



### Yes, a Minor Can Have a Bank Account

For some reason, in recent weeks several banks have asked questions about the legality of a minor owning a bank account in her/his own name and without a parent or other adult as a joint owner. Perhaps it is difficult to get past the oft-stated understanding that a minor lacks legal capacity to execute a contract. First, as a technical matter, a minor-executed contract is not **void**, it is instead **voidable** by the minor. When a minor enters into a contract (s)he can rescind her contractual obligation(s) at any time prior to attaining the age of 18 (Illinois' age of majority), or (s)he is entitled to perform under the contract and ratify the contractual obligation(s) at age 18.

However, the technical distinction between "void" and "voidable" need not be part of the discussion in Illinois with regard to a minor's ownership of a bank account. An oft-stated understanding of a minor's legal authority (or lack thereof) to execute a contract can be supplanted by law, and in Illinois an unambiguous statute in the Illinois Banking Act authorizes ownership of a bank account by a minor; however, Section 45.1 specifically states that "A state bank may accept deposits made by a minor and may open an account in the name of such minor..." I'll stop there and discuss other significant elements of Section 45.1 below. For now, note the use of the word "may" twice in the first sentence of Section 45.1. No person under the age of 18 has the right to **compel** a bank to open an account for her/him. A bank has discretion to formulate its own policy regarding minors' accounts, including whether to permit them at all and whether to allow them but to impose conditions or restrictions. Of course, the bank's policy must be applied and enforced in a consistent manner that does not discriminate on the basis of race, ethnicity, gender, religion, etc., etc., etc.

It is not hard to imagine real life situations in which a bank would not balk at allowing even a young minor to open a deposit account. A young boy or young girl may deliver newspapers, mow lawns, dogsit for the neighbor or otherwise earn at least a modest sum of money. A bank could no doubt accommodate the safekeeping of the young entrepreneur's income, even if only in a simple passbook savings account.

Having emphasized the use of the word “may” to illustrate each bank’s discretion regarding minors’ accounts, the next key component of Section 45.1 is the provision that “the rules and regulations of such bank with respect to each such deposit and account shall be as binding upon such minor as if such minor were of full age and legal capacity.” At this point, we have evolved from a long-held understanding that a minor is unable to enter into a contract to an unambiguous Illinois law that a bank has discretion to allow minors to open and maintain bank accounts and that minors’ accounts are to be treated contractually no different than the accounts of adult accountholders.

The final provision of Section 45.1 worth noting, and a provision that goes beyond my mere “safekeeping” of a child’s income is the end of Section 45.1 stating that “the receipt, acquittance or order of payment of such minor on such account or deposit or any part thereof shall be as binding upon such minor as if such minor were of full age and legal capacity.” That sentence in Section 45.1 introduces the concept of an authorized transactional account (e.g., DDA) for a minor.

Recognizing that the first three words of Section 45.1 are “A state bank,” on behalf of a CBAI Member I explored with the O.C.C. whether this statutory discretion pertaining to accounts held in the names of minors extended to national banks and federal savings banks. The response that I received from an attorney in the O.C.C.’s Central District (Chicago) Office was.....in a word .....”Yes.” The O.C.C.’s regulations on federal preemption of state laws cover not only what **will be** preempted in favor of national banks, but also what is **not** preempted. Among the categories of state laws that are not preempted is “contract law,” and I was told that Section 45.1’s allowance for a minor to open a bank account, and be contractually bound by the bank’s ordinary contractual terms and conditions caused Section 45.1 to be in the “contract law” category.

***This explanation of Section 45.1 of the Illinois Banking Act is for informational purposes only. CBAI is making no recommendation in favor of, or against, allowing minors to open and maintain bank accounts at any CBAI Member bank. Any bank policies, including implementation of conditions or restrictions on minors’ accounts, should be established in consultation with the bank’s own attorney.***

*Legal Link is a free CBAI member benefit. For answers to your general, banking-related legal questions, contact CBAI General Counsel Jerry Cavanaugh at 800/736-2224 (IL only), 217/529-2265] or [jerryrc@cbai.com](mailto:jerryrc@cbai.com).*