Dual-Signature Checking Accounts

Small businesses, non-profit charities, partnerships, co-executors and co-trustees sometimes use dual-signature checking accounts as an internal accounting control procedure. If not implemented carefully, these accounts can make banks liable when the customer's personnel fail to comply with the customer's internal dual authorization requirement. For this reason, some banks simply refuse to open dual-signature accounts, which frustrates customers and bankers alike. There are several ways banks accommodate these customers' needs without undue risk.

Modern-Day Check Processing and the UCC

To understand the issues involved requires a basic understanding of modern-day check processing and applicable sections of the Uniform Commercial Code (UCC). Until about forty years ago, banks manually verified all check signatures against account signature cards where requirements for multiple signatures were noted. As the number of checks increased and customers demanded faster transactions, check processing became automated. Today, automated systems process hundreds of checks per minute. It is not feasible to verify signatures on all these checks. Nor is signature verification an effective fraud prevention method because people's signatures change over time and high resolution scanning technology makes forging signatures easy and undetectable. Today, most banks use risk management programs and fraud filters to identify fraudulent checks, and only suspect checks are manually inspected.

Acknowledging industrywide acceptance of automated check processing, the UCC was revised to provide that "ordinary care" and "reasonable commercial practices" for banks processing checks by automated means do not require manual examination of checks if the bank follows prescribed procedures and does not vary unreasonably from general banking practices.[1] Accordingly, a bank that pays a dual-signature check with only one signature because the bank's automated check processing system did not verify there were two signatures likely will not be liable to the customer for negligence for failure to exercise ordinary care or reasonable commercial practices.

However, the UCC also provides that a bank may only charge the account of a customer for checks that are "properly payable," and that a check is properly payable if it is "authorized by the customer" and is in accordance with an agreement between the customer and bank.[2] The UCC further provides that, "[i]f the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking."[3] While not necessarily negligent, a bank that pays a dual-signature check with only one signature is strictly liable for re-crediting the customer's account because the check is treated as having an "unauthorized signature" and is not "properly payable" and cannot be charged against the customer's account.

Product Options

There are several ways banks mitigate the risks associated with multiple signature checks. One way is by not offering dual-signature accounts, which may cost the bank some business. Another solution is offering a dual-signature checking account as a special product with procedures to manually inspect all checks written on the account. Additional fees are often charged to compensate for the manual processing and increased liability risk.

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[1] UCC § 3-103.
[2] UCC § 4-401.
[3] UCC § 3-403.

Other banks offer dual-signature accounts where the account contract clearly indicates that payment is authorized by a single signature, but that the face of the customer's checks will have two signature lines to accommodate the customer's internal dual-authorization procedures. According to one UCC expert, "[t]his type of provision should be enforceable under the freedom-of-contract principle codified in UCC § 4-103(a),"[4] which provides that the effect of the UCC provisions discussed above "may be varied by agreement" as long as the agreement does not limit a bank's responsibilities to act in good faith and exercise ordinary care. This type of agreement varies the effect of the UCC provisions discussed above such that a two-signature check signed by one person will be "authorized by the customer" and "properly payable" by the bank. The following statements should be included in the agreement:

- the bank processes claims on an automated basis, based on information encoded on checks;
- automated processing reduces costs, to the benefit of all bank customers;
- because of automated processing, the bank cannot compare signatures or determine that a dual-signature requirement is being violated;
- any dual-signature requirement is a matter that is internal to the customer, whether the bank knows of it or not;
- the customer cannot assert a claim against the bank for permitting a transaction that violates the customer's dual-signature requirement; and
- if the customer wants the bank to sight-review presented checks for violation of the customer's dual-signature requirement, it must give specific notice to the bank and pay a fee for the service.[5]

A checking account with "positive pay" features is yet another option offered by many banks. Positive pay is a fraud prevention tool where one customer representative has authority to sign checks, and another customer representative has authority to approve checks presented to the bank for payment. Checks not approved by the second individual upon presentment to the bank are not paid by the bank. Additional fees are often charged for these accounts to compensate for the additional systems and procedures and added liability risk.

Takeaways

One takeaway is that there are a variety of products offered by different banks, and customers should shop around to find the products or services that most closely align with their needs and preferences. Another takeaway is that banking laws and regulations should not treat banks as utilities that are required to offer commodity products and services. For banking products and services to evolve with technological advances and modern business practices, banking laws and regulations must encourage flexibility, creativity, and entrepreneurial innovation.

For more information about the dual-signature account matters discussed in this article, contact Mel Tull, VBA General Counsel, at mtull@vabankers.org or (804) 819-4710.

This article has been prepared for informational purposes only and is not legal advice.

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[4] See 2 Clark and Clark, *The Law of Bank Deposits, Collections and Credit Cards* (3d ed. 2014), § 10.02[2], p.10-30, for more information about this type of contractual provision.

[5] *Id.* at p. 10-31.