The form in Appendix A may be used when the bank is following the notice procedure set forth in subdivision ~~3.2.1~~ 3.1.1. of this rule; and

~~3.3.2.~~ 3.2.2. The form in Appendix B may be used when the bank is following the notice procedure set forth in subdivisions ~~3.2.2.~~ 3.1.2. or ~~3.2.3~~ 3.1.3 of this rule.

~~3.4.~~ 3.3. Use of Previously Approved Forms-- Unless a change in law, legislative rule, or determination by a court necessitates immediately altering a notice form previously approved for use by the Commissioner of Banking, banks shall have a reasonable amount of time, up to six months, to replace their existing approved forms. And during that time the banks may continue to use their previously approved forms.

§ 106-17-4. Effect of Written Notice.

4.1. Closing the Account-- Upon receipt of written notice from a customer holding a joint account directing the bank not to allow one or more of the other named parties to that joint account to withdraw funds, close the account, pledge or otherwise encumber the account solely on that party's own signature, then the bank may, unless prevented by federal law, treat that notice as a request to end the joint account relationship and the bank may choose to close the account either by issuing a check in the name of the customer requesting the change, or by transferring the account monies to another account which is in the name of the customer requesting the change.

If there is any loss of accrued interest or other penalty for early withdrawal associated with closing the joint account, the bank may impose the loss or penalty.

4.2. Payment of Interest-- If the account is closed and the monies in the account placed in an escrow account by the bank, then interest shall accrue as is normally paid by the bank on its escrow accounts.

4.3. Noninterference with Bank Pledging Policy-- Nothing within this rule prohibits a bank from adopting as a matter of bank policy, a requirement that all joint account holders must agree and/or sign before any pledge of a joint account can be made.

§ 106-17-5. Non-Liability of Bank

5.1. Upon Closing the Account-- To the extent the bank closes the account acting upon written notice of a joint account holder made pursuant to W. Va. Code § 31A-4-33 the bank has no liability to any affected joint account holder in consequence for taking such action.

5.2. Upon Following Agreement of Parties-- To the extent the bank follows or complies with an agreement among and between all the parties to a joint account as to the apportionment or disposition of funds held in the joint account, the bank has no liability to any affected joint account holder in consequence for taking such action.

5.3. Upon Compliance with a Court Order-- To the extent the bank follows or complies in good faith with an order from a court as to the apportionment or disposition of funds held in a joint account affected by notice pursuant to W. Va. Code § 31A-4-33, or makes any payment or attachment to a creditor or other legal claimant pursuant to legal process, the bank has no liability to any affected joint account holder in consequence for taking such action.

5.4. Upon Taking Commercially Reasonable Action-- To the extent the bank, in good faith, takes all commercially reasonable action to promptly prevent a joint account holder from withdrawing, closing, pledging or otherwise encumbering such account as directed by another joint account holder's written notice received by the bank, the bank has no liability to any affected joint account holder for being unable to prevent the withdrawal, closing, pledge, or encumbrment.

§ 106-17-6. Severability.

If any word, phrase, or provision of this rule is held to be invalid, the remainder of the rule shall, to the fullest extent possible, not be affected by that holding.

Acct. No. _____

NOTICE TO JOINT ACCOUNT HOLDERS

This joint account is payable in both your name "or" in the name of the other person(s) listed on the account (Example "Mr. Smith or Mrs. Smith").

Please be advised and forewarned that:

- o All the money in this joint account may be withdrawn by anyone named on this account; or may be pledged as security for a loan or debt by anyone named on the account.
-- UNLESS, prior written notice is given to the bank not to permit it.

- o Despite any notification to the bank
-- The bank may pay the entire account balance to a creditor or other legal claimant pursuant to legal process.

I have read and understand the above rules about this joint account.

Signature of Joint Account Holder 1: _____

Signature of Joint Account Holder 2: _____

Signature of Joint Account Holder 3: _____

[Optional addition-- "At least one account holder must sign."]

8/13/94

NOTICE TO JOINT ACCOUNT HOLDERS

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-- UNLESS, prior written notice is given to the bank not to permit it.

- o Despite any notification to the bank
-- The bank may pay the entire account balance to a creditor or other legal claimant pursuant to legal process.

[This form is to be used in incorporating the language in the signature card, or where a checkbox indicating the above disclosure has been made is part of the signature card.]

7/13/93



STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE

GASTON CAPERTON
GOVERNOR

Charleston, West Virginia

JAMES H. PAIGE III
SECRETARY

August 12, 1994

Sharon G. Bias
Commissioner of Banking
Building 3, Room 311
State Capitol Complex
Charleston WV 25305

Re: Proposed Rule Amending - Title 106, Series 17
Notice and Treatment of Joint Accounts

Dear Commissioner Bias:

Pursuant to W. Va. Code 5F-2-2(a)(12), I hereby consent to the proposal of the rule amendment specified above as modified in response to public comment.

You may attach a copy of this letter to your filing with the Secretary of State as evidence of my consent.

Sincerely yours,

A handwritten signature in cursive script, reading "James H. Paige III".

James Paige, III
Cabinet Secretary

DATE: August 12, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Sharon G. Bias, Commissioner
WV Division of Banking

LEGISLATIVE RULE TITLE: Notice and Treatment of Joint Accounts

1. Authorizing statute(s) citation WV Code §31A-4-33 and §31A-2-4(c)(11)
2. a. Date filed in State Register with Notice of ~~Hearing~~ Comment Period:
July 5, 1994
- b. What other notice, including advertising, did you give of the hearing?
Sent to banking institutions on WV Division of Banking's "Official Notification" list and to WV Bankers Association and all thrift and savings and loan associations.
- c. Date of ~~hearing(s)~~ : Comment Period:
July 5, 1994 to August 5, 1994
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached x No comments received
- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)
August 12, 1994
- f. Name and phone number(s) of agency person(s) to contact for additional information:
Tim Winslow, General Counsel . 558-2294

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing: n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a



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COMMISSIONER OF BANKING LEGISLATIVE RULE PERTAINING TO NOTICE AND TREATMENT OF JOINT ACCOUNTS

Amendment to Proposed 106 CSR 17 as Result of Comments and Reasons for the Amendment

Only one written comment was received on this proposed rule, and a copy of that letter is attached hereto. The comment suggested modifying Appendix A to note that only one of the joint account holders signatures was required.

The rule was amended to accommodate the suggestion by providing that the banks, at their option, could add at the end of form Appendix A -- "At least one account holder must sign." By making this change optional, banks which have already printed forms without the language will not have to go to the expense of reprinting. Indeed, banks may decide it is better policy to have all the joint account holders sign the disclosure form, and may not wish to add the optional language which is not in conformance to their desired internal practice.

Attendance at Public Hearing

No hearing held. N/A

Comments Received & Reply to Comments

Written comments attached. See above for details and amendment in reply.

BOWLES RICE
McDAVID GRAFF & LOVE

ATTORNEYS AT LAW

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August 3, 1994

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347-1124

Timothy C. Winslow, Esq.
West Virginia Division of Banking
1800 Washington Street, East
Building 3, Room 311A
Charleston, WV 25305



Re: Proposed Amendment to Joint Account Regulations

Dear Tim:

We have reviewed the proposed joint account regulations at the request of the West Virginia Bankers Association and I attempted to give you minor comments by telephone but, upon learning that you are on vacation, I thought perhaps I should submit them in writing before the formal deadline of the 5th. The only comment we have is with respect to the form providing for signature on a separate form (Appendix A). A review of that form could imply that all account holders should sign. Perhaps the addition of language to the form, such as "at least one account holder must sign," could correct any inference created by the design of the form.

Thank you for your consideration of these comments. If you have any questions, please call me or Tom Winner.

Very truly yours,

Deborah A. Sink

DAS/bal

cc: Thomas A. Winner
265903