

## OPERATIONS: STOP PAYMENTS ON CASHIER'S CHECKS

**Question:** *From time to time, we have requests to issue stop payments on cashier's checks. It is our understanding that there are exceptions where stop payments are allowed. The instance we had today involved a fraudulent transaction which the customer discovered after the cashier's check was placed in the mail.*

**Answer:** Because a customer got scammed into sending a cashier's check is not a reason to put a stop payment on said check and a holder in due course would have a claim for wrongful dishonor.

Under the Tx. B&CC, a cashier's check is NOT subject to stop payment! The issuing bank is liable for payment. Here is the text of the law from the Bus. & Com. Code:

**...snip**

*Sec. 3.411. REFUSAL TO PAY CASHIER'S CHECKS, TELLER'S CHECKS, AND CERTIFIED CHECKS.*

*(a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.*

*(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.*

*(c) Expenses or consequential damages under Subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because:*

- (1) the obligated bank suspends payments;*
- (2) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument;*
- (3) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument; or*
- (4) payment is prohibited by law.*

Source [link](#).

Any bank, check casher, etc. would have a claim against your bank as the holder in due course under §3-302.

*This publication is designed to provide accurate and authoritative information of the subject matter covered. It is provided with the understanding that the publisher is not engaged in the rendering of legal, accounting, or other professional advice - from a Declaration of Principles adopted by the American Bar Association and a Committee of Publishers and Associations.*

## Operations: Stop Payments on Cashier's Checks

When the check is presented for payment, you can attempt to contact the depository bank to explain the situation and see if there are any funds left to recover (probably not), but they are under no obligation to help you. Ultimately, this is most likely an expensive lesson learned by your customer.

Section §3.312 of the Tx B&CC applies to cases in which a cashier's check, teller's check, or certified check is lost, destroyed, or stolen. Under §3.312, a claim may be asserted only by the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check.

The claim may be made by communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check. ("Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.) The communication must be received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid. The claimant must provide reasonable identification if requested by the obligated bank. Additional requirements (such as requiring the posting of a bond or other form of security on the claimant to assert a claim) may not be imposed on the claimant by the obligated bank.

The communication must contain, or be accompanied by, a "declaration of loss" of the claimant with respect to the check. A "declaration of loss" is a written statement (usually an affidavit) made under penalty of perjury to the effect that:

- 1) the declarer lost possession of the check;
- 2) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check;
- 3) the loss of possession was not the result of a transfer by the declarer or a lawful seizure; and
- 4) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

Delivery of the declaration of loss is a warranty of the truth of the statements made in the declaration. If the claimant falsely submits a declaration of loss, a holder of the check, unable to obtain payment because of the declaration of loss, would have a cause of action against the claimant for breach of this warranty.

A claim asserted as set forth above, has no legal effect until it is enforceable at the later of:

- (1) the time the claim is asserted; or
- (2) the 90th day following the date of the check in the case of a cashier's check or teller's check, or the 90th day following the date of acceptance, in the case of a certified check.

Because a depository bank cannot be sure whether a claim under Section §3.312 has been asserted on a teller's check, cashier's check, or certified check, it should not take one of these checks if it cannot present the check for payment before the 90th day following the date of the cashier's check or teller's check, or the 90th day following the date of acceptance in the case of a certified check. If a depository bank takes such a check after the applicable 90-day period and a valid claim has been asserted, payment will be excused when it presents the check to the obligated bank.