



THE RETURN OF CHECK FRAUD

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Check Fraud

- Key Terms
- Applicable Laws/Regulations
- Scenarios
- What are We Seeing



Check Fraud

KEY TERMS

- Payor Bank (Drawee) – The bank upon which a check is drawn
 - Typically the financial institution required to pay the check
- Payee – The person to whom the check is made payable
- Endorser – The person that signs the back of the check
- Maker (Drawer) – The person who signs the front of the check
 - Typically the owner of the account from which the check is drawn
- Depository Bank – The bank that takes the check for deposit



Check Fraud

KEY TERMS

- Presenting Bank – The bank that presents the check for payment to the payor bank
- Person Entitled to Enforce
 - Holder of the check (person in possession)
 - Non-holder with rights of a holder
 - Person entitled to enforce by law



Check Fraud

KEY TERMS

- Holder in Due Course
 - No obvious evidence of forgery, alteration, irregularity
 - Holder takes the check
 - For value
 - In good faith
 - Without notice that the instrument was overdue, altered, unauthorized signature, or of certain defenses



Check Fraud

APPLICABLE LAWS/REGULATIONS

- Uniform Commercial Code
 - Properly Payable (§4401)
 - Banks can charge customer for checks that are properly payable from an account
 - Authorized by customer
 - Does not violate an agreement that exists between the bank and its customer



Check Fraud

APPLICABLE LAWS/REGULATIONS

- Uniform Commercial Code
 - Transfer/Presentation Warranties (§§3417/4208)
 - The check was transferred by a person entitled to enforce it
 - The draft was not altered
 - The warrantor had no knowledge that the signature of the check drawer/maker was unauthorized
 - For remotely created items – the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item was drawn



Check Fraud

APPLICABLE LAWS/REGULATIONS

- Uniform Commercial Code
 - Transfer/Presentation Warranties (§§3417/4208)
 - Notice of a claim for breach of warranty must be provided to the warrantor within 30 days after claimant has reason to know of the breach and identity of warrantor
 - Delay can relieve warrantor of liability



Check Fraud

APPLICABLE LAWS/REGULATIONS

- Uniform Commercial Code
 - Customer Duty to Report (§4406)
 - Customer must exercise reasonable promptness in reviewing account statement
 - Precluded from asserting alteration/forgery (if credit union experiences a loss due to failure to report)
 - Credit union can still be liable for failing to exercise ordinary care
 - Customer must report any unauthorized signature or alteration within 1 year of statement being available
 - Credit union relieved of all liability
 - Precluded from asserting breach of warranty claim against depository bank



Scenario 1

- Alteration

- Credit Union A customer writes check made payable to ABC Corporation for \$95,000
 - Check is intercepted and made payable to Individual B
 - Individual B deposits check into their Credit Union B account on January 3
 - Customer informs Credit Union A of fraud on February 14
 - Credit Union A sends warranty claim to Credit Union B on February 19



Scenario 1

- Alteration

Liability

- Credit Union A is liable to its customer because the check was not properly payable
- Credit Union B breached warranty that the item was not altered and is liable to Credit Union A (or other presenting banks)
- Individual B is liable to Credit Union B



Scenario 1

- Alteration

- Credit Union A customer writes check made payable to ABC Corporation for \$95,000
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Scenario 1

- Alteration

Liability

- Credit Union A is liable to its customer because the check was not properly payable
- Credit Union B breached warranty that the item was not altered and is liable to Credit Union A (or other presenting banks)
 - BUT – Credit Union A did not file timely claim so Credit Union B is discharged to the extent of loss caused by the delay
- Individual B is liable to Credit Union B



Scenario 1

- Alteration

- Credit Union A customer writes check made payable to ABC Corporation for \$95,000
 - Check is intercepted and made payable to Individual B
 - Individual B deposits check into their Credit Union B account on January 3
 - Customer informs Credit Union A of fraud on **February 14 of the following year**
 - Credit Union A sends warranty claim to Credit Union B on February 19



Scenario 1

- Alteration

Liability

- Credit Union A is liable to its customer because the check was not properly payable
 - BUT – Customer is precluded from making a claim on an alteration/unauthorized indorsement
- Credit Union B breached warranty that the item was not altered and is liable to Credit Union A
 - BUT – When Customer is precluded for waiting too long, Credit Union A is precluded from asserting breach of warranty claim against Credit Union B



Scenario 2

- Forgery (Forged Maker)

- Individual A deposits check made payable to Individual A into their account at Credit Union A
 - Check is drawn on Corporation B's account at Credit Union B, purportedly signed by Corporation B representative
 - Check is deposited on January 3
 - Corporation B immediately informs Credit Union B that it did not write the Check
 - Credit Union B returns the check to Credit Union A on January 4



Scenario 2

- Forgery (Forged Maker)

Liability

- Credit Union B is liable to its customer because the check was not properly payable
- Credit Union A is liable to Credit Union B because the check was returned timely per UCC/Regulation CC



Scenario 2

- Forgery (Forged Maker)

- Individual A deposits check made payable to Individual A into their account at Credit Union A
 - Check is drawn on Corporation B's account at Credit Union B, purportedly signed by Corporation B representative
 - Check is deposited on January 3
 - Corporation B immediately informs Credit Union B that it did not write the Check
 - Credit Union B returns the check to Credit Union A on **January 8**



Scenario 2

- Forgery (Forged Maker)

Liability

- Credit Union B is liable to its customer because the check was not properly payable
- Credit Union A is **not** liable to Credit Union B because
 - It did not warrant that the maker's signature was authentic (only that it did not know it was not authentic)
 - The check was not returned timely per UCC/Regulation CC



What are we Seeing?

- Cashier's Check Fraud
- Federal Reserve
- Operational Pushback



What can we do?

- Educate consumers
- Investigate claims
- Focus on details
- Escalate as appropriate



CONTACT US



550 N. Brand Blvd., Ste. #550
Glendale, CA 91203



Alex.wade@swmlp.com
Bill.adler@swmlp.com
Robert.wilkins@swmlp.com



(818) 241-0103



<https://swmlp.com>



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