



Mar 23, 2020

Categories:

[Blockchain and Digital](#)

[Assets](#)

[Coronavirus Response](#)

[Team](#)

Authors:

[William T. Repasky](#)

Cashing Checks in the COVID-19 Age

It seems like we are all remote bankers now. With branch operations restricted and teller lines closed in most locations, some old-school banking questions must be considered anew. Congress is considering a coronavirus economic relief package that may include mailing millions of checks to American citizens. Meanwhile, our banking regulators are encouraging us to be flexible in our banking practices, including with how we handle cashing checks for non-customers. We have a recipe for interesting times ahead.

ISSUE: A non-customer appears at your Bank's drive-up window to cash two checks: one appears to be a paycheck from one of the Bank's commercial customers, and the other is from the U.S. government. This example assumes that these are not official or certified checks.

In bringing the checks to your Bank, the non-customer is making a presentment of an item. If the check is written against an account at your Bank, then your commercial customer, the employer, is the check's "Drawer," your Bank is the "Drawee," and the check is commonly referred to as an "on-us" item. But, if the check is drawn on an account at a different financial institution, it is not an on-us item. Of course, there is no contractual relationship with the third-party drawer, and there are no account rules to be considered vis-à-vis that drawer.

The Non-Customer vs. the Bank

Your branch's first decision will be whether to cash these checks for the non-customer. Guiding that decision will likely be your Bank's existing policy respecting non-customer depository transactions, unless your Bank has chosen to temporarily suspend existing policy to accommodate the perceived desires of certain regulators. Regardless, whenever the branch location chooses not to cash the check, your Bank faces little risk of legal liability to the non-customer. Banks generally are free to choose with whom they do business, and your Bank typically does not otherwise owe a legal duty to serve non-customers. Many banks, whose practices allow for the cashing of checks for non-customers, charge the presenting

payee a convenience fee, even for those items where the U.S. government is the drawer. Always remain mindful that your policies, or exceptions you permit to be made to your policies, should be uniformly applied and must never be premised on any type of actual or implied discriminatory grounds.

In the alternative situation, where a bank does cash the check for the non-customer, then that non-customer has no grounds for complaint. This is intuitive, of course, so long as the bank is in fact dealing with the “real” non-Customer, i.e., the check’s true “payee.” If your Bank cashes the check for a thief who stole the check, then it may be liable to the true owner of the check. This scenario can present a liability risk for a claim of conversion (typically arising under the UCC’s § 3-420), under which your Bank can be liable to the real payee for the face amount of the instrument. This is simply the business risk of undertaking such a transaction. To minimize this risk, your Bank’s identification policies must be appropriate, be reviewed with your line staff, and then adjusted as needed to accommodate any changed deposit operational practices your Bank may temporarily institute during the current public health emergency.

Customer Drawer vs. the Bank

Here the employer, who wrote the check—in our example, is one of your Bank’s commercial account holders. If that business has its payroll account with you, then your Bank is the Drawee bank in the transaction. Generally, the drawer’s bank must pay a check properly presented by a person entitled to enforce the instrument. See, UCC’s § 3-501. If a financial institution refuses to cash the item at the CSR’s desk or drive-up window, then it “dishonors” payment. Banks that do so then run the risk of becoming financially liable to their account customers, the Drawer, for “wrongful dishonor.”

However, a bank’s liability arises only when presentment is made by a person entitled to enforce the check in question. All banks are consequently entitled to ensure the identity of the persons with whom they deal, even with “on-us” checks. Among other rules, UCC § 3-501 states, “Upon demand of the person to whom presentment

is made [here the bank], the person making the presentment [here the purported payee] must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.” Without satisfaction of these steps, your Bank may refuse to cash the check without liability for wrongful dishonor of the instrument.

Non-Customer Drawer vs. the Bank

Your Bank is not in contractual privity with non-customers, including drawers of checks presented to the Bank for negotiation. The concept of wrongful dishonor as to your Bank is non-applicable to that drawee, of course. However, should your Bank elect to cash the item and present it for payment through collection channels, then all the normal UCC Article 4 representations and warranties apply, as will the liability risks. The coronavirus changes none of this. This, in turn, reinforces the importance of good customer identification practices by the line staff. Lastly, our experience is that financial institutions classify third-party drawer checks issued by the government as low-risk items on their risk matrix, and we foresee no reasons why the COVID-19 checks should be treated differently. The devil will be in the details, and the congressional legislation, once enacted, will have to be studied.

Even before the shock of coronavirus was upon us, bankers wrestled with the day-to-day concern of what it means to “give reasonable identification.” Typically, most banks’ Account Agreement Rules do not speak directly to that question. However, other internal policies or manuals often set forth identification documents that the financial institution will permit. Generally, such identification documents are classified as “primary” and “secondary.” The state in which your branch operates may have specific direction for customer identification protocol and/or other check cashing rules. Generally then, if in the subjective opinion (read, “good faith and non-discriminatory”) and objective opinion (read, “identification documentation found on the Bank’s list”) of the branch personnel they conclude that the person at the drive-

through window has not presented satisfactory documentation or if the presented documents appear suspicious for any material reason, then the UCC and the Bank's policy most likely has not been satisfied, and your Bank is not required to cash the item.

The need for brevity prevents discussion of the many related issues raised in this check-cashing scenario, such as the application of your Bank's BSA policy to the transaction, whether OFAC verification is appropriate, whether check-cashing fees can be or should continue to be imposed, whether a Suspicious Activity Report filing is required when the non-customer is turned away for suspicious identification documents, etc. Nonetheless, those who have mastered the law on paper checks have a new role to play as banks confront the realities of COVID-19. In conclusion, UCC Articles 3 and 4 dinosaurs unite!

For any banking questions relating deposit operations, whether during the Coronavirus period or afterwards, please contact [Bill Repasky](#) at (502) 779-8184 or brepasky@fbtlaw.com, or any of the lawyers on Frost Brown Todd's [Financial Services Industry Team](#).

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.