

Fraud in the Banking System

Potential Remedies for Consumers

Carla Sanchez-Adams, Senior Attorney
National Consumer Law Center



Overview

Types of Payment
Fraud and
Applicable Laws

Gaps in Existing
Laws

Dig Deeper

Quick note

- Presentation will not cover all payment types
- Fraud is an umbrella term for both unauthorized payments and what most people call scams, but we call fraudulently induced payments
- Key distinctions:
 - Unauthorized- consumer does not initiate/click button/send payment;
 - Fraudulently induced- consumer sends payment based on some type of fraud scheme/deception/manipulation

Types of Payment Fraud and Applicable Laws

Types of payments

Credit Cards

Electronic Funds Transfers (EFTs)

Wire Transfers

Checks

Crypto

Credit Cards

Credit Cards: Strong Protections

Protections against unauthorized use or errors under the Truth in Lending Act. **15 U.S.C. § 1640** sets out liability for violations.

- Fair Credit Billing Act (FCBA) for errors. **15 U.S.C. § 1666**
 - Unauthorized use is an error, but error resolution under FCBA has burdensome timing and notice requirements
 - Requires written dispute at specific billing errors address within 60 days of charge first appearing on statement
- Unauthorized Use provision. **15 U.S.C. § 1643**
 - No written dispute required, and victim can dispute at any point they learn of the unauthorized use
 - Cardholder can only be liable for \$50 max, but certain conditions must be met

Electronic
Funds
Transfers



Electronic Funds Transfers (EFTs)

Applies to:

- **ACH** transactions (basic electronic payments to/from your bank account, including preauthorized, billpay from your bank, etc.)
- **Debit cards** (bank, nonbank, government)
- **Mobile p2p apps** that store funds (PayPal, Venmo, Cash App)

What law
governs
EFTs?

- Electronic Fund Transfer Act (EFTA), 15 U.S.C. § 1693, et seq.
- Regulation E, 12 CFR § 1005.1 et seq. and Official Commentary to Reg. E.
- EFTA rights cannot be waived. 15 U.S.C. § 1693l (lowercase “l”)

What protection does the EFTA provide?

- Strong protections for unauthorized use (liability limits) and error resolution procedures.
- Unauthorized defined:
 - EFT initiated by someone other than the consumer who does not have actual authority to initiate the transfer AND consumer received no benefit

15 USC § 1693a(12); 12 CFR

§ 1005.6

What is NOT considered unauthorized?

- EFT ***initiated by*** the consumer, even if deceived/scammed into doing it
- EFT by person to whom the consumer furnished the “access device” (i.e., debit card), even if the person exceeds their authority
- EFT “initiated by the financial institution or its employee”
 - Can still be an “error,” just not “unauthorized”

If EFT is
unauthorized,
what then?

Consumer has the right to dispute liability and to have bank investigate under the error resolution procedures.

- Two separate EFTA provisions not to be confused:
 - Limits on liability- 15 USC § 1693g, 12 CFR § 1005.6
 - Error resolution procedure- 15 USC § 1693f(f), 12 CFR § 1005.11(a)

Unauthorized Charges: Liability Limits

- If “access device” lost/stolen:
 - If report w/in 2 biz days of learning of loss: max liability is \$50
 - If report w/in 60 days of statement, max liability is:
 - \$50 + debits **made after 2 biz days** until notice given
 - Up to a maximum of \$500
- If device not lost/stolen:
 - \$0 liability if report w/in 60 days of statement
 - If report > 60 days, liable for all **preventable** charges **after** 60 days

How do you trigger error resolution?

- Consumer must provide notice about the error within 60 days of receiving statement showing the error
- Oral or written notice is sufficient to trigger investigation
 - But bank may require written notice w/in 10 days of the oral notice – bank must provide the “how to and where to” at the time of the oral notice
- Notice must identify the consumer, the account number, explain that an error occurred, and reason for belief that it was an error.

Bank Duty to Investigate Errors

- After notice, bank must investigate the error “promptly”
- Report results w/10 days OR provisionally re-credit account, take up to 45/90 days to investigate
- If alleged error is an unauthorized EFT and investigation is inconclusive, burden is on bank to prove it's authorized. 15 USC § 1693g(b).

Investigation must be “promptly”

What happens after the investigation?

- If error found, correct w/in 1 day.
- If gave provisional credit but found no error, can reverse credit but must give 5 days notice or honor payments for 5 days. This may trigger overdraft or other problems.
- Must give consumer written explanation of findings, notice of right to request documents that the institution relied upon in making its determination
 - If consumer requests documents, must be in “understandable form.”

17

Wire
Transfers



Wire Transfers Excluded from EFTA

- Wire transfers “not designed primarily to transfer funds on behalf of a consumer”
- But Western Union, MoneyGram transfers are covered (though rules slightly different if international)

19

What law applies to wire transfers?

UCC Article 4A as codified in a state

- Generally, UCC not designed as a consumer protection statute, so has very weak protections- no attorney’s fees, no punitive damages,
- UCC 4A does provide some protection for unauthorized wire transfers, but bank can shift liability back to consumer.

Unauthorized wire transfers

Generally, bank bears risk of loss of unauthorized wire transfer, but can shift liability back to consumer in two ways:

- 1. If transfer was done according to principles of agency law (i.e. implied or apparent authority) then it's considered authorized; or
- 2. If the bank, in good faith, used a “commercially reasonable” security procedure that the consumer and bank agreed would be used to verify the authenticity of the wire transfer request, then the request is deemed authorized.

UCC

§4A-202

Security procedures

Wire transfer is deemed authorized by the consumer if the bank, in good faith, verified the authenticity of the instruction with a security procedure agreed to by the consumer. UCC §4A-202

- Did the bank use a “security procedure”?
- Was the security procedure “commercially reasonable”?
- Did the consumer agree to the security procedure?
Did the bank act in good faith?

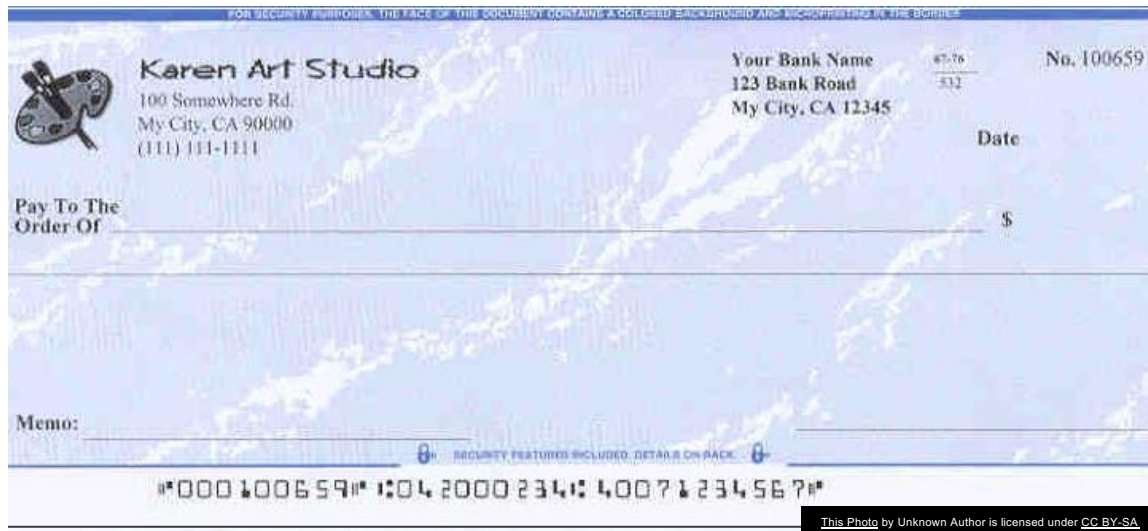
What do you do when you learn of the unauthorized wire?

Dispute with bank ASAP!!!

- Unauthorized wires must be reported to banks within 30 days (if Fedwire) or 90 days if the client wants to recover interest
 - HOWEVER, bank account agreement may shorten this to any period that is not manifestly unreasonable
- Charges from unauthorized wires must be reported to banks within 1 year of notification if the consumer wants to be able to file a lawsuit

What are the remedies under 4A if consumer sues?

- Refund of wire transfer amount if disputed before 1 year from when incident occurs
- Interest on wire transfer amount and refund of wire transfer amount if timely disputed (90 days or what account agreement says)
- No attorney's fees



Checks

What law covers checks?

UCC Articles 3 and 4

- Scenarios:
 - Forged check (all info. forged / just signature forged)
 - Forged indorsement (of payee's signature but other terms intact)
 - Altered check (altered amount / altered payee)

Forged Checks

- Check that is forged or has consumer's forged signature is not properly payable and amount must be recredited.
UCC § 4-401(a); UCC § 4-401 cmt. 1
- A check that is a counterfeit check is treated as a check with a forged drawer's signature.
- Consumer's negligence and/or failure to **timely notify** bank of forgery (as required by bank statement rule) can result in consumer's account not being recredited.

Forged Indorsements

- If payee's signature or the signature of a special indorsee is forged, the check is not properly payable, and the consumer's bank cannot charge the consumer's account. UCC § 4-401 cmt. 1
- In most states, consumers do not have a duty to review their statements and notify their bank **about forged indorsements** (because it would be hard for a consumer to tell a signature by payee was forged) See UCC § 4-406(c)
- BUT consumer still needs to bring suit to recredit on a check with forged indorsement improperly paid within 3 years. UCC §§ 4-111, 4-406 cmt. 5

Altered Checks

- UCC defines an alteration as an “unauthorized change . . . that purports to modify in any respect the obligation of a party,” including “an unauthorized addition of words or numbers.” **UCC § 3-407(a)**
- Consumer only responsible for payment according to original terms of check drawn, not altered terms.
- Protection of recredit ONLY if timely dispute as required by the bank statement rule.
- BUT if the alteration could not reasonably be detected, the usual “properly payable” rules would apply rather than the bank statement rule. **UCC § 4-406 cmt. 1, ¶ 3**

How and when do you notify bank of bad check?

Bank Statement Rule Requires:

- Consumers review their bank statements and notify their bank if the consumer’s signature on a check was forged or unauthorized or if a check has been altered. **UCC § 4-406(c)**
- Consumer has duty to examine statement with “reasonable promptness,” which varies depending on the circumstances. **UCC § 1-205 (pre-2001); UCC § 1-204(2) (2001); UCC § 4-406 cmt. 2 (see last sentence)**
- UCC does not require **written** notice of forged signatures or alterations or specify **how** a consumer must “notify” their bank, but bank account agreement may require that consumers provide written notice of errors, including unauthorized signatures and alterations.

Bank Statement Rule Requirements cont.

- Consumer must notify their bank of the forgery or alteration within 1 year of when statement was made available. **UCC § 4-406(f)**
- Courts split on whether 1 year is from when statement sent or received.
- However, 1 year deadline may be shortened by the account agreement (almost always is), though cannot be manifestly unreasonable. **UCC § 4-103**

Remedies under UCC 3 and 4

- Recredit of check amount if disputed within time frame in account agreement- which can be as short as 30 days- or 1 year if the account agreement doesn't specify
- Suit to recredit amount must be brought within 3 years from when incident occurs.

No attorney's fees



Crypto and EFTA

Some crypto transactions could be protected by the EFTA, but it is still unclear.

Some states have passed specific laws about crypto transactions through crypto kiosks (known as crypto ATMs) limiting fees, limiting daily transaction amounts, or reimbursing fees and/or fraudulently induced amounts

- Passed in 2025: Arkansas, Nebraska, North

Gaps in existing laws

Gaps in the EFTA (EFTs)

- Fraudulently induced EFTs
- Money sent to the wrong person
- Sent an incorrect amount of money

Gaps in UCC 4A (wires)

- Fraudulently induced wire transfers
- Transfers that may not be authorized because initiated through consumer's account using consumer's info. by fraudster but banks treat as authorized because a security procedure (such as one-time passcode or multifactor authentication) was used

Gaps in UCC 3 and 4 (checks)

- Contract modification of certain terms, including time frame to dispute/provide notice (some court cases find 14 days not manifestly unreasonable for sophisticated business consumer; others say 20-60 days all permitted)
- Difficulty in learning altered payee or forged indorsement; but easier if amount altered or check forged.
- Banks may get hung up on trying to recover from another bank before

Dig Deeper

Identifying Actionable Transfers

Even if the transaction causing the ultimate “loss” is not covered by the EFTA (e.g., wire transfer or transfer from business account), does a previous transfer fall under EFTA?

- Examples:
 - Unauthorized savings to checking transfer (internal transfers are necessarily EFTs) followed by an unauthorized wire transfer
 - Personal to business transfer (likely an EFT if linked accounts with same bank) followed by an external transfer from business account

Getting the Whole Story

Always ask for all the facts:

- Clients are embarrassed and ashamed and will downplay involvement in “scams”
- Distinction under the EFTA for those who were manipulated/deceived into providing account access vs. those manipulated/deceived into sending money
- Could be the difference between a winning case vs. a losing case
- Did client receive a code and enter it, or type in an amount and hit an OK button? Was consumer deceived into giving up some sort of information, but didn't click links or push buttons to make transfer happen?

