

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

Do Not Mark In this Box

FILED

Nov 17 10 19 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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: Notice and Treatment of Joint Accounts

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Timothy C. Winkler

3.40

FILED

TITLE 106
LEGISLATIVE RULES
COMMISSIONER OF BANKING

Nov 17 10 19 AM '93

SERIES 17
~~LEGISLATIVE RULE PERTAINING TO~~ OFFICE OF WEST VIRGINIA
NOTICE AND TREATMENT OF JOINT ACCOUNTS ^{SECRETARY OF STATE}

§ 106-17-1. General.

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

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~~ 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. 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~~ 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. ~~Compliance may be made in one of three ways~~ A bank may comply with this subsection by:

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~~ this signed separate document either together with the joint account's signature card, or in another manner whereby ~~such~~ the document is easily retrievable as to each ~~such~~ joint 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 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 ~~hereunder~~ in this subsection:

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

3.3.2. The form in Appendix B may be used when the bank is following the notice procedure set forth in subsections subdivisions 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 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 ~~such 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 person requesting the freeze customer requesting the change, or by transferring the account monies to another account which is in the name of the person requesting the freeze 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 such loss or penalty may be imposed.

4.2. Payment of Interest-- If the account is closed and the monies ~~therein~~ 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 ~~these rules~~ this rule shall 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 ~~said~~ 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 ~~shall have~~ has no liability to any affected joint account holder for being unable to prevent ~~such~~ the withdrawal, closing, pledge, or encumbrment.

§ 106-17-67. Severability.

If any word, phrase, or provision of this rule ~~shall be~~ is held to be invalid, the remainder of the rule shall, to the fullest extent possible, not be affected ~~thereby~~ 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: _____

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").

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.

[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



FILED

WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

Nov 22 2 09 PM '93
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator Joe Manchin III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

November 16, 1993

TO: Ken Hechler, Secretary of State, State Register

TO: Commissioner Sharon G. Bias
Division of Banking
Building 3, Room 311-A
Capitol Complex
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Notice and Treatment of Joint Accounts

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Tim Winslow, General Counsel