

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In this Box

**FILED**

Aug 16 2 55 PM '93

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: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 17

TITLE OF RULE BEING PROPOSED: Legislative Rule Pertaining to Notice  
and Treatment of Joint Accounts

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.

Sharon S. Bias

5.80



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

FILED

TITLE 106  
LEGISLATIVE RULES  
COMMISSIONER OF BANKING

Aug 16 2 55 PM '93

SERIES 17  
LEGISLATIVE RULE PERTAINING TO SECRETARY OF STATE  
NOTICE AND TREATMENT OF JOINT ACCOUNTS

§ 106-17-1. General.

1.1. Scope-- These regulations establish rules for the notice to holders of joint deposit accounts regarding their rights and liabilities as to such accounts. In addition, these regulations pertain 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--

1.4. Effective Date--

§ 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 such 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 such bank will be 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. 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 such accounts 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. Compliance may be made in one of three ways:

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

3.2.2. 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. Establishing a procedure for ensuring that all persons opening a covered joint account are 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. Notice Forms-- The form of the notice, including the wording contained in the disclosures and any restriction or specific use of a particular form, shall be approved and established by the Commissioner of Banking. 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 hereunder:

3.3.1. The form in Appendix A may be used when the bank is following the notice procedure set forth in subsection 3.2.1 of this rule.

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

3.4. 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 such time 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 such notice as a request to end the joint account relationship and the bank may close the account either by issuing a check in the name of the person requesting the freeze, or by transferring the account monies to another account which is in the name of the person requesting the freeze.

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

4.2. Payment of Interest-- If the account is closed and the monies therein 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 these rules shall prohibit 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

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.

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 said joint account, the bank has no liability to any affected joint account holder in consequence for taking such action.

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.

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 shall have no liability to any affected joint account holder for being unable to prevent such withdrawal, closing, pledge, or encumberment.

§ 106-17-7. Severability.

If any word, phrase, or provision of this rule shall be held to be invalid, the remainder of the rule shall not be affected thereby.

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: \_\_\_\_\_

7/1/93

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").

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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

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 2250 which amended W. Va. Code § 31A-4-33 so as to clarify the rights and liabilities of joint account holders, and mandated consumer notification of those rights.

The rule sets forth the forms and procedures to be utilized in providing joint account holders with notification. Banks are given three basic compliance options: (1) incorporate the notice of disclosure in the signature card agreement; (2) maintain the disclosure notice as a separate document which is signed by the joint account holders; or (3) place a check-off box within the signature card agreement whereby the account holders acknowledge receipt of the disclosure form.

The rule also establishes the effect of receipt of a written demand pursuant to W. Va. Code § 31A-4-33 to deny one of the named joint account parties access to the account.

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

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

Three written comments were received, and copies of the written comments are attached hereto. The one comment concerned a lessening of the time period a bank would be required to maintain a freeze against a person on a joint account if the account was not closed. As originally proposed the rule provided 14 calendar days for a person requesting a freeze to come into the bank to close the account. During such time the bank was obligated to maintain a freeze against one of the joint account holders. The second comment suggested that the portion of the rule concerning the affect of giving written notice was unnecessary and could result in compliance problems and possible conflict with federal laws. The third comment expressed concern that the rules placed the banks at risk for increased lawsuits if joint account holders were allowed to "freeze out" other account holders.

The rule was amended to simplify the procedure by letting the bank treat a joint account holder's written notice to prevent another joint party from having free access to the account, as a request to close the account in favor of the person giving the written notice. Such treatment may be given provided it does not conflict with federal banking laws.

The reason for the amendment was to establish a simple procedure which would be easy for banks to follow, establish the consequences of providing written notice under W. Va. Code § 31A-4-33, and avoid setting a trap for the unwary consumer who views the notice as a protective measure.

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.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Legislative Rule Pertaining to Notice of Treatment of Joint Accounts  
 Type of Rule:  Legislative  Interpretive  Procedural  
 Agency WV Division of Banking  
 Address State Capitol Complex  
Building #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 provide consumers with proper notice regarding law and procedure on jointly held bank accounts.

Rule Title: Legislative Rule Pertaining to 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.

No economic impact on political subdivisions.  
The expense to the banking industry negligible.

C. Economic Impact on Citizens/Public at Large.

No economic impact although citizens are better informed and may make better decisions.

Date: July 14, 1993

Signature of Agency Head or Authorized Representative

Sharon S. Bias



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
OFFICE OF THE SECRETARY

State Capitol, Room M-146  
Charleston, West Virginia 25305-0310  
Telephone: (304) 558-0400  
Fax No.: (304) 558-4983

GASTON CAPERTON  
Governor

JOHN M. RANSON  
Cabinet Secretary

July 15, 1993

Sharon G. Bias  
Commissioner  
Banking  
Building 3, Room 311-A  
State Capitol Complex  
Charleston, West Virginia 25305

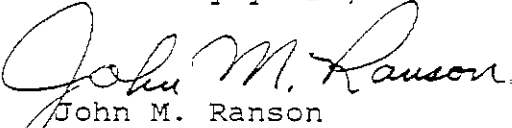
Re: Proposed Rule - Title 106, Series 17  
Legislative Rule Pertaining to Notice and Treatment of  
Joint Accounts

Dear Commissioner Bias:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby consent to the proposal of the rule specified above.

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

Sincerely yours,

  
John M. Ranson  
Cabinet Secretary

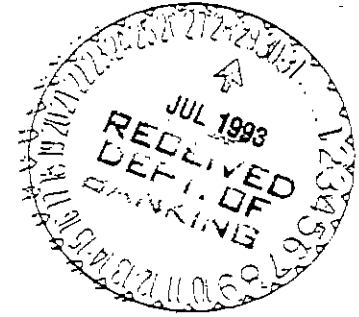
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F&M Bank - Keyser

BOX 789 • KEYSER, WEST VIRGINIA 26726 • PHONE 304-788-3111 or 301-786-4342



July 28, 1993

Timothy C. Winslow, Esq., General Council  
West Virginia Division of Banking  
1900 Kanawha Blvd. East, Building 3, Room 311  
Charleston, WV 25305-0240

Re: Proposed Rules  
"Notice to Joint Account Holders"

Dear Mr. Winslow:

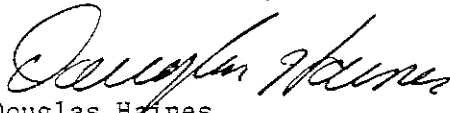
We object to the rules as set out in your memorandum of July 20, 1993. We do agree that a notice from one account owner not to allow withdrawals by another owner should terminate the joint account agreement. We foresee problems in managing the account for fourteen days. This would be especially true with ACH activity. As an example, an insurance premium ACH debit would require considerable time to determine if it benefits the owner requesting the freeze or another party.

We suggest that upon receipt of such a notice, the bank attempt to telephone the owner sending the notice and follow up by letter advising that the account must be closed to terminate the joint relationship. This would end the bank's responsibility on the day the notice was received.

We hope that some consideration be given to modifying the proposed rules and relieve banks from monitoring such accounts.

Very truly yours,

F & M BANK-KEYSER, INC.

  
Douglas Haines  
Executive Vice President  
& Cashier

DH:pf

# West Virginia Bankers Association, Inc.

Suite 1212 • Commerce Square • Charleston, WV 25301-1780 • (304) 343-8838

Thomas A. Winner  
President and CEO

August 12, 1993

Timothy G. Winslow, Esq.  
General Counsel  
West Virginia Division of Banking  
1900 Kanawha Boulevard, E.  
Building 3, Room 311  
Charleston, West Virginia 25305-0240

Re: Proposed Legislative Rule Relating  
to Notice and Treatment of Joint Accounts

*Tim*  
Dear Mr. ~~Winslow~~:

The West Virginia Bankers Association (the "Association") appreciates the opportunity to submit comments and your consideration of those comments with regard to the above-referenced regulations. The Association has approximately 160 member banks. Accordingly, the proposed regulation is of significant interest to our membership.

We have reviewed the provisions of § 106-17-3 relating to the required notice to existing joint account holders and notice to those opening new joint accounts. The notice must contain information relating to the legal consequences of joint account ownership. As the Division and the Association have reviewed these issues previously, we have only one (1) comment with respect to this information. Section 3.4 mandates that banks change their forms within six (6) months of the effective date of the Proposed Rule if their current form is not consistent with the new regulation. However, it appears that if the form was previously approved, such a change in form should not be required. Section 3.3 provides that the forms in the appendices may be utilized "in addition to any other notice form which may be, from time-to-time, approved by the Commissioner of Banking." If banks are currently using a form previously approved by the Commissioner of Banking and no change in that form has been mandated by law, legislative rule or court determination, then a bank should be permitted to continue to use that form as contemplated by Section 3.3. Accordingly, we believe that Section 3.4 should be deleted or modified to require banks to change their forms as a result of the regulation only if they were not previously approved by the Commissioner.

The balance of the proposed regulation addresses statutory language that has been in effect for a period of time within 31-4-33. This language provides that any joint account holder may give notice to the bank that the bank should not pay a joint deposit in accordance with the terms of the joint deposit account, i.e., to or at the direction of any of the other joint depositors (referred to for discussion as a "payment notice"). All of proposed § 106-17-4 is designed to establish the procedure by which a bank should react to receipt of such a payment notice.

*West Virginia Bankers Association, Inc.*

Timothy G. Winslow, Esq.  
August 12, 1993  
Page 2

The Association has canvassed members of its Operations Committee and others and has concluded that specific regulation in this area is not necessary. Our members have not historically had difficulty handling the variety of circumstances under which they might receive a payment notice. Nor, to our knowledge, have bank customers had difficulties under such circumstances. We are very concerned that the elaborate procedure called for in the proposed regulations will impose additional duties on a bank, other than those imposed under the statute, and could result in increased liability for failure to follow a technical procedure. This result is contrary to the apparent purpose of § 31A-4-33 which is to clearly state that a bank may pay joint accounts under their terms without liability to the other holder or holders. Accordingly, the Association strongly recommends that no regulations be promulgated in this regard.

There is also the possibility that, to the extent the proposal could increase banks' exposure, federal preemption issues could arise. While the general law of joint accounts applies to state and national banks alike, an elaborate and burdensome regulatory process might not extend to national banks. At a minimum, this issue could raise ambiguities with respect to national bank compliance.

We will be glad to elaborate, if you have further questions, especially upon the issues raised by § 106-17-4. Thank you for this opportunity and for considering our input. If you have any further questions, please call me.

Very truly yours,



Thomas A. Winner

**The Central National Bank  
of Buckhannon**

**A Key Centurion Bank**

Member FDIC

Equal Opportunity Lender

32 E. Main St. P.O. Box 640  
Buckhannon, WV 26201  
(304) 472-4600 Fax (304) 472-4600

August 10, 1993

WV Division of Banking  
State Capitol Complex  
Building # 3, Room 311  
Charleston, WV 25305



I am writing in regards to the Legislative Rule pertaining to Notice and Treatment of Joint Account Holders.

Although we are told that this rule was not meant to be a burden on banks, my personal opinion is that whether it was meant as such or not, it is.

My biggest concern at the present time is the section on the effect of the written notice. (106-17-4) Upon receipt of written notice from a customer "that the bank not allow one or more of the other named parties to that joint account to withdraw funds...", then the bank "shall freeze the so named party's access to that account for a period of fourteen (14) calendar days, pending other disposition of the account funds."

This is the same language used for Checking/NOW/Draft Accounts, Saving Accounts, and Certificates of Deposit. 106-17-4.4 goes on to state that "Unless the account is closed by issuing a check to the joint account holders, all interest that should accrue on the account shall be paid into that account."

Our contract with the customer indicates that "any one of you who signs this form may withdraw or transfer all or part of the account balance at any time..." The approved Notice to Joint Account Holders specifically states that "All the money in this joint account may be withdrawn by anyone named on this account;...."

Our Bank's policy is that when a joint account holder opens the account, they are aware that ANY ONE SIGNED ON THE ACCOUNT can withdraw ALL OR PART of the funds at any time. If one joint account holder does not want the other one to have that right, then it is no longer a joint account, and the account is closed by that customer withdrawing the funds.

Now it appears that the law would require the bank to either place a freeze on the account for one or more account holders and to refuse to honor checks by the person named to be frozen from access or close the account by issuing a check to the joint account holders.

## The Central National Bank

OF BUCKHANNON

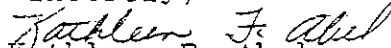
Buckhannon, West Virginia

This not only creates the possibility of more work for the banks to monitor accounts but also the possibility of lawsuits when and if a check should be paid on the frozen account holder. (Banks have responsible employees, but isn't this burden a little too much, especially when the customer has already been told that any one signed on the account can withdraw funds?)

We allow customers to close the account by writing a check on their account. With 106-17-4.4, it would appear that if the account were an interest-bearing account and it was not closed by issuing a check to the joint account holders, the bank would still be liable to the customer for fourteen (14) days interest. Is this correct, or does it need to be clarified?

106-17-4 does state that the freeze shall be placed, "pending other disposition of the account funds." Does this give the banks the right to require the customer to close the account by writing a check on the account? It appears that some clarification is needed.

Sincerely,

  
Kathleen F. Abel

Vice President -Compliance