

BEFORE RESPONDING TO ANY GOVERNMENT REQUEST FOR INFORMATION, BANK PERSONNEL SHOULD READ DISCUSSION ON PAGE 1 OF THIS CHAPTER REGARDING CONTACTING SPECIAL BANK OFFICER AND/OR BANK COUNSEL.

A. Scope

The Minnesota restrictions on releasing information on customer records apply only to individuals or their authorized representatives.

B. Bank's Requirements for Releasing Information

How the bank responds to a disclosure request depends on the type of request received. Some of the state procedures are similar to the federal procedures discussed in Part II above.

1. Basic Procedures. As with requests from federal agencies, there are certain basic procedures that the bank should follow for every information request from a state or local government agency. See section II.B. above. Please note that under Minnesota law, there is no certificate of compliance delivered to the bank as required by federal law. The bank may not obtain reimbursement for costs from state, county and local agencies unless the information is sought under section 5.b. below.

2. Customer Authorization. The state statute (Minn. Stat. § 13A.01 et seq.) has no specific requirements for customer authorization. The bank should follow the guidelines in section II.B.2. above for customer authorization.

3. Search Warrant. Search warrants must follow the form authorized by law. See section II.B.4. above and forms appendix.

4. Judicial or Administrative Subpoena. Effective August 1, 2009, certain government authorities may use a judicial or administrative subpoena to obtain financial records of a customer, namely:

- a. law enforcement,
- b. a lead agency as defined in section 626.5572, subdivision 13, or
- c. prosecuting authority that is investigating financial exploitation of a vulnerable adult in response to a judicial subpoena or administrative subpoena under section 388.23.

5. Release of Checking Account Information to Law Enforcement Agencies and Holders of Worthless Checks. Banks must release limited information concerning a customer's checking account to state, county or local law enforcement and prosecuting authorities or holders of worthless checks under certain conditions. The procedures for satisfying those conditions are stated in Minn. Stat. § 609.535, and are

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summarized below. For the purposes of this statute customer refers to any account holder, whether an individual or not.

a. Request by Law Enforcement Authorities

(1) Certification. The bank cannot release any checking account information to a law enforcement authority under this statute unless it receives from the authority a written certification. The certification must state that the authority is “investigating or prosecuting a complaint” against the financial institution’s checking account customer with respect to the issuance of a dishonored check in possible violation of Minn. Stat. § 609.535, or Minn. Stat. § 609.52, subd. 2. The certification must also state that at least 15 days have passed since the authority sent the customer the statutory notice of dishonor.

(2) Release of information. Upon receipt of the certification in (1), the bank must release within 10 calendar days the following information:

- (a) documents relating to the opening and closing of the drawer’s account,
- (b) notices regarding non-sufficient funds, overdrafts and the dishonor of any check drawn on the account within the last six months before the date of request,
- (c) periodic statements mailed to the drawer by the bank for the periods immediately prior to, during, and subsequent to the issuance of any check being investigated or prosecuted, and
- (d) the last known home and business addresses and telephone numbers of the drawer.

Banks may not impose a fee on law enforcement or prosecuting authorities for copying or other costs associated with the production of this information.

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b. Request by Holder or Payee of Worthless Check. Occasionally a bank will receive requests from merchants or individuals for information regarding the drawer of a bounced check. The merchant or individual holds the check and is trying to obtain payment.

(1) Certification The bank cannot release any checking account information to a payee or holder of a dishonored check unless it receives a written request from the holder or payee:

- (a) stating that the check has been dishonored,
- (b) stating that at least 30 calendar days have passed since the holder or payee mailed the statutory notice of dishonor,
- (c) accompanied by a copy of the statutory notice of dishonor, and
- (d) accompanied by a copy of the dishonored check.

(2) Release of information Upon receipt of the certification in (1), the bank must release within 10 calendar days the following information:

- (a) whether at the time the check was issued or presented for payment the drawer had sufficient funds or credit with the bank, and whether, at that time, the account was open, closed, or restricted for any reason and the date it was closed or restricted;
- (b) the last known home address and telephone number of the drawer; and

Note: The law makes it clear that it does not authorize a bank to give the payee or holder the business address or business

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telephone number of the drawer, unless the drawer is a business entity or the drawer's place of employment is the home.

(c) whether the total value of all checks issued by the drawer within six months before or after the date of the dishonored check exceeds \$250. A check not paid due to a stop payment order is not considered dishonored.

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c. Statutory notice of default. Minn. Stat. § 609.535, subd. 8, provides that the bank cannot release the checking account information described above unless the notice of dishonor to the drawer complies with Minn. Stat., § 609.535, subd. 3. That section requires that:

(1) the notice include a statement stating that "If the check is not paid in full within five business days after mailing of the notice, the drawee will be authorized to release information relating to the account to the payee or holder of the check and either the drawee, payee or holder of the check may also release this information to law enforcement or prosecuting authorities,"

(2) the notice include a citation to Minn. Stat. § 609.535 and a statement that a person issuing a check intending that it not be paid can be subject to the following penalties, in addition to restitution:

(a) imprisonment for up to five years and for a fine or up to \$10,000 if the value of the dishonored checks written by the customer in a six month period exceeds \$500; or

(b) imprisonment for up to one year and/or a fine of up to \$3,000 if the value of the dishonored check or of all dishonored checks written by the customer in a six month period exceeds \$250, but is less than \$500; or

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- (c) imprisonment for up to 90 days and/or a fine of up to \$700 if the value of the dishonored check or of all dishonored checks written by the customer in a six month period does not exceed \$250.

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(3) the notice be sent by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed on the check.

d. A bank cannot be held liable in a criminal or civil proceeding for releasing information in accordance with this statute.

6. Child Support. Under Minn. Stat. § 256.978, banks must provide certain information to public authorities responsible for child support. When there is an arrearage of child support and there is reasonable cause to believe that the person owing the support has or had accounts or other assets with the bank, or has otherwise dealt with the bank, then the authority may deliver a written request for information to the bank. The bank may provide the authority with only the following information with respect to the subject of the inquiry:

- a. place of residence,
- b. telephone number (home and work),
- c. identifying information on the type of financial relationship,
- d. current value of financial relationships, and
- e. current indebtedness of the subject to the bank.

7. Other Agencies. Banks and their agents and employees are not liable for disclosing information regarding stolen, forged or fraudulent checks for use by the crime alert network, check verification services, consumer reporting agencies, or by law enforcement agencies that are investigating a crime, provided that the bank is acting in good faith. Minn. Stat. § 299A.61.

8. Exceptions. The bank may release information to government agencies in certain situations without receiving the certificate described above. These exceptions are the same as those described in Part II of this chapter.

C. Minnesota Law on Use of Social Security Numbers

Effective July 1, 2008, Minn. Stat. § 325E.59 restricts the use of social security numbers.

1. Restrictions. No one, excluding government agencies, may do any of the following: