UCC 3 & 4

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Presentation Content

THIS PRESENTATION IS DESIGNED TO PROVIDE ACCURATE AND AUTHORITATIVE INFORMATION REGARDING ITS SUBJECT MATTER.

IT IS PRESENTED WITH THE UNDERSTANDING THAT THE PRESENTER IS NOT RENDERING LEGAL, ACCOUNTING, OR OTHER PROFESSIONAL SERVICES.

IF LEGAL ADVICE OR OTHER EXPERT ASSISTANCE IS REQUIRED, THE SERVICES OF A COMPETENT PROFESSIONAL PERSON SHOULD BE SOUGHT.
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  – Identified Person in Possession
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  – Value
  – In Good Faith
  – Without Notice of
    • Overdue or Dishonored
    • Unauthorized Signature
    • Any Claim
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HOLDER IN DUE COURSE

• Holder In Due Course Takes Free of:
  – All Claims to the Instrument
  – All Defenses
• Holder Not In Due Course Takes Subject to:
  – Claims to the Instrument
  – Defenses
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HOLDER IN DUE COURSE

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    • Personal Benefit of Fiduciary
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REASONABLE COMMERCIAL STANDARDS

- Ordinary Care
- Other Similarly Situated Banks
- Written Policies and Procedures
- Following Policies and Procedures
- Employee Training

CHECK FRAUD SCAMS
FORGED DRAWER'S SIGNATURE

- Drawer's Signature
  - Sign Drawer’s Name
  - Sign Any Name
  - Forgery on Multiple Signatures
  - Facsimile Signature
- Reasonable Commercial Standards/Ordinary Care
  - Signature Verification – All
  - Signature Verification – Threshold
  - Random Sample
  - Fraud Detection System
  - Parameter Settings

FORGED ENDORSEMENT

- Forged Endorsement
  - Sign Payee’s Name
  - Stamp Payee’s Name
  - Forge One Name on Joint Payee Check
  - For Deposit Only
  - No Endorsement
- Reasonable Commercial Standards/Ordinary Care
  - Cashing Checks
  - Corporate Check Deposited
  - ATM Deposits
  - Notice of Breach of Fiduciary Duty

UNAUTHORIZED SIGNATURE AND ENDORSEMENT

- Ratification
  - After-the-fact
  - Had Knowledge
  - Applies to All Checks After Ratification
- Negligence Contributing to Forged Signature
  - Substantially Contributes
  - Ordinary Care – Reasonable Commercial Standards
  - Comparative Negligence
- Customer’s Duty to Examine Statements and Report Forgery
  - Bank Makes Statement Available
    - Statement Contains Items or Description of Items
    - Report Unauthorized Signature or Alteration
    - Bank Exercised Ordinary Care
    - Comparative Negligence
UNAUTHORIZED SIGNATURE
AND ENDORESEMENT

- Conversion of a Check
  - Exercise of Possession Property of Another
  - Payee That Did Not Receive Delivery Proclaimed
  - No Claim by Drawer Against Drawee
  - Recovery May Not Exceed Interest in the Instrument
- Impostor and Pseudocopy
  - Drawn Induced to Issue Check
  - Intent Is Not to Have Person Named to Have Interest
  - Any Person in Possession is Holder
  - Endorsement is Effective
  - Endorsement Substantially Similar
- Employer's Responsibility for Fraudulent Endorsement by Employee
  - Employer's Endorsement
  - Employee has Responsibilities
  - Endorsement Substantially Similar
  - Comparative Negligence

COUNTERFEIT CHECKS

- Item Under the UCC
  - Not Properly Payable
  - Subject to Deadlines
  - No Warranty
- Counterfeit Cashier's Checks
- Treasury Checks
  - Duplicate Check Numbers
  - Out of Sequence Numbers
  - Easy to Create
  - Positive Pay

ALTERATIONS

- Payee Information
- Amount
- Postdated Check
- Presentment Warranty
LESS CASH DEPOSITS

• Deposit Part, Withdraw Part
• Oftentimes Stolen or Counterfeit
• Corporate Checks
• Counter Deposits Slips
• Establish Limits
• No Less Cash for New Accounts

CHECK KITING

• Kiting Types
  – The Payday Kite
  – Criminal Kiting for Dollars
  – Corporate Kite
• Multiple Banks
• One-Bank Kite
• Your Best Customers
• Account Relationship Officer

CHECK 21 FRAUD ISSUES

• Physical Fraud / Security Features
• Physical Features / Increased Fraud
• Signature Verification
• Impact on Fraud Detection Systems
  – Duplicates
  – Original and Substitute Check
  – Companion Pull
• Void on Check
• Funds Availability
CHECK 21 FRAUD ISSUES

- Fraudulent Recredit Claim
- Over the Counter Presentation of Substitution Check
- Manipulation of Image
- Creation of Duplicates
- Presentation of Original and Substitute Check
- Internal Fraud

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