

Selected Subjects

Guru Chatter* on UCC and Check Issues



Refer to Maker

Question: What does return reason "Refer to Maker" mean on a check?

Answer by Ken Gollhofer:

It means the returning bank knows what's wrong with a check, but is refusing to tell both the depository bank and the payee. (Yes, it's a pet peeve of mine.) Otherwise, there is no standard meaning.

Some depository banks make doubly certain they review these items to verify that they were returned by the midnight deadline. If it is ambiguous, they automatically protest them as a late return. Obviously, since it does not know the reason for return, the depository bank has no idea whether the midnight deadline applied, but the timely protest preserves the information for future reference, either by the depository bank or its customer.

When is a Check Too Old to Cash?

Question: By law, when is a check considered too old to cash? 6 months? 2 years? What does the UCC say on the subject?

Answer by Ken Gollhofer:

The model version of the UCC indicates a check is stale dated when it is more than 6 months old. In essence, the paying bank may decide to pay or return the item. Someone asked to cash a stale dated check might reasonably refuse based on the clear indication that the check may or may not be paid regardless of whether the funds are available.

Stop Pay on a Post Date Check

Question: Should a bank employee take a stop payment order from a customer if the check is post dated?

Answer by John Burnett:

In a word, Yes.

For such a check, the account holder can either announce his intention that the check not be paid until its date, or place a stop payment order. In most banks, a stop payment record is used for both.

If the customer merely says, "I wrote a post-dated check and I don't want it paid until its due date," the bank must follow that instruction, and return the check for date if presented before the check date. On or after the check date, the bank will treat it like any other check and pay it, all other things being equal. The check date can be as far out as six months when the customer request is taken.

But if the customer says, "I wrote a check that's post-dated and I don't want you to pay it, ever!" the bank has a stop payment order that's valid for six months, and the bank should return the check marked "Payment Stopped."

Can an Individual Negotiate This Check?

Question: I'd like some clarity as far as endorsements are concerned for checks made payable to an individual on the first payee line then on the second line a corporation is listed. There are no "and's" or "or's" between the two. Can these be negotiated by the individual?

Answer by John Burnett:

As I understand it, there are two ways to look at such a check. First, you can view the corporate name as part of the address for the payee, but without the "c/o" in front. Frankly, that's how I would view it.

The second is to treat it as an example of "stacked payees" in which two payees are named but no conjunction or other hint is provided to determine whether they are joint payees or alternative payees. When there is no "and" or "&" the rule in the UCC says the payees are considered alternative payees.

Although I believe the reasoned approach is the first of these choices, either approach gets to the same result -- the individual can endorse and negotiate the check without another endorser.

Returning Checks Endorsed "For Deposit Only"

Question: In our daily review of large incoming checks, we regularly return checks with an endorsement of simply "for deposit only" or "for deposit only 1234567" that do not have the payee's name or a guaranteed endorsement from the paying bank. We return them as "endorsement not as drawn". This is correct, right (or are we just being too picky?)

Answer by John Burnett:

Unless your customer -- the drawer of these checks -- insists on actual endorsements, you can rely on section 4-205 of the UCC (check your state's version) as providing a warranty from the depository bank that the amount of the check was paid to its customer or deposited to the customer's account.

You could save yourselves a lot of aggravation if you reserved your return of checks for "endorsement not as drawn" for cases where there is actually an endorsement and it's apparent that it's not from the right party.

Do We Have to Pay this Back to the Depositing Bank?

Question: Customer found forged signature while going through bank statement. He notified our bank. He was given funds back because he was timely according to his bank statement. We sent it to the depositing bank with an affidavit the day our customer signed it (June 7, 2005). And yes this was a late return. It was returned back to our bank with a letter dated Nov 29,2005. Wash state has a 60 return...do we have to pay this back to the depositing bank?

Answer by John Burnett:

The fact that the depository bank was delayed in making its claim of late return doesn't negate the fact that your return was, in fact, late, as you have admitted. Your accountability for the amount of the check is not in dispute here. To paraphrase that old parents' admonition: "Two lates don't make a right."

The depository bank can still look to you as accountable on your settlement for the check; it just can't use the normal process, since it went beyond the 60 days permitted. But it could use the courts, and that adds costs. Stop the bleeding on this, and pay up.

Non-Profit Corporate Customer/Check for Petty Cash

Question: We have a corporate customer who would like to get petty cash for its office. How should the check be made out? They are insisting that since they have IRS non-profit designation that the check needs to be made out to the bank in order to receive cash.

Answer by Ken Gollhofer:

The correct method for obtaining petty cash does not vary between "for profit" and "non profit" entities. As was discussed in Accounting 201 many years ago, the check should be made payable to "cash" or to the employee responsible for reconciling petty cash. In the first example, it would be endorsed by the employee presenting the item. In the second, it would be endorsed by the payee.

Regardless of the drawer, banks should not accept checks payable to the bank in payment for official checks.

Payable to Cash Conundrum

Question: Our customer wrote a check payable to cash which it was intended to pay an invoice.(cashed on 8-11-05) Customer was charged for the item and just

recently discovered the invoice was not paid. It looks like the check was cashed by an unauthorized individual. How do we get money back from the other bank?

Answer by John Burnett:

There is really no good way to pursue this. Your customer left the barn door wide open when the check was written to Cash. That the funds weren't applied to the invoice in question is really between your customer and the party to whom your customer gave the check. You shouldn't get involved.

Problematic Affidavit of Forgery

Question: We have received an affidavit of forgery on a check that one of our customers deposited. The affidavit states that the payee has been altered. The check has no visible signs of alteration. The affidavit has a different intended payee. Of course the drawee bank wants the money to reimburse their customer. Do we have any options?

Answer by Ken Gollhofer:

If I understand you correctly, you believe the affidavit is false. If so, you respond simply indicating that you do not believe any alteration took place. In effect, you are saying, "Sue me." The burden of proof will be on the other institution, but review your decision with counsel before you announce it.

Drawee Banks Time Limit for Returning Altered Item

Question: How long does a drawee bank have to return an item to BOFD for altered payee?

Answer by Ken Gollhofer:

Based on the model version of the UCC, the drawer has one year to detect an altered item and draw it to the attention of the drawee bank. From the time it is notified, the drawee bank generally has 30 days to notify the depository bank. If the drawee bank delays beyond that time it bears any risk of loss caused by that delay.

Your state's version of the UCC may have varying time frames. The drawee bank's contract may also alter its relationship with the drawer.

Retention of Customer Check Orders

Question: How long must the bank keep records of customer check orders, both paper and electronic?

Answer by Ken Gollhofer:

Any applicable requirements will be a function of state law or regulation. You might try posting this question in your state's forum. Alternatively, you could contact your state's department of banking or state bankers association

Retaining the Original Copy of a Paid Check

Question: How long does the original of a paid check have to be retained by the bank or Federal Reserve if a customer does not have the checks returned in their statement?

Answer by John Burnett:

There is no requirement in most states that the original of the check be retained, as long a copy can be produced when needed.

Time Limit to Present Claim for Encoding Errors

Question: What is the time limit for banks to present claims for encoding errors? I am unable to locate a specific UCC that addresses this issue, and I would like to be able to quote our responsibility according to the UCC.

Answer by John Burnett:

In most states the UCC (section 4-111) has a three-year statute of limitations.

Placing One Hold on the Aggregate Deposit

Question: I recently had a teller place a hold on a total deposit of \$150.00. The deposit was made up of 8 smaller checks; however, the teller only placed one hold on the aggregate amount of the deposit. The deposit included both local and non-local items. Can the bank place a hold on the aggregate amount of checks deposited? Or must the bank place separate holds for each check deposited?

Answer by Jim Bedsole:

It's fine to place a hold on the aggregate amount of the checks, but in the case where there are both local and non-local checks, either you'd have to just apply the local time period, or you'd have to segregate the two types.

Also with a total deposit of \$150, you have to make the first \$100 available next business day, so you really can only place a hold on \$50.

Operational Changes due to Closing of Fed Branch?

Question: When nonlocal checks become local because of a Fed Reserve branch closing, what operational changes do we need to make?

Answer by John Burnett:

If your bank assigns availability of deposited checks based on whether a deposited check is local or non-local, you will need to have the table of local routing numbers updated to include all of those that are now included under your FRB check processing region in [Appendix A to Regulation CC](http://www.bankersonline.com/regs/229/a229a.html).
<http://www.bankersonline.com/regs/229/a229a.html>

And remember that you may have more than one set of these routing number tables if you have branches in different check processing regions.

Increasing the geography from which checks will be considered local is a change requiring a notice to consumer customers under Regulation CC. Since the change is favorable, the notice must be given within 30 days after the change is implemented, or sooner.

Taking the Loss on "Unauthorized" Telephone Drafts

Question: We are taking a loss on several so-called telephone authorized drafts. The customers say they didn't authorize them. What is our recourse? Are we obligated to credit the customer back? How long do we have to return it?

Answer by Randy Carey:

John Burnett recently provided a very complete answer to this question.

[Dealing With Unauthorized Drafts](http://www.bankersonline.com/operations/jb_paperdrafts.html)

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Recovering Funds from the Non- warranty States

Question: Another bank that we send unauthorized demand drafts to as collection items, states that if the maker bank and the payee bank are not both located in one of the fourteen warranty states, they will not honor the collection request. Is there any validity to that? I have seen your list of warranty states, is it to be considered as an official list? Last, are there any ways to recover funds when dealing with non-warranty states, other than through the indemnification process?

Answer by John Burnett:

The list we included in an article on [unauthorized demand drafts](http://www.bankersonline.com/operations/jb_paperdrafts.html) http://www.bankersonline.com/operations/jb_paperdrafts.html is based on information from the Federal Reserve as of February 2005. So I would not consider it "official," whatever that means. It should also be noted that the 14 states listed did not take uniform paths to amend their versions of the UCC. Accordingly, it might take more than just determining that the depository bank and the paying bank are both in "warranty" states. That is, state A might not

recognize state B's warranty wording. That's noted in the Fed's Federal Register document proposing amendments to Regulation CC to address this issue. *[Note: The Fed issued the final amendments, which are effective 7/1/2006.]*

As for whether there are methods for reimbursement for unauthorized drafts outside of both the UCC and indemnification, I suggest you contact an attorney conversant with this area of the law.

Sending Stale Dated Checks to the State

Question: It is my understanding that when an issued check becomes stale dated it is mandatory to send the funds to the state. Does this apply to checks made out to vendors or just employee/payroll checks?

Answer by John Burnett:

Let's start by distinguishing between "stale dated" and "abandoned."

"Stale dated" generally refers to checks that are more than 6 months old. These checks can be paid by the drawee bank, if in good faith. Or they can be returned for date without risk to the bank.

Funds represented by checks that remain outstanding long enough to qualify for a state's abandoned property law become subject to that law, and may have to be surrendered to the state (assuming you are unable to contact the checks' payees and arrange for payment). That period varies from state to state, but is generally at least two years. It would apply both to vendor and payroll payments (and others).