Independent Bankers Association of Texas
Compliance Helpline *800.749.4228*

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Compliance Overview
Forged Checks

In Theory
A check without the maker's signature is not considered to be "properly payable" according to the Texas Business & Commerce Code §3.401.

In Practice
A bank may not charge a customer's account for a check that he or she did not sign nor benefit from the proceeds of said check. A forgery is an unauthorized signature. A counterfeit check is treated as a forged check.

Who Pays
Generally speaking, the accountholder's bank (the paying bank) is liable for a check that was charged to an accountholder with the forged signature of the maker. Unless the check was returned by the midnight deadline, the bank of first deposit (the depository bank) is not liable for a check that has a forged signature of the maker.

Accountholder's Duties
The Texas Business & Commerce Code §4.406(f) provides that an accountholder must discover and report unauthorized signatures to a check within one year of the item being made available to the accountholder in a statement (may be shortened based upon the account agreement with the customer). If the accountholder notifies the paying bank within that one-year period, the bank may not charge that item to the accountholder.

Repeat Wrongdoer Rule
For multiple items forged by the same wrongdoer, the Texas Business & Commerce Code §4.406(d)(2) provides that an accountholder must exercise "reasonable promptness" (up to 30 days but may be shortened based upon the account agreement with the customer) to report unauthorized signatures or is precluded from asserting a claim for subsequent items forged by the same wrongdoer following the mailing of the first statement or check reflecting the unauthorized signature.

Key Question
When did the first unauthorized signature occur and when was the first statement sent that included the unauthorized item?

Defenses for Bank Liability

There are generally two potential defenses for a bank from a claim by an accountholder from a claim of an unauthorized signature.

1) Payment was by Agreement – for example, a facsimile signature provided the bank and customer entered into a facsimile signature agreement; or the signor had signing authority under an authorization or power of attorney on file.

2) Ratification – a retroactive adoption of unauthorized signature; for example, there was an item previously forged by a family member and the accountholder has no intention of making a claim, or the accountholder retained the benefit of the transaction and has no intention of making a claim.

Key Questions

Did the accountholder benefit from the transaction? Has the accountholder entered into a settlement agreement with the individual who executed the unauthorized signatures? Has the accountholder, either implicitly or explicitly, allowed the individual to write checks on their behalf?

Best Practice

When the bank is notified that forgeries have occurred on a particular account, the best practice is to require that the account be closed to prevent other forged items from being processed, and to avoid claims of wrongful dishonor if the payment of an unauthorized item results in an otherwise authorized item being returned unpaid.