

## Bank Account Searches: Are They Permissible?

Lawyers and other professionals contact our office every day and ask whether it is permissible for an asset search company or private investigator to conduct bank, stock, bond or mutual fund account searches on a subject. The short answer is “no”.

Not only is conducting a bank, stock, bond, or mutual fund search considered to be an invasion of privacy, but it is also considered to be an unfair and deceptive business practice. More important, any company that claims to be capable of conducting bank account searches in this day and age, (and there are a number of them) is doing so by using false pretenses. If that was not enough, the Board of Bar Overseers has also come out and stated that an attorney, who has a bank account search conducted on their behalf, could be held vicariously liable. Finally, the Attorney General’s offices, in a large number of states, have aggressively sought and obtained injunctions and heavy fines against asset search companies who conduct bank account searches.

Therefore, when you have to satisfy your “due diligence” on behalf of your clients by conducting an asset search, contact a reputable company who knows what is permissible and what is not. Here, at [www.assetsearchesplus.com](http://www.assetsearchesplus.com), we only use trained asset recovery attorneys to conduct asset searches. We provide our clients with access to each and every asset and liability of a subject that is permissible to obtain, in all 50 states, so that our clients can receive the necessary data to fully satisfy their due diligence within (1) to (3) business days.

The long answer as to why you are no longer able to conduct a bank account search is that on November 12, 1999, President Clinton signed the Financial Services Modernization Act into law. Since then, using false pretenses to obtain bank account information, from either banks or bank customers, is considered a federal crime.

The law applies to all banks and financial institutions, including stock brokerage firms, insurance companies, loan companies, credit card issuers, and credit bureaus.

The Act applies to those persons who use false pretenses and any third party requesting the information when it is known, or should be known, that false pretenses will be used.

Certain limited exemptions do apply. Exempt parties include law enforcement agencies, financial institutions, insurance companies conducting claims related investigations, and state-licensed private investigators that are attempting to collect delinquent child support. However, in this case, private investigators must have a court order in hand authorizing the bank investigation.

Financial Services Modernization Act of 1999 - An Excerpt:

Subtitle B--Fraudulent Access to Financial Information

SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.

(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES- It shall be a violation of this subtitle for any person to obtain or attempt to obtain, or cause to be

disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person--

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES - It shall be a violation of this subtitle to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES- No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES - No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of--

(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) NONAPPLICABILITY TO INSURANCE INSTITUTIONS FOR INVESTIGATION OF INSURANCE FRAUD - No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS- No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a) (47) of the Securities Exchange Act of 1934).

(g) NONAPPLICABILITY TO COLLECTION OF CHILD SUPPORT JUDGMENTS - No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.

#### SEC. 522. ADMINISTRATIVE ENFORCEMENT.

(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION- Except as provided in subsection (b), compliance with this subtitle shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act to enforce compliance with such Act.

(b) ENFORCEMENT BY OTHER AGENCIES IN CERTAIN CASES-

(1) IN GENERAL- Compliance with this subtitle shall be enforced under--

(A) section 8 of the Federal Deposit Insurance Act, in the case of--

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

(B) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(2) VIOLATIONS OF THIS SUBTITLE TREATED AS VIOLATIONS OF OTHER LAWS- For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this subtitle shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this subtitle, any other authority conferred on such agency by law.

#### SEC. 523. CRIMINAL PENALTY.

(a) IN GENERAL- Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 521 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

(b) ENHANCED PENALTY FOR AGGRAVATED CASES- Whoever violates, or attempts to violate, section 521 while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

#### SEC. 524. RELATION TO STATE LAWS.

(a) IN GENERAL- This subtitle shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

(b) GREATER PROTECTION UNDER STATE LAW- For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 522 of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

#### SEC. 525. AGENCY GUIDANCE.

In furtherance of the objectives of this subtitle, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 521.

#### SEC. 526. REPORTS.

(a) REPORT TO THE CONGRESS- Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subtitle in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(b) ANNUAL REPORT BY ADMINISTERING AGENCIES- The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subtitle.

#### SEC. 527. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) CUSTOMER- The term `customer' means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION- The term `customer information of a financial institution' means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) DOCUMENT- The term `document' means any information in any form.

#### (4) FINANCIAL INSTITUTION-

(A) IN GENERAL- The term `financial institution' means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED- The term `financial institution' includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p) of the Consumer Credit Protection Act).

(C) SECURITIES INSTITUTIONS- For purposes of subparagraph (B)--

(i) the terms `broker' and `dealer' have the same meanings as given in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(ii) the term `investment adviser' has the same meaning as given in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)); and

(iii) the term `investment company' has the same meaning as given in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3).

#### (D) CERTAIN PERSONS AND ENTITIES SPECIFICALLY EXCLUDED-

The term `financial institution' does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act and does not include the Federal Agricultural Mortgage

Corporation or any entity chartered and operating under the Farm Credit Act of 1971.

(E) FURTHER DEFINITION BY REGULATION- The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subtitle.

For any additional questions on conducting an asset search, do not hesitate to contact one of our attorneys here at Asset Searches Plus, Inc., at 1 (800) 290-1012, or contact us by email, at [info@assetsearchesplus.com](mailto:info@assetsearchesplus.com), or visit our blog on our website: [www.assetsearchesplus.com](http://www.assetsearchesplus.com) . Thank you.

Sincerely,

Edward L. Amaral, Jr., Esq.

President

## **Choosing the Right Asset Search Company**

When looking to conduct an asset search, it is important to carefully choose a qualified asset search company to assist you. The internet has become second nature for the majority, making it easy for someone to create a website that could potentially scam you or provide invaluable information. Therefore, it is important to research the company that you are using to make sure it will give you the results you are seeking.

The time that a company has been in business can tell you a lot about their experience. More likely than not, a company that has been in business for 10+ years will have already learned the do's and don'ts regarding how the business functions, as opposed to a company that has just started. You should be sure to ask any potential asset search provider this question.

It is also important to choose a company that is knowledgeable in more than just providing the results, but giving you advice on how to interpret and implement them. Companies with attorneys on board can give you a basic roadmap as to how to go about using the report that you are given, whether it be to satisfy a judgment, recover unpaid child support or validate a party's financial statement.

Convenience is another key point to consider. A company with an easy to use website, helpful customer service, and a small turnaround time is beneficial when trying to get results quickly. They should be able to accommodate you if you do not have access to a computer.

Finally, you should ask yourself these questions before choosing an asset search company:

- 1.) Does the company only use “legal” and reliable sources and methods to conduct their searches?
- 2.) Do they stand behind the quality of their work?
- 3.) Does all work remain confidential?
- 4.) Do they provide a professional looking report that you will be eager to read or share with your client?

If the company that you are considering meets these expectations, it is safe to say that you have made a great choice.

For additional information, please contact us at **1(800)290-1012**, or at [edamaral@assetsearchesplus.com](mailto:edamaral@assetsearchesplus.com) or [www.assetsearchesplus.com](http://www.assetsearchesplus.com).