PUBLICATION UPDATE

Route to: ☐ ____ ☐ ____ ☐ ____ ☐ ____
☐ ____ ☐ ____ ☐ ____ ☐ ____

Negotiable Instruments Under the Uniform Commercial Code

Publication 613 Release 91 August 2024

HIGHLIGHTS

- This release contains updates and revisions to provide the current status of the law, including developments in statutory, and regulatory law. The release includes discussion of several important recent developments and adds new and revised material on a number of significant topics.

Chapter 7—Obligations of Drawees of Drafts and Acceptors of Drafts; Certification of Checks.

Definition of negotiable instrument. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either. *Crossman v. RBS Citizens, N.A.*, 2023 Vt. Super. LEXIS 84 (Vt. Super. 2023). Negotiable instruments are definite promises to pay definite amounts at definite times; the contract in question was not. *Corso v. Concordia Healthcare USA, Inc.*, 2023 U.S. Dist. LEXIS 50239 (D. Del. Mar. 24, 2023). See § 7.01[1]. A promissory note generally constitutes a type of "negotiable instrument" governed by Article 3 of the Colorado UCC. The core requirement is an unconditional promise to pay a fixed amount of money. *Together Real Estate Holdings, LLC v. Roberts (In re Roberts)*, 2023 Bankr. LEXIS 705 (Bankr. D. Colo. Mar. 17, 2023). See § 7.09.

Definition of check. Plaintiff failed to show that the certificates at issue were "checks" within the context of the UCC and thus they fell outside the scope Georgia law. None of the certificates contained instructions to

pay; the language did not amount to an order or instruction to pay but instead described a promise to pay. *Thorpe v. Bank of Am.*, 2022 U.S. Dist. LEXIS 127406 (N.D. Ga. June 7, 2022). See § 7.10.

Loan applications. Federal prosecutors alleged that defendants conspired to make false statements to FDIC-insured banks regarding the source and purpose of foreign wire transfers to open and maintain accounts at those institutions, in violation of 18 U.S.C. § 1014. Defendant maintained that § 1014 applies only to lending-related transactions. *United States v. Michel*, 2024 U.S. Dist. LEXIS 67018 (D.D.C. Apr. 12, 2024). See § 7.10.

Chapter 9—Presentment, Dishonor, Notice and Protest. *Duplicate presentment fraud.* "Duplicate presentment fraud" occurs when the holder of a check deposits the check remotely with one bank via a mobile device, and then deposits the physical check again with a second bank. If the second bank makes funds available to the payee before the check is dishonored by the paying institution, the second bank may suffer a loss. Federal Reserve regulations allow the second bank to seek indemnification from the bank that accepted the remote deposit, if certain conditions are met. *Garfield-Dan Ryan Currency Exch., Inc. v. Citibank, N.A.*, 2024 U.S. Dist. LEXIS 83725 (N.D. Ill. May 8, 2024). See § 9.01[1].

Letters of credit. The majority of jurisdictions, including New York, have adopted a rule of "strict compliance," which requires that papers, documents and shipping directions must be followed as stated in the letter. *Milky Whey, Inc. v. HSBC Bank USA, N.A.*, 2024 U.S. Dist. LEXIS 61598 (S.D.N.Y. Mar. 31, 2024). See § 9.06.

Risk for a counterfeit check. If a bank customer, such as a law firm, deposits a check drawn on a foreign bank and then spends or transfers the funds in the mistaken belief that the check has cleared, there is the potential for loss if the check is later revealed to be counterfeit. Cases are discussed at § 9.27.

Chapter 22—Credit Cards. *Sovereign immunity.* The Fair Credit Reporting Act effected a clear waiver of the federal government's sovereign immunity where 15 U.S.C.S. §§ 1681n and 1681o authorized consumer suits for money damages against any person who willfully or negligently failed to comply with 15 U.S.C.S. § 1681s-2's directive, and 15 U.S.C.S. § 1681a defined the term person to include any governmental agency. *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 144 S. Ct. 457, 461 (2024). See § 22.02[3].

Limitations on fees. In March 2024, the CFPB finalized a rule to cut excessive credit card late fees by closing a loophole exploited by large card issuers. The final rule adopts a threshold of $8 and ends automatic inflation adjustments for that amount for issuers that have 1 million or more open accounts. These issuers account for more than 95% of total outstanding credit card balances. A

federal district court issued an injunction to pause implementation of the new rule in response to business and banking organizations that argued the rule violated certain federal statutes. See § 22.17[3].

Rewards programs. In May 2024, the CFPB issued a report finding that consumers encounter numerous problems with credit card rewards programs. The issues include vague or hidden conditions that keep consumers from receiving rewards; companies that devalue rewards; redemption of earned benefits; revocation of previously earned rewards. See § 22.19.

Matthew Bender provides continuing customer support for all its products:

- **Editorial assistance—please consult the "Questions About This Publication" directory printed on the copyright page;**
- **Customer Service—missing pages, shipments, billing or other customer service matters, +1.800.833.9844.**
- **Outside the United States and Canada, +1.518.487.3385, or fax (+1.800.828.8341) or email (international@bender.com);**
- **Toll-free ordering (+1.800.223.1940) or visit www.lexisnexis.com/BrowseUs.**

LexisNexis®

www.lexis.com

Copyright © 2024 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 613, Release 91, August 2024

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

FILING INSTRUCTIONS

Negotiable Instruments Under the Uniform Commercial Code

Publication 613 Release 91 August 2024

Check As Done

- ☐ 1. Check the Title page in the front of your present Volume 2. It should indicate that your set is filed through Release Number 90. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 90, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- ☐ 2. This Release Number 91 contains only White Revision pages.
- ☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

Check As Done	*Remove Old Pages Numbered*	*Insert New Pages Numbered*

For faster and easier filing, all references are to right-hand pages only.

VOLUME 2

Revision

☐	Title page thru xvii	Title page thru xvii
☐	7-1 thru 7-9	7-1 thru 7-10.1
☐	7-31 thru 7-39	7-31 thru 7-41
☐	9-5	9-5 thru 9-6.1
☐	9-31 thru 9-37	9-31 thru 9-38.1
☐	9-49	9-49 thru 9-50.1
☐	9-95	9-95 thru 9-105

VOLUME 2A

Revision

☐	Title page	Title page
☐	App. 16-A-1	App. 16-A-1 thru App. 16-A-2.1
☐	App. 16-A-21 thru App. 16-A-27	App. 16-A-21 thru App. 16-A-33

VOLUME 2B

Revision

☐	Title page	Title page
☐	App. 20-A-7 thru App. 20-A-11	App. 20-A-7 thru App. 20-A-9
☐	22-1 thru 22-7	22-1 thru 22-8.1
☐	22-63	22-63 thru 22-67
☐	App. 22-B1-73 thru App. 22-B1-75	App. 22-B1-73 thru App. 22-B1-76.1
☐	App. 22-B1-83 thru App. 22-B1-89	App. 22-B1-83 thru App. 22-B1-89
☐	App. 27-B-60.1 thru App. 27-B-60.3	App. 27-B-60.1 thru App. 27-B-60.4(1)
☐	App. 27-B-60.13 thru App. 27-B-60.15	App. 27-B-60.13 thru App. 27-B-60.15
☐	TC-1 thru TC-105	TC-1 thru TC-107
☐	I-1 thru I-73	I-1 thru I-73

FILE IN THE FRONT OF THE FIRST VOLUME
OF YOUR SET

To order missing pages log on to our self service center, www.lexisnexis.com/printcdsc or call Customer Services at 1 (800) 833-9844 and have the following information ready:

(1) the publication title;
(2) specific volume, chapter and page numbers; and
(3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?
FIND THEM AT www.lexisnexis.com/printcdsc

Use the search tool provided to find and download missing filing instructions, or sign on to the Print & CD Service Center to order missing pages or replacement materials. Visit us soon to see what else the Print & CD Service Center can do for you!

www.lexis.com

Copyright © 2024 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 613, Release 91, August 2024

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.