

Selected Subjects

Guru Chatter*

on **Check and Deposit Issues**



Is a Check Written on a Paper Napkin Negotiable?

Question: A customer wrote a check using a paper napkin and we don't know whether to pay it or not - what's required to make a check legal?

Answer by John Burnett:

Many banks now have provisions in their deposit contracts allowing the bank to set standards on the form of documents used for the account (this generally refers to deposit tickets and checks). But if the bank has no such provision, or hasn't set the standard for customers, all that is required is that the check be payable to order or bearer, on demand, in an amount that can be determined from the face of the check, that it be signed by the drawer and that the check identify the account from which it is to be paid. In theory, it could be scrawled on the side of a watermelon.

That works if the check is presented directly to the paying bank for payment. The paper napkin or watermelon would not be acceptable for clearing between banks.

Cashing a 10 Year Old Cashier's Check

Question: A consumer was given a cashier's check in 1995 and never cashed it. She just found it and wanted to know whether or not the bank it was drawn on will honor this check since it is so old. If not, what recourse does she have?

Answer by Ken Gollhofer:

There's a long list of variables ranging from the possibility that the check was replaced to the probability that it has been escheated to the state. It's equally possible that the issuing bank does not exist under the same name.

Rather than speculate on a variety of possibilities, I suggest you offer to send it to the drawee bank as a collection item.

Records Research on Stop Payment Order

Question: If a customer calls in a stop payment order, how far back are you required to go back and research your records to verify non-payment of the check?

Answer by Randy Carey:

Typically the customer would be required to tell you the date they wrote the check, so your search would be somewhat predicated on the information provided by the customer.

Answer by John Burnett:

If the check was written months (or years) earlier, I'd suggest that you remind your customer that it may have already cleared, and that you can research [pick a number that your retrieval process can readily handle] months back. Then tell the customer that if the check was paid before that period, the stop won't be effective, but the fee won't be refunded, either.

Stop Payment on a Lost Certified Check

Question: If a certified check has been lost, can payment be stopped so another may be issued?

Answer by John Burnett and Mary Beth Guard:

Check your state's version of the Uniform Commercial Code for section 3-312. That section addresses claims for lost, stolen or destroyed cashier's, tellers, and certified checks.

Payment cannot be *stopped* on a certified check, but if your state has adopted 3-312, a claim may be made in the event the certified check has been lost. The claim doesn't become enforceable until 90 days after the claim is made (or 90 days after the check was certified, whichever was sooner), so the bank is still at risk of having to pay the first check if it shows up before then. As a result, many institutions wait until the claim is enforceable before they will refund the customer's money or issue a new certified check.

New York's provisions for this question are found in section 4-403 of its UCC, and refer to the process as "stopping payment" on the certified check. The same claim process and waiting period apply, however.

Stop Pay on Social Security Direct Deposits

Question When one of our customers dies and they receive a direct deposit of Social Security can we put a stop payment on the account for the direct deposit? We have had a few instances where the deposit will come in the following month and our core system doesn't catch it. We have them coded as deceased on their CIF file.

Answer by John Burnett:

Strictly speaking, a "stop payment" only applies to checks drawn on your bank, not on deposits it accepts. But what you call the mechanism you're looking for isn't important.

Treasury rules require you to return direct deposits you receive after the known date of death of the recipient. The key is knowing of the death, and then acting upon that information. Find out from the vendor that provides your account and ACH processing whether there is a "flag" you can set that will cause ACH credits to "unpost." Then use it.

Multiple Payees on USPS Money Order

Question: I always thought that if a check has more than one listed payee and there is not an "and" or ampersand joining them, the check could be endorsed and negotiated by any one of the listed payees.

Now my bank has received a USPS money order back (several weeks after it was deposited, of course), marked "endorsement missing." There are two payees listed on the money order with no "and" or ampersand, and one of the payees endorsed it and deposited it to his account.

Does the Postal Service play by different rules?

Answer by John Burnett:

As a matter of fact, it does. It makes its own rules. You already realize that the USPS doesn't have to comply with the "midnight deadline" for returns. And it should be no surprise that the "nor gloom of night" folks have their own rule on multiple payee postal money orders.

From the Postal Manual, with emphasis added:

14.3.5 More Than One Payee

*A money order completed by the purchaser to show more than one firm or person as payee is paid to either payee if the conjunction "or" is used to connect the payees. **If no conjunction is used, or if the conjunction "and" is used to connect the payees, then all the listed payees must endorse the money order.***

Stale Dated Money Orders

Question: Do money orders ever become stale-dated? A member tried to deposit US Postal Money Orders dated more than a year ago. Can we take those or are they stale-dated?

Answer by John Burnett:

According to section 14.3.1 of the U.S. Postal Manual, domestic postal money orders are never stale-dated:

Domestic money orders are paid regardless of the time passed since their issue.

Accepting Post Dated Checks for Deposit

Question: Can we accept a post dated check for deposit? The check is drawn on another institution.

Answer by Ken Gollhofer:

Under the current version of the UCC, the paying bank may pay or return a post dated check - it's their choice, not yours. If you accept a post dated check for deposit you do it with the understanding that the reason why it could be returned to you unpaid is readily apparent from the face of the check.

To underscore the issue, you would be entitled to an exception hold based on reasonable cause to doubt the collectibility of a post dated check (see Model Form C-13).

Bank's Liability for Paying Stale Dated Check

Question: Stale Dated Check. Our bank was presented with a \$700.00 check that we paid one month ago, that was over 6 months old at the time of payment. Can this item be returned or, as I suspect, is it considered a "late return" at this time? The second half of the question is, what liability does the bank of first deposit have for accepting this item and are we, as the paying bank, responsible, in any way, for having paid a stale dated item?

Answer by Ken Gollhofer:

Obviously, a physical inspection of the item would have made it apparent to your bank that it was post dated. You had until midnight of the banking day following the banking day of presentment to return the item. After then, it is finally paid and would definitely be a "late return" in the time frame you mention.

The paying bank's only risk in accepting a stale dated item for deposit is if the paying bank returns the item in a timely fashion.

Finally, under the current version of the UCC (check your state's version) the paying bank may pay or return a stale dated check; i.e. it is your option and paying the item imposes no automatic liability on your bank. For the discussion to

go further, your customer would have to have been damaged in some way by the payment and be able to make some allegation that your institution had some demonstrable responsibility to reject the item due to the stale date.

Is This Check Stale Dated?

Question: A customer of the bank is arguing the payment of a check drawn off of his account, which was written over 6 months ago. He is stating that it should be stale dated, and the bank should not have cleared the check. I was always under the impression that 6 months was the qualifier for a stale dated check, however, after reading some information on your website, I'm not so sure about that. Could you help me out on this?

Answer by John Burnett:

Before the 1990 amendments to Articles 3 and 4 of the Uniform Commercial Code were adopted (they had been adopted by all by New York and South Carolina as of August 2005), the customer may have had a valid complaint. But the revised version of the UCC includes, in section 4-404, language that recognizes the fact that banks don't generally read the dates on customer checks any more. The law now permits the bank to return the check when it's more than six months old, or to pay it if the customer hasn't advised the bank not to pay the check.

In other words, if a customer doesn't want an old check paid, the customer should issue a stop payment order, and keep it renewed.

Dealing with Corporate Checks

Question: Is it acceptable to have a corporation write out checks payable to cash? I thought I had heard at one time that corporations should not be doing this. Also, if a check is payable to a signer of a corporation, how should the check be endorsed for it to be deposited into the corporation? I think the individual should sign it and then write in "pay to the order of XYZ Corporation."

Answer by Ken Gollhofer:

There is no legal prohibition against a corporation making checks payable to "Cash." Basic accounting classes still cite that as the preferred method for obtaining any cash necessary to operate the business. The corporate employee presenting the item should endorse the check (using his or her own name) to establish an audit trail.

Considering broader issues, your bank should be attuned to whether the amount of cash involved is consistent with the operation of the business.

To transfer a check made payable to M.B. Guard to a corporation, the payee would endorse it: Pay to the order of Bankersonline, Inc., M.B. Guard.

Charge Item Back to "Any" of the Customer Accounts

Question: If you cash a check drawn on a different bank for a customer and that check is later returned as a returned deposit item, can you charge that item back to any account that your customers name is on as an owner? What if there are other owners on the same account with that customer, can you still charge the check back to that account?

Answer by Ken Golliher:

When banks cash checks for customers over the counter they are relying on the right of setoff, their ability to charge any returned item against the payee's deposit account. Any right of setoff you may have is grounded in 1) state law and 2) contractual terms.

In general, the right of setoff requires a "unity of title," i.e., the account to which you wish to charge the return item should be owned solely by the payee. It's also fairly common that contractual language expands that right to joint accounts on which the payee is an owner.

No matter what, you need to familiarize yourself with the law of your state and the terms of the contracts in place for the accounts that are of interest to you.

Assuming "Or" on CD with No "And" or "Or"

Question: If a Certificate of Deposit (or other account) is jointly owned and the terms "or" or "and" designating ownership are not contained on the account can the Bank assume an "or" status of ownership?

Answer by Ken Golliher: The conjunctions "or" and "and" are very important when they separate payees on checks; under the UCC (state law) they indicate how many signatures are required to negotiate the check. However, even there, they do not carry any suggestion regarding who owns what portion of the funds.

Any suggestion that conjunctions are indicia of ownership in an account title would have to be a function of state law and that is highly unlikely. It is the bank that generally selects the conjunction for the account title, not the customer. *Some banks no longer put conjunctions in the account title at all.* Banks normally rely on the terms of the contract/signature card to indicate how many signatures are required to transact business and what survivorship provisions are applicable.

I encourage you not to draw any conclusions regarding ownership from the title

of an account unless they are supported by state laws of which you are personally aware.

Tax Levy on Deposit, Check Returned NSF

Question: What happens if you place a hold on a deposit account for a Tax Levy that a deposit had been made to the day before and then the check that the deposit was made with is returned NSF?

Answer by Ken Gollhofer:

You debit the returned item back to the account. The bank granted provisional credit when the item was deposited and its claim against the funds has priority in time over the levying party's claim.

Payable to the Estate or the Personal Rep?

Question: A CD is taken out for an estate account with a TIN. The personal rep wants to cash the CD in early with no penalty. He also wants the check made out to him personally. The bank informed him that we have to make the check payable to the estate with his name listed as PR. He doesn't want to do it that way. He wants the check made payable to him. We've told him since the account is under a TIN, the check must be made payable to the Estate. Are we incorrect? What is the proper procedure?

Answer by John Burnett:

You make the rules, and you've made them properly. The check should be drawn in the same way as the account is titled. If the personal representative is due the funds, it is his right to then indorse the check as personal representative over to himself and then negotiate it. And, by the way, all estate accounts should have TINs obtained from the IRS.

Check Error Resolution - Time Limit

Question: A consumer writes a check for \$1200 and the payee enters the check as \$200. The consumer's bank clears the check as \$200 also and didn't catch the error. How long does each person, the payee and the bank have to correct the mistake? Once the consumer's bank is made aware that the check cleared for the wrong amount, how many days notice must be sent to the individual that wrote the check before the monies are corrected and removed from their account?

Answer by John Burnett:

The encoding bank (the bank accepting the check for deposit) is liable under the UCC for these errors. In this case, it is liable to its customer, the payee of the check. If the encoding bank asks for an adjustment from the paying bank, there is

no notice period. Assuming the funds are in the customer's account, the paying bank should debit the account and forward the funds to the depository bank.

The same situation could be resolved between the consumer and the payee if the payee just notified the consumer of the error and asked for the difference.

Stop Pay, Paid. Will We Be Taken to the Cleaners?

Question: We have a customer that is a dry cleaning business. The 2 signers on the account are husband and wife. The wife put a stop payment on a check that was made out to cash. The husband came to the branch to cash the check. Since the husband was known to the teller, she cashed the check. Are we liable for these funds?

Answer by Ken Gollhofer:

It would be helpful to know whether the business is a corporation, partnership, etc.

However, in general, the burden of showing the fact and amount of loss when the bank pays over a stop payment is on the customer. The bank is not automatically liable for paying over a stop payment order.