



Stale Dated Checks

Discussion Outline

March 2017

Disclaimer

The following outline discusses certain UCC sections applicable to dates on checks.

This outline is not intended as legal advice or opinion or any other form of legal or business recommendation to any person.

Readers should consult with their legal counsel as to the application of the UCC provisions to their financial institution or to a particular check.

Part One

UCC Provision on Payment of Stale Dated Checks

For purposes of this outline, the term “stale dated check” means a check which is presented to the paying bank more than six months after the date stated on the check.

- ❖ UCC Article 4-404 states: “A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.” Because an “account” means a deposit or credit account maintained with a bank, this rule applies to a check drawn against either a deposit or credit account. UCC § 4-104(a)(1).
- ❖ Article 4-404 applies to the presentment of a check to a paying bank. In contrast, Article 3 governs the transfer of the check or draft from the depositor to the depository bank (governed by UCC § 3-416) and the transfer of the draft from a payable through or payable at bank to a drawee of a draft (governed by UCC § 3-417). (Note that there may be state law variations in application of the Article 3 transfer/presentment warranties).
- ❖ Article 4-404 provides the paying bank with the option of whether or not to pay a stale dated check, without regard to potential liability for wrongful dishonor if it determines to return the stale dated check, provided the paying bank acts in good faith in making this decision.
- ❖ Article 4-404 does not provide a warranty to the paying bank from a collecting/depository bank that a check is not a stale dated check. Accordingly, Article 4-404 does not give the paying bank a breach of warranty action against the collecting/depository bank if the paying bank pays a check and subsequently determines that the check was a stale dated check.
- ❖ Article 4-404 does not relieve a paying bank of its obligations under UCC to the drawer customer for claims relating to missing endorsement or fraudulent signature on the check, if the paying bank determines to pay the stale dated check.

Part One *(continued)*

UCC Provision on Payment of Stale Dated Checks

- ❖ Article 4-404 does not alter the time frames under the UCC (or Regulation CC) within which the paying bank must return a check to the depository bank, if the paying bank determines to return the stale dated check.
- ❖ Article 4-404 does not eliminate warranties that a presenting bank makes to the paying bank under the UCC, Check 21 Act or Regulation CC when presenting a stale dated check, such as warranties relating to duplicate payment. Accordingly, a paying bank may have other claims under law (other than Article 4-404) relating to a stale dated check.
- ❖ Article 4-404 is not a statute of limitations on the enforceability of a check by the holder of the check against the drawer customer. See *Harik v. Harik*, 861 F.2d 139 (Nov. 10, 1988) (Court stated that Section 4-404 has no effect on drawer's liability to payee.)

Part Two

Relationship of Stale Dated Checks to the Article 4 Presentment/Transfer Warranties

- ❖ The transfer and presentment warranties of UCC Article 4 do not provide a warranty to the paying bank as to whether or not a check is a stale dated check. See Sections 4-207 and 4-208.
- ❖ Under the transfer and presentment warranties of Article 3 and Article 4, the depositing customer and the transferring and presenting banks warrant that they are each a person entitled to enforce the instrument.
- ❖ A bank or its depositing customer can be a person entitled to enforce an instrument, if that person qualifies as a “holder” of the check, but is not otherwise a “holder in due course.”
- ❖ Section 3-301 provides that a "person entitled to enforce" an instrument means “(i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 3-418(d)....”. (§ 3-301)
- ❖ A “holder” is defined as “(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession...”. (§1-201(21)).
 - ❖ There is no concept of stale dated check in the definition of “holder.” One can be a holder of, and thus a person entitled to enforce, a stale dated check.
 - ❖ See also UCC § 3-306 as to a person not having rights of a holder in due course.

Part Two *(continued)*

Relationship of Stale Dated Checks To the Article 4 Presentment/Transfer Warranties

- ❖ In contrast, Section 3-302 provides that a “holder in due course” is a holder that took the instrument
 - “(i) for value,
 - (ii) in good faith,
 - (iii) without notice that the instrument is overdue or has been dishonored.....”. (§3-302).
- ❖ An overdue check may cause a holder to not meet the definition of holder in due course.
- ❖ Section 3-304(a)(2) provides that a check is overdue ninety (90) days after its date.
- ❖ The definitions of “negotiable instrument” and “instrument” do not exclude stale dated checks. (§ 3-104).
- ❖ For the above reasons, the fact that the holder of an overdue check is not a holder in due course does not cause the presenting bank to breach presentment warranties of Article 4 made to the paying bank.