

## Deposit Account Ownership

### Consumer Account Ownership

Since the late 1960s, Congress has enacted a broad range of laws to protect consumers in their financial transactions with banks. These laws include the following:

#### Individual Accounts

An individual account is opened for, and owned by, an individual. The individual is the sole owner of the account, and no other person has any rights to it. When the individual dies, the account normally becomes part of his or her estate. Sometimes the individual may want to give someone else the authority to sign checks or make other decisions for the account. This can be accomplished through a **power of attorney**.

Powers of attorney vary depending on the wishes of the individual account owner (the **principal**). A general power of attorney gives unlimited authority over the account to the person designated. A special power of attorney limits the authority to a specific duty or function for a limited period. For example, a customer may give someone a power of attorney for a checking account so that bills can be paid; but not for a savings account or certificate of deposit. A power of attorney ceases at the death of the person who grants it.

#### Joint Accounts

A joint account is opened in the names of, and owned by, two or more individuals. Establishing identification is just as important in opening joint accounts as it is in opening individual accounts. Joint account holders should be present to sign the signature card. In most circumstances, the account agreement holds each account holder responsible for the transactions on the account, including overdrafts.

Joint accounts can be held either in joint tenancy with full right of survivorship or as tenancy-in-common. Most banks require joint accounts to be established as joint tenancy with full **right of survivorship**.

#### Power of attorney

A legal document that authorizes a person named as an agent (attorney-in-fact) to act on behalf of another person (the principal).

#### Principal

The person or company that appoints another (an agent) to act on his or her or its behalf.

#### Right of survivorship

The right of surviving tenants to take full possession of specific assets, such as account funds, upon the death of other tenants, without establishing an estate but subject to state laws.

#### Joint Tenancy with Rights of Survivorship

Bill Wiltshire or Peggy Wiltshire

Word “or” separates the names of the account holders.

Only one signature is required on the check. Either account holder may make deposits, write checks, make withdrawals, transfer funds, access the account electronically, stop payment on checks, or close the account.

Surviving owners have rights to all of the funds.

#### Tenancy-in-Common

Bill Wiltshire and Peggy Wiltshire

Word “and” separates the names of the account holders.

In many circumstances, account holders must act together. Both signatures are required for withdrawal from the account.

Requires more monitoring. Bank verifies that all account holders sign checks or withdrawal slips. If checks are paid with only one signature, bank could be liable to the account holders who did not sign.

Upon the death of one account holder, the remaining holder is entitled only to his or her share in the account. The decedent’s share may be inherited by a third party.

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### Fiduciary Accounts

A **fiduciary** account is opened by a representative for the benefit of another person. Examples are trust accounts, estate accounts, guardianships, and custodial accounts.

#### **Fiduciary**

An individual, bank, or other party to whom specific property is turned over under the terms of a contract and who acts for the benefit of another party on a basis of trust and confidence.

#### **Trust Accounts**

A simple trust account, for example, is opened by a mother and father “in trust for” a minor child. When opening the account, the bank obtains identification from the representatives (the parents) as if opening an account for an individual.

#### **Estate Accounts**

An estate account is established for an estate of a decedent and requires specific documentation, often a document issued by the probate court appointing an individual as the personal representative or executor of the estate.

#### **Guardianship Accounts**

A guardianship account is set up by a court-appointed guardian to manage funds intended for a ward, a minor, or an incapacitated person. A guardianship account requires substantial documentation. Laws vary by state, but in general, a guardianship account may only be opened with court documentation, and often withdrawals may be made only by a court order. These accounts usually require special handling by experienced bank officers.

In all cases, this type of fiduciary account has a representative (such as a guardian) and a **beneficiary** (such as a minor child) or person for whose benefit the account is held. The accounts take many different forms and require different types of documentation, depending on the fiduciary relationship.

#### **Beneficiary**

(1) The party legally entitled to receive the proceeds of an annuity, insurance policy, letter of credit, trust fund, retirement account, or will, either from an appointment, assignment, disposition, instrument, or contract; (2) in the context of electronic fund transfers, the term used in Article 4A of the Uniform Commercial Code to refer to the person to be paid under the payment order.

#### **Custodial Accounts**

A custodian, typically an adult such as a parent or a guardian, can create and manage a custodial account for the benefit of a minor. Before the minor may make transactions, approval from the custodian is required.

In the case of business relationships, a custodial account may be created to manage the retirement funds for employees of a business. Usually the investments are limited to mutual funds or other similar investments with regulated companies.

The custodian account relationship also describes the role of banks when they hold securities on behalf of institutional investors.

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### Business Account Ownership

The types of business account ownership are sole proprietorship, partnership, corporation, public funds, and unincorporated organization.

#### Sole Proprietorship Accounts

A sole proprietorship account may be opened in the name of the proprietor (the person owning and operating the business) or in a trade name. “Trading as” (t/a) or the phrase “doing business as” (d/b/a) may be used. For example, if Tabatha Thompson owned a business called The Gift Shop, the account would read “Tabatha Thompson d/b/a The Gift Shop.”

When a proprietorship is operated under the individual’s own name, a bank requires identification, references, and signature cards to open the account, just as in the case of an individual. Often there is no way to distinguish a sole proprietorship from the individual who is the owner. However, when any name other than the individual’s name is used, the connection between the owner and the fictitious trade name should be established legally. The proprietor provides the bank with the legal registration form required by the state. This may be a business certificate, a fictitious name registration, or a certificate of registration of trade name.

A sole proprietor has the right to open an account, make deposits, stop payments, and manage the account. Checks payable either to the owner or to the proprietorship may be deposited to the account. The proprietor can authorize another individual as a signer on the account, but this person would not have the same rights to the account as the owner.

#### Partnership Accounts

A partnership account may be opened under the names of the individual partners or under a trade name. Partnerships are businesses operated by two or more individuals that are not incorporated.

Depending on the terms of the **partnership agreement**, any one partner may be empowered to act for the others: one partner’s actions are legally binding on the others. In opening an account for a partnership, a bank requires it to submit a **partnership resolution** with signatures from all partners authorized to act on behalf of the partnership. The bank also obtains a copy of the partnership agreement and, if the partnership operates under a trade name, maintains a copy of the business certificate on file.

##### Partnership agreement

A legal agreement stating the contributions each partner has made to the business, the nature of the business, and the proportions in which each partner will share in profits or losses.

##### Partnership resolution

A document containing language certifying that the name of the partnership is exactly the same as the one provided to the bank and listing who is authorized to write checks and sign for loans on behalf of the partnership.

#### Corporation Accounts

A corporate account is opened in the name of the corporation, which is the owner of the account. The bank legally interacts with the corporation, not the stockholders, directors, or officers. A corporation is identified by its legal name, which usually must include “Corporation,” “Incorporated,” or “Limited,” or an abbreviation of one of those terms.

A corporation—like an individual, sole proprietorship, and partnership—is a legal entity, but the similarity ends there. The corporation cannot act independently; it must act through representatives. Stockholders, who own the corporation, elect the board of directors. The board of directors, which is the governing body of the corporation, is responsible for conducting the corporation’s business. The board establishes who can open and operate a bank account on behalf of the corporation.

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To verify authority to open an account, the bank requires and maintains on file a certified **corporate resolution**. The bank keeps on file the names, titles, and signatures of persons who are authorized to transact business on the corporation's behalf. This file is updated with new signature cards as new people are given authority or a previous authority is terminated.

### Corporate resolution

A document filed with a bank that defines the authority given to the corporation's officers and specifies who may sign checks, borrow on behalf of the corporation, and otherwise conduct business and issue instructions to the bank.

Besides knowing who can transact business for the corporation, banks keep records on the authority limits of each signer. The president, for example, may have unlimited authority, but the vice president of finance may only have the authority to sign checks up to a specific amount. Depending on the resolution, it may be necessary for several people to sign checks for certain amounts. The following is an example:

Individual	Combined (any two)
Vice President \$5,000	\$10,000
Comptroller \$5,000	
Secretary \$5,000	

Unlike an individual or a partnership account, neither a corporate account nor the operation of the corporation is affected by the death of a stockholder, officer, or director.

### Government or Agency Accounts

A unit of federal, state, or local government opens a public funds account to receive and disburse funds on behalf of communities and citizens. The unit of government officially appoints the banks with which it opens accounts. Federal, state, and local laws usually prescribe the procedures for setting up public funds accounts.

Documentation generally consists of signature cards listing authorized signers and an official letter or notice appointing the bank as a depository, which is typically issued by the head of the government unit. By law, amounts in accounts that exceed FDIC insurance limits are secured by specific segregated assets held by the bank. For federal agencies, these assets are usually U.S. Treasury securities.

### Unincorporated Organization Accounts

Banks open deposit accounts for all sorts of unincorporated organizations, such as churches, bowling leagues, soccer teams, class reunions, and charitable relief funds. Although these are not businesses in the traditional sense, banks usually treat them as business accounts.

Signature cards are required when an account is opened for an unincorporated organization, and so is a taxpayer identification number (TIN), even if the organization does not pay taxes and is not designated formally as a nonprofit organization under tax laws. Each situation dictates what additional letters, forms, agreements, or special documents should be obtained. The bank's attorney, compliance officer, and policy and procedures manual should be consulted when establishing accounts for such organizations.