How to Secure a Bank Account from Levy

Objective

The primary objective in securing a bank account from levy is to obtain the bank’s agreement that you, the flesh-and-blood man/woman, are the authorized representative of the account holder, the artificial-person TRADE NAME. This reality is spelled out in detail in your security agreement and is echoed in the UCC Financing Statement filed with the secretary of state—but you must also obtain the bank’s acknowledgement of this fact. Once documented on the bank signature card as an authorized representative on the account control of the collateral (the funds in the account) is established, thus perfecting your security interest in the account. At that point, your other relationship with the account holder/debtor, i.e. that of secured party, can be impressed upon bank personnel—and such are obligated to honor the perfected security interest—thus securing account funds from third-party levy.

Pertinent Sections of the Uniform Commercial Code

Here are the sections of the Uniform Commercial Code governing such matters:

§ 9-314. Perfection by Control. (a) Perfection by control. A security interest in…deposit accounts…may be perfected by control of the collateral under Section 9-104…”

§ 9-104. Control of Deposit Account. (a) Requirements for control. A secured party has control of a deposit account if: …(2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor…”

The signature card (property of the bank), signed by both account holder (debtor) and authorized representative (secured party), constitutes an agreed-upon, authenticated record “that the bank will comply with instructions originated by the secured party [authorized representative] directing disposition of the funds in the deposit account without further consent by the debtor [account holder].”
Signing the Signature Card

With one exception, the bank signature card should be signed exactly as shown in “How to Sign Your Signature Without Liability” on page 315 of Cracking the Code Third Edition©, “CTC3,” with signature of both debtor and secured party appearing. Signing in this manner differentiates between the contracting parties, i.e. True Name and TRADE NAME, corresponds with the documentation you provide, and satisfies the requirement of UCC 9-104(a)(2). Select from the sample signatures appearing on page 319 of CTC3 that contain both debtor’s and secured party’s signature, but do not place a copyright symbol, i.e. “©,” after either of the two names. The copyright symbol, and likewise the copyright notice, is not used here. It is more important to establish the account and be acknowledged as the authorized representative than it is to assert the copyright—which can always be called into play later if necessary, but this is not likely.

1 Levy: n. A seizure. v. To raise; execute; exact; collect; gather; take up; seize. Thus, to levy (raise or collect) a tax.

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For an existing account, a request to examine the signature card for the account will usually be granted, but bank personnel may not be too delighted with your new self-proclaimed status as authorized representative/agent and the accompanying artwork you render on the card to prove your point. If you are able to modify the signature card on your account without causing any friction, by all means do so. However, if this is not feasible, the easiest thing to do is simply to close the account and open another. Opening a new a bank account is a simple matter, and there is nothing wrong with using the same bank as long as no undue antagonism is generated in the process. The most hygienic method, however, is to open your new account with another bank and start afresh.

Documenting Your Position

At the time you sign the bank signature card you should have with you a certified copy of both your UCC Financing Statement and the security agreement referenced within the text of the collateral description of the financing statement (use the “Copy Certification by
Document Custodian” form to make a certified copy of the security agreement). These certified copies are to be left with the bank after the signature card is completed.

Upon signing the signature card, inform the bank personnel assisting you that the account holder is also your debtor and that you are the secured party, and then produce the certified copy of your financing statement and security agreement. The identifying number of the security agreement appearing within the collateral-description box (Box 4 on a UCC Financing Statement; Box 8 on a UCC Financing Statement AMENDMENT in the case of a cross-filing) of the financing statement and the section entitled “Authorized Representative” on page 7 of the security agreement (page 247 of CTC3) should be highlighted for ease of inspection. Bank personnel are only too familiar with such kinds of documents, so there should be no difficulty in understanding what you are presenting. As long as bank personnel can see that you know what you are doing, there will be no problem.

**Guaranteeing Success**

It is vital that you thoroughly understand that you are not the account holder—and can never be the account holder. The name of all account holders appears in all-capital letters in all bank records and documents. All account holders are artificial persons, e.g. your TRADE NAME. This policy is purely of the bank’s own choosing; all you are doing is respecting the bank’s selection/designation of the account holder. If bank personnel balk at all, have the girl/guy pull out a sample personal check from her/his drawer and point out the name of the account holder printed on the check. The name is set in capital letters. If the secretary of state recognizes the distinction between the two names on your financing statement, it is reasonable to expect that the “New Accounts” officer will too. In the event there is further resistance, have her/him examine what appears to be the signature line on the sample personal check using the magnifying glass that you produce (bring one with you, if possible). Even though the check is a personal check, and therefore theoretically would have only one signatory, said “line” is for any authorized signatory of the account holder—*i.e. an authorized representative*—and you are such an authorized signatory/representative.
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These facts should quell any doubts on the part of bank personnel. However, as always, the senior factor is your personal certainty of what you are doing. The Federal Reserve literally owns the U.S. Government, and covertly asserts ownership of all property in Banks (Fed instrumentalities) do business only with artificial persons whose names appear in all-capital letters; any party that “volunteers” to act as a surety and give anomalous indorsements and sign as an accommodation party 3 for the account holder, however, is never turned away. It is also wise to familiarize yourself with the section of the security agreement entitled “Event of Default,” which can also be highlighted if desired. This paragraph appears just below “Authorized Representative” at the bottom of page 7 of the security agreement. Any attempt by any third party to remove any of the debtor-account holder’s funds (your secured collateral) constitutes an event of default on the part of the debtor and allows you to foreclose on the collateral, i.e. withdraw the funds if necessary. Because you provide the bank with certified documentary evidence of your secured-party status at the time the signature card is signed, no other party can have a prior security interest in those funds, and all bank personnel must acknowledge this fact and honor your perfected security interest or risk both civil and criminal charges.

As a final note on securing your position, a certified copy of your UCC Financing Statement and security agreement left with bank personnel could conceivably be misplaced/lost, although this is unlikely based on the potential liability attendant with such oversight. However, it is nevertheless a good idea to send the manager of the bank an additional certified copy of both financing statement and security agreement by Registered Mail (Restricted Delivery), with an Affidavit of Mailing. A cover letter confirming your perfected security interest in the collateral in the account and the bank’s responsibility in protecting this secured collateral should also be enclosed. As long as you can prove that the manager received the above cover letter and the certified copies of the documents (evidence), the bank is liable for any pilferage of the account

2 Senate Document No. 43, 73rd Congress, 1st Session. (March 9 – June 16, 1933) “…The ownership of all property is in the State; individual so-called ownership is only by virtue of government, i.e. law amounting to
mere user; and use must be in accordance with law and subordinate to the necessities of the State.”

3 If these terms are not readily understood, it is vital that you re-read “How to Sign Your Signature Without Liability,” beginning on page 315 of CTC3 and get them cleared up.