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## **BANK ACCOUNTS AND COLLECTIONS**

Bank staff frequently are confronted by garnishments and attachments of customer accounts when the party seeking the garnishment has not completely or accurately identified the customer. A few pointers follow:

### **The duty of the Bank, and any garnishee:**

Missouri law does not impose a duty on the Bank or garnishee to question whether the proper account has been seized, as long as it is properly identified.

a. The Bank should notify the customer that a garnishment has been served, so that the customer may challenge the garnishment if the customer has any objections. The Bank has no obligation to assert that the funds in the account are actually owned by a third party.

b. The only exception is when the court rendering the principal judgment has no jurisdiction to do so. If there is a question as to whether the court had jurisdiction, (service of summons was improper, etc), then Missouri law does impose a duty on the Bank to challenge that jurisdiction. Again, an issue over ownership of the account is outside any duty of the Bank.

### **Questions of account ownership:**

#### **“d/b/a” accounts:**

A “d/b/a” account does not protect the real owner against a garnishment. A “d/b/a” account is nothing more than another name for the same party. A judgment against that party can certainly be enforced against an account owned by that person even though he or she uses another name on the account. The test is the ownership of the account and not the name on it.

#### **Confusion over ownership:**

Where there is some current question over the joint ownership, we suggest that the Bank has no choice but to freeze the account without any disbursements to either the customer or judgment creditor until further court order.

### Joint accounts:

The following applies to normal joint accounts and husband and wife joint accounts, regardless of whether the names are specified in the conjunctive “and” or disjunctive “or”, or both.

Where an account is held jointly by a husband and wife, it is not subject to attachment or garnishment by the creditor of only one of these parties. The Bank is then free to release the funds of this account to either of the husband or wife without any liability to the creditor.

A joint account that is held by parties that are not husband and wife, however, has to be treated differently. When the Bank is served with a garnishment or attachment against such an account, the customer should be notified of the attachment and the funds in that account should be frozen to the extent of the total amount of the garnishment until further court order or agreement of the creditor and the customers.

This is so because to the extent that account represent funds of the judgment debtor only, that joint account may be vulnerable to the creditor of that debtor. A determination has to be made by the court whether or the extent to which the funds in the account belong to the customer who is not liable to the attaching creditor. The Bank is merely the custodian of funds that are being claimed by conflicting parties.

The Bank should respond to the garnishment by completing the Interrogatories to Garnishee served upon it by the Court, and stating that:

“The Bank/Garnishee is in possession of an account in joint names that may contain primarily funds of one of the joint parties and the Bank/Garnishee has insufficient facts to determine the true ownership of said funds. Accordingly the Bank/Garnishee requests further Order of the Court.”

It is the duty of either the customer or the creditor to bring this issue before the court for resolution. Since the Bank has no claim against the funds, it is not necessary for the Bank to participate in a hearing on this matter other than to produce such documents as may be required by subpoena or the consent of the customer.

Thereafter, the court will render a ruling and the Bank will receive an Order with instructions on delivery or release of the funds in the account.

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