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Need access to historical banking information? Better read the fine print...

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September 2014

In the past 10 years, technology has ushered in tremendous changes to the banking industry. Paper bank statements that travel via snail mail are the exception to the rule — given online access and "going green" — and the return of your canceled checks is archaic.

Many merchants and vendors scan or convert written paper checks into electronic transactions to complete their deposits, and banks have enabled deposit by digital image so you can use your smartphone to transmit pictures of checks. Paper is old news — replaced by electronic access to digitally stored information.

Financial institutions might be saving money and becoming more efficient, but be prepared — if you now need a bank's paper records for a case you could receive them: 1) quickly with a smile, 2) after a long wait with a large fee or 3) never.

NEED FOR RECORDS

Many account holders find reviewing their bank accounts and transactions online sufficient. Their access to many online activities and balances are closer to real time. Stop payments, transfers, vendor payments and other transactions *already* happen in real time.

Most financial institutions maintain online access for statements and activity for up to one year. Customers no longer have to print statements and only review canceled check images when particular transactions are in question.

This strategy saves considerable space in filing cabinets and attics. But sometimes we need bank records for these reasons:



- The IRS requires taxpayers to maintain supporting records for their returns for a minimum of three years for most items. Some records carry a longer requirement, and in other cases we must archive those records permanently.
- A business' ability to support the amounts reported on filed tax returns. This requires past bank records, including deposit details and check images.
- Notice of a federal or state tax agency's audit. This might come two to three years after the filing of tax returns. Online access to the supporting bank statements, deposit details and canceled checks

might no longer exist, and the period available online might be limited to the most recent year's information. The account holder must now turn to the financial institution to produce records to satisfy the auditor.

- Divorce or any litigation matter. The disputing party must provide the opposing party with financial details, including bank statements, credit card statements and other account details through the litigation discovery process. The period requiring record documentation could go back many years,

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negation discovery process. The period requiring record documentation could go back many years, and banks typically only retain records for seven years (as little as two years for certain items).

- Any fiduciary matter, i.e., situations in which someone was entrusted with the custody and care of funds for someone else. The fiduciary would be required to produce records to substantiate the maintenance and use of the funds, and bank statements, deposit details and canceled check images must support any accounting the fiduciary provides.

EMBEZZLEMENT LEADS TO BANKING FRUSTRATION

A recent case illustrates a worst-case scenario involving a request for bank information. A small, 30-unit condominium association maintained two bank accounts at a local branch of a financial institution. The association's board of directors — comprised of unit owners — maintained a contractual relationship with a property manager to oversee the association, including the accounting books and records, bank accounts and unit owner information. The property manager, who possessed proper licensing and insurance, provided services for two years.

The property manager usually attended the regular board of directors' meeting over the course of two years. However, she surprised everyone when she abruptly resigned and told board members that she'd embezzled all of the association's funds. She said she'd retained an attorney, and that the board should contact counsel to start the process of finding a new property manager. Obviously, the board was shell-shocked. It wasn't prepared to deal with the theft, and it couldn't operate the association with no funds.

The attorney representing the former property manager assured the board's counsel his client, as required by state law, would turn over all her records to the association. Unfortunately, after weeks of delay, when the former property manager's attorney finally turned over the records, the storage boxes didn't include even the minimal level of records, such as complete monthly bank statements, deposit details and supporting paid invoices.

With the bank account numbers and limited information in hand, the board president — who was a signatory on both bank accounts — visited the local branch of the association's bank to request replacement bank statements for both bank accounts.

LEVERAGE EQUALS ACCESS

Sometimes the best advice and intentions can unwittingly lead to undesired and costly results as the condominium association would find out. The board president instructed the bank to close both bank accounts to limit future access by the former property manager — who also was a signatory on the accounts.

The board president then established new accounts at a different financial institution. The local branch manager of the original bank — sympathetic to the association's suffering as the victim of a financial crime — assisted the president by printing and providing the missing monthly bank statements.

We've seen a trend that most financial institutions will work with an *existing* customer to supply information and answer questions on closed accounts *if* the customer keep at least one open bank account. However, if a customer doesn't — as was the case for the condo association — there's no guarantee that a bank will help.

SOME THINGS COME EASY...

Depending on the circumstances, a customer often can simply visit a local branch of a financial institution and obtain printed copies of bank statements and canceled check images. This can depend on the level of access the local branch has to the account and the number of documents the customer requests.

Generally, bank representatives at most institutions can access statements, deposit details, canceled check images and other transactional details for open accounts. Of course, if a customer requests copies of every canceled check image for the last two years, the bank can't provide the records on the spot. The customer might have to wait days or weeks.

...OTHERS ARRIVE WITH STAGGERING FEES

The customer often must send a written request to the financial institution for information a local branch can't provide, for larger requests and for closed bank accounts. A local branch may forward the request to the bank's research department.

Most larger institutions have research departments that search for and print requested documents. However, a research department at a smaller bank is often comprised of a few bank employees who search for records in the back room of the branch in which the customer made the request.

Financial institutions normally charge for research and documentation up front. The amounts range from nominal to several hundreds of dollars depending on the period and level of detail requested. In the past, banks would charge our firm \$1 per page plus an hourly rate for the actual research. However, just as technology has changed, so have these rates, often to cover the costs needed for research and records.

The condo association in our case discovered this with mouths agape. The bank manager estimated that the condo board would have to pay \$6,010 *up front* to obtain the records they needed — \$25 per hour and \$6 per printed page. The board members were stunned.

The association had requested the deposit details for a two-year period so they could reconstruct the individual unit owners' accounts. Although the monthly bank statements reflected deposits made with the bank, the association needed the deposit details to determine those unit owners who paid with each deposit.

Even worse, the association couldn't file an insurance claim to recover their stolen funds until they possessed the deposit details because the former property manager alleged she deposited some of her

funds into the association's accounts. That amount, if any, would be needed to offset any amounts determined diverted. Because the association had closed both accounts and moved to a new institution, the bank was less than receptive to providing this level of documentation without a charge.

The association didn't have \$6,010; its accounts were empty. The bank eventually reduced — but didn't waive — the fees. However, the association still had to pay in advance. The bank agreed to charge \$1 per page, or approximately \$1,000. An individual fronted the cost so the association could complete the investigation, file an insurance claim and pursue the former property manager. Regardless, a \$1,000 invoice for a 30-unit condominium was a great expense.

READ THE FINE PRINT

The condo board asked the bank manager why the institution charged such high fees. The manager said the bank must recover the costs associated with providing customers historical information and cited the account agreement's description of the bank's costs to provide requested information. Roughly translated:

"Read the fine print."

The bank's cost estimate form as provided to the association contained a section that allowed an authorized bank employee to waive the fees for the research. In that spot, the form was checked "No" and a description above stated "Accounts Closed." Circling back to my earlier point that leverage equals access, had the accounts remained opened — or the association opened new accounts at the bank to replace the old accounts — I'm confident the bank would've waived their fees, especially because the association were victims of a financial crime.

LESSONS LEARNED

I tell this cautionary tale not to bash banks and financial institutions but to highlight the shift in access to financial information and the potential costs associated with requesting account information that, until recently, arrived monthly like clockwork in mailboxes. Eliminating paper and accessing information electronically creates savings, especially with the environment, but that can come at a significant cost.

I highly recommend reading every bank's account details including disclosed cost schedules *before* opening an account, as well as when new disclosures are sent out for existing accounts, so you're not surprised should you ever require research. Caveat emptor (buyer beware) indeed!

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