

Consumer Advisory

Writing a Check: Understanding Your Rights

You already know in many ways how your checking account works. You write paper checks, withdraw money from an automated teller machine (ATM), or pay with a check card. Your paycheck might go by “direct deposit” into your account, or you might deposit checks at a bank’s teller window or ATM.

But recently, you might have noticed changes in your checking account. The checks you write might be “clearing”—the money is being taken out of your account—faster. Some checks you write might be listed as “ACH” transactions on your bank statement. Instead of receiving canceled checks back from your bank, you might be receiving “substitute checks.”

What’s happening?

Checks are being handled in some new ways these days, and those changes can affect how you handle your money.

- Some checks are now processed electronically, and the original paper checks are destroyed.
- Checks can be processed faster, and your checks might be clearing faster.
- You might not be able to get your original checks—or even copies of your checks—back from your bank.

Electronic processing may be even more common in the future, but one thing will not change: you will continue to have the right to dispute any mistake and clear up problems with your account, whether you have the original check or not.

Does it matter if my check is processed faster?

Traditionally, when you write a check, the paper check is transported from bank to bank before the money is taken out of your account. Now that many checks are being processed electronically, money may be taken out of your account faster. To avoid bounced checks and related fees, you must be sure you have enough money available in your account to cover each check when you write it (and when you withdraw funds at an ATM).

Although electronic processing might mean that the check you write clears faster, the funds that you deposit might not be available to you any faster. A federal rule governs the maximum time your bank can wait before making deposited funds available to you, and that rule hasn’t changed. That’s why you need to know exactly how much money is available in your account at the moment you write a check. For example, money from a check you deposit on a Monday might not be available until the following week. So, if you count on that deposit when you write a check on Tuesday to pay a bill, that check might bounce.

Also, be sure that the available account balance you’re counting on does not include funds from your bank’s “overdraft protection” program. It’s possible that an account balance statement could include an overdraft protection amount, which could lead you to believe you have more money in your account than you really do.

What are the different ways my check can be processed now?

Remember, the way your check is processed affects how fast your check clears, and you have only limited ability to control the way your check is processed.

A check you write can be processed in several ways:

- Under the **traditional method** for processing paper checks, the check you write to a merchant (for example) is deposited by the merchant at the merchant's bank, and the original paper check is then shipped from bank to bank. This process could take a few days, and it may look something like this:

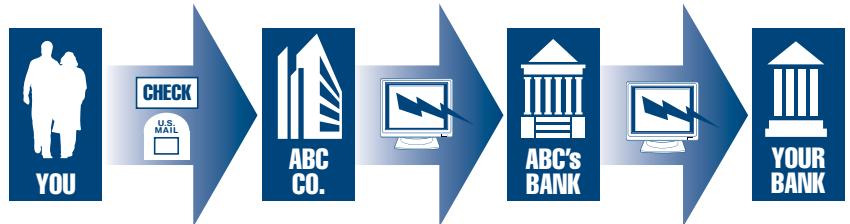


- A new federal law known as the “**Check 21 Act**” makes it easier for banks to create and send electronic images of paper checks. Even before Check 21, banks were allowed to process checks electronically when all the banks in the process agreed. Under Check 21, any bank may create a special paper copy—called a “substitute check”—using images of the front and back of an original check. If any bank in the process requires a paper check, another bank can send a substitute check in place of the original. (See www.occ.gov/consumer/check21.htm.) The process may look like this:



- Under an **electronic fund transfer (EFT)** process, a merchant or other party (such as a utility company) can change your paper check into an electronic “debit” that is paid from your checking account. The debit may be paid from your account much faster than if a check had been processed in the traditional way.

- One kind of EFT uses the Automated Clearing House (ACH) network, which a merchant or company can use to convert a paper check into an electronic payment. For example, if you mail a check to your credit card company, the company may convert that check to an ACH payment. The company generally would destroy the original paper version and keep only an electronic image of the check. The process may look like this:



- Sometimes, a paper check can be turned into an ACH transaction right in front of you. For example, when you write a check at a retail store, the clerk might scan the information from the check, stamp your check “void,” hand it back to you, and then send the payment information to the merchant's bank electronically. The process may look like this:



Generally speaking, you will not be held responsible for processing errors or transactions that you did not authorize. Different laws and rules apply, depending on how your check was processed.

- Under **traditional** check-processing procedures, you won't generally be held responsible for payments you didn't authorize. The applicable law is a state law called the Uniform Commercial Code (UCC). Your precise rights, the length of time you have to file a claim, and the way you can file a claim may differ depending on how the UCC was adopted in the relevant state.
- The UCC also applies if a **substitute check** is involved, but so does the Check 21 Act. Check 21 provides for a special refund called an "expedited recredit" that applies only if you received a substitute check. To obtain this refund, you should contact your bank, generally within 40 days of the date your bank provided you with the substitute check or the date of the bank statement showing the problem. You must submit your claim in writing, along with information necessary for the bank to investigate. If the bank determines that your claim is valid, the bank must credit your account by the end of the next business day. If 10 business days have passed since you filed the claim, and the bank has not determined whether the claim is valid, the bank must credit your account for at least part of the amount in question while it continues to investigate.
- **Electronic payments**, including those involving ACH (such as a converted check), are governed by the federal Electronic Fund Transfer Act and Regulation E. You generally have 60 days from when you received the bank statement showing the error to notify your bank about the problem. Within 10 days after you notify the bank, the bank is required to investigate its records for an error; if the matter is still unresolved after 10 days, the bank must temporarily credit your account for at least a portion of the disputed amount and continue investigating for 45 days.

What if I made the payment another way?

Rules that govern EFT payments will apply if you make an ATM withdrawal or if you use a debit card (check card), debit card number, or your checking account number without writing a paper check.

You could also make a payment through a "demand draft" or "remotely created check" (RCC) by authorizing someone to withdraw money from your account without your signature. For example, you could authorize your credit card company by phone to make an RCC for payment on your credit card account before the monthly deadline. The UCC applies to RCCs. While RCCs can be useful, you must trust the person or company you allow to create an RCC, because the RCC does not include your signature, and proving that you did not authorize the payment could be difficult.

What if I can't resolve a problem with my bank?

Contact your bank first. You might also contact the recipient of the payment. If you are unable to resolve the problem through the bank, and a national bank is involved—a national bank has the words "National," "National Association," or "N.A." in its official name—you may contact the Customer Assistance Group at the Office of the Comptroller of the Currency toll-free at 1-800-613-6743 or by going online to www.helpwithmybank.com.

For complaints about state-chartered financial institutions, contact the relevant state attorney general or state banking department. Links to state attorneys general can be found on the Web site of the National Association of Attorneys General at www.naag.org. The Conference of State Bank Supervisors lists state banking department links at www.csbs.org/links/statelinks.asp. You may also contact

the Federal Reserve Board at www.federalreserve.gov/consumerinfo.htm, regarding state banks that are members of the Federal Reserve System; or the Federal Deposit Insurance Corporation at www.fdic.gov/consumers/consumer/index.html, regarding state banks that are not members of the Federal Reserve System.

For complaints about nationally chartered savings banks and thrifts, contact the Office of Thrift Supervision at www.ots.treas.gov.

If you have a problem with the recipient of your check—an entity other than a financial institution, such as a department store—contact the Federal Trade Commission (FTC) toll-free at 1-877-FTC-HELP (1-877-382-4357). More information about contacting the FTC is on the Web at www.ftc.gov.