

A Deposit Banker's Guide to LLCs

A limited liability company (LLC) is likely to be the most common business entity that you will encounter. Whether it be a simple single-member LLC operating a local business, or a more sophisticated LLC with many offices around the country, LLCs are relatively easy to get started and run, making them a common choice for many entrepreneurs who come to you seeking banking services for their business.

While it is generally the business owner's responsibility to understand the nature of their business, "know your customer" requirements and other banking considerations mean you will need to understand some fundamentals about LLCs. This guide is designed to present you with some of those basics, along with FAQs.

Lastly, LLCs are not the only type of business entities that bankers will encounter. While some aspects of this guide will cross over with other, non-LLC businesses, it will focus only on LLCs due to how common they are relative to other business types.

The Account Relationship

As with all account types, the deposit account relationship with LLC customers is a contract. It includes the signature card, business resolution or declaration, deposit account rules, and potentially others. The specific documentation bank requires when opening an LLC account will depend upon bank's deposit account software and documentation, as well as policies and procedures. It may also depend upon the type of business the LLC is engaged in, and its level of complexity. To that extent, it might also include records generated and provided by the LLC itself, some of which is discussed below.

If there is ever any information you need from your LLC customer, do not hesitate to ask. Your customer is in the best position to understand the nature of their business and all aspects of its operation and should be able to provide any requested records as necessary.

Tax Identification Numbers

An LLC will have a Tax Identification Number (TIN). Depending on elections made by the LLC and the number of members, the Internal Revenue Service (IRS) will treat an LLC as either a corporation, partnership, or as part of the LLC's member's tax return (a "disregarded entity"). Consider that a TIN is associated with the LLC's tax status and an LLC's tax status is a matter decided between the business and the IRS. It has nothing to do with the LLC's status as a legal



entity or its filings with the Department of Financial Institutions (DFI).

Generally speaking, an LLC is likely to obtain an employer identification number (EIN). However, there are situations when an LLC may use its owner's social security number (SSN). Typically, the situations upon which an LLC uses a SSN are for disregarded entities. A single-member LLC may be classified as a disregarded entity, and may inform the bank that it is reporting under a SSN. It is also possible for spouses in a community property state, such as Wisconsin, to operate a LLC together as a disregarded entity.

Bank Secrecy Act Considerations

There are two components to Bank Secrecy Act (BSA) considerations that come into play with LLCs: Customer Identification Program (CIP) and Customer Due Diligence (CDD). For purposes of CIP, BSA requires banks to identify and verify customers who open new accounts. A "customer" includes a person that opens a new account. For BSA purposes an LLC is a "person" and thus, when an LLC opens a new account, bank must conduct CIP on that LLC.

Beyond that, bank should also consider its policy. Sometimes, banks will have a CIP policy which requires identification and verification of not only the LLC, but also the signers on that account. In such cases, bank must follow its CIP policies.

For purposes of CDD, bank must identify and verify beneficial owners of legal entity customers. A legal entity customer is, generally speaking, one which files with DFI. Because LLC's file articles of organization with DFI, all LLCs are legal entity customers. For this reason, banks must obtain the certification as to beneficial owners for LLC customers.

FAQs

Question 1: Can an LLC adopt a trade name?

Yes, an LLC may adopt a trade name. Keep in mind that a trade name is just a name. An LLC, however, is a separate legal entity. It is possible for a legal entity to adopt a trade name such as "Badger Apartments, LLC d/b/a Badger Maintenance and Repair." However, it is not possible for an LLC to do business as another LLC (or any other entity for that matter). Sometimes LLC customers will seek such an arrangement in order to combine their accounts, but such an arrangement is not possible or appropriate.

Question 2: Can an LLCs have a joint account?

Because Wisconsin Chapter 705 governs the rules for joint accounts as between natural persons, not entities, an LLC cannot have a joint account.

Oftentimes, business owners may own and operate multiple LLCs. Those LLCs may even be interrelated in some manners. These business owners may seek to have one single deposit account for purposes of managing all of their LLCs through a single account. There is no easy way to accomplish this. Before creating any type of single account for multiple LLCs, it is recommended that you check with bank management and possibly bank's attorney for advice on how to proceed.

Question 3: Can an LLC have a POD beneficiary designation?

No. Because an LLC is an entity and will not die, it cannot make a POD beneficiary designation.

Question 4: What TIN should be used for an LLC?

Bank's customer should inform the bank which TIN to use for the account.

Question 5: How can bank assist a customer who does not know what TIN they should use?

Bank should direct this customer to the customer's accountant and/or attorney for tax advice.

Question 6: What happens when the last owner of an LLC dies?

The answer to this question depends. Ideally, the LLC will have planning in place for what is to be done with the LLC. Will business continue under new ownership? If so, who is taking over and in what capacity? Will the LLC be liquidated? If so, by whom? Because there is no specific procedure to follow, the answer to this question will vary depending upon the nature of the business, and the circumstances of the death of the owner. In the event that such information is unknown, an interested party (such as a family member) may need to work with an attorney to sort the business out.

The person wrapping up the decedent's affairs may need to inform the court that the decedent had a business. Through this procedure, the court may provide authority to wrap up the LLC through Wisconsin Statute Section 857.25 regarding the continuation of a business under the powers and duties of a personal representative. In these cases, you should look for a court order, or powers within a domiciliary letter, which will address who and what authority relates to the LLC.

Also, consider that the death of an individual does not change anything regarding the account relationship. Because the LLC owns the account, the account relationship continues to exist. Thus, any surviving authorized signers may continue to act.

Question 7: Can an agent be added to an LLC account?

Yes. It is possible for an LLC to appoint an agent through a power of attorney agreement (POA). The authority to appoint the POA must come through the LLC. As with all agent designations, you must review the power of attorney agreement appointing the agent carefully.