



Banking And Lending Law

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Background

The law governing banks, bank accounts, and lending in the United States is a hybrid of federal and state [STATUTORY](#) law. Consumers and businesses may establish bank accounts in banks and savings associations chartered under state or federal law. The law under which a bank is chartered regulates that particular bank. A mix of state and federal law, however, governs most operations and transactions by bank customers.

Article 3 of the [UNIFORM COMMERCIAL CODE](#), as adopted by the various states, governs transactions involving negotiable instruments, including checks. Article 4 of the Uniform [COMMERCIAL CODE](#) governs bank deposits and collections, including the rights and responsibilities of [DEPOSITORY](#) banks, collecting banks, and banks responsible for the payment of a check. Other provisions of the Uniform Commercial Code are also relevant to banking and lending law, including Article 4A (related to funds transfers), Article 5 (related to letters of credit), Article 8 (related to [SECURITIES](#)), and Article 9 (related to secured transactions).

A number of regulations govern a check when it passes through the Federal Reserve System. These regulations govern the availability of funds available to a depositor in his or her bank account, the delay between the time a bank receives a deposit and the time the funds should be made available, and the process to follow when a check is dishonored for non-payment. Federal law also provides protection to bank customers. Prompted by banking crises in the 1930s, the federal government established the Federal Deposit Insurance Corporation, which insures bank accounts of individuals and institutions in amounts up to \$100,000.

A number of laws have been passed affecting banks, banking, and lending. A brief summary of these is as follows:

- National Bank Act of 1864 established a national banking systems and chartering of national banks.
- Federal Reserve Act of 1913 established the Federal Reserve System. Banking Act of 1933 ([GLASS-STEAGALL ACT](#)) established the Federal Deposit Insurance Corporation (FDIC), originally intended to be temporary.

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- Banking Act of 1935 established the FDIC as a permanent agency.
- Federal Deposit Insurance Act of 1950 revised and consolidated previous laws governing the FDIC.
- Bank **HOLDING COMPANY** Act of 1956 set forth requirements for the establishment of bank holding companies.
- International Banking Act of 1978 required foreign banks to fit within the federal regulatory framework.
- Financial Institutions Regulatory and Interest Rate Control Act of 1978 created the Federal Financial Institutions **EXAMINATION** Council; it also established limits and reporting requirements for insider transactions involving banks and modified provisions governing transfers of electronic funds.
- Depository Institutions Deregulation and Monetary Control Act of 1980 began to eliminate ceilings on interest rates of savings and other accounts and raised the insurance ceiling of insured account holders to \$100,000.
- Depository Institutions Act of 1982 (Gar-St. Germain Act) expanded the powers of the FDIC and further eliminated ceilings on interest rates. Competitive Equality Banking Act of 1987 established new standards for the availability of expedited funds and further expanded FDIC authority.
- Financial Institutions Reform, Recovery, and Enforcement Act of 1989 set forth a number of reforms and revisions, designed to ensure trust in the savings and loan industry.
- Crime Control Act of 1990 expanded the ability of federal regulators to combat [FRAUD](#) in financial institutions.
- Federal Deposit Insurance Corporation Act of 1991 expanded the power and authority of the FDIC considerably.
- Housing and Community Development Act of 1992 set forth provisions to combat [MONEY LAUNDERING](#) and provided some regulatory relief to certain financial institutions.
- Riegle Community Development and Regulatory Improvement Act of 1994 established the Community Development Financial Institutions Fund to provide assistance to community development financial institutions.
- Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 permitted bank holding companies that were adequately capitalized and managed to acquire banks in any state.
- Economic Growth and Regulatory Paperwork Reduction Act of 1996 brought forth a number of changes, many of which related to the modification of regulation of financial institutions.
- Gramm-Leach Bliley Act of 1999 brought forth numerous changes, including the restriction of disclosure of nonpublic customer information by financial institutions. The Act provided penalties for anyone who obtains nonpublic customer information from a financial institution under false pretenses.

Numerous federal agencies promulgate regulations relevant to banks and banking, including the Federal Deposit Insurance Corporation, Federal Reserve Board, General Accounting Office, National **CREDIT UNION** Administration, and Treasury Department.

The ability for bank customers to engage in electronic banking has had a significant effect on the laws of banking in the United States. Some laws that govern paper checks and other traditional instruments are difficult to apply to corresponding electronic transfers. As technology develops and affects the banking industry, banking law will likely change even more.

Banking Transactions

Checks and Other Negotiable Instruments

Article 3 of the Uniform Commercial Code, drafted by the National Conference of Commissioners on Uniform State Laws and adopted in every state except Louisiana, governs the creation and transfer of

negotiable instruments. Since checks are negotiable instruments, the provisions in Article 3 apply. Because banks are lending institutions that create notes and other instruments, Article 3 will also apply in other circumstances that do not involve checks.

A person who establishes an account at a bank may make a written order on that account in the form of a check. The account holder is called the drawer, while the person named on the check is called the payee. When the drawer orders the bank to pay the person named in the check, the bank is obligated to do so and reduce the drawer's account by the amount on the check. A bank ordinarily has no obligation to honor a check from a person other than a depositor. However, both the drawer's and payee's banks generally must honor these checks if there are sufficient funds to cover the amount of the check. The payee's bank must generally honor a check written to the order of the payee if the payee has sufficient funds to cover the amount of the check, in case the drawer of the check does not have sufficient funds. A drawer may request from the bank a [CERTIFIED CHECK](#), which means the check is guaranteed. Certified checks must be honored by any bank, and, as such, are considered the same as cash.

A customer's bank has a duty to know each customer's signature. If another party forges the signature of the customer, the customer is generally not liable for the amount of the check. Banks may recover from the forger but may not generally recover from the innocent customer or a third person who in [GOOD FAITH](#) and without notice of the [FORGERY](#) gave cash or other items of value in exchange for the check. Drawers have the right to inspect all checks charged against their accounts to ensure that no forgeries have occurred. Drawers also have rights to stop payment on checks that have been neither paid nor certified by their banks. This is done through a [STOP PAYMENT ORDER](#) issued by the customer to the bank. If a bank pays a check notwithstanding the stop payment order, the bank is liable to the customer for the value of the check.

Many of the rules applying the checks apply to all negotiable instruments. Banks that serve as lending institutions routinely exchange loans for promissory notes, which are most likely negotiable instruments. These instruments are considered property and may be bought and sold by other entities.

Checking Accounts

Article 4 of the Uniform Commercial Code governs the operation of checking accounts, though several federal laws supplement the provisions of Article 4. The provisions of this uniform law define rights regarding bank deposits and collections. It governs such relationships as those between a depository bank and a collecting bank and those between a payor bank and its customers.

Funds Transfers

Article 4A of the Uniform Commercial Code governs methods of payment whereby a person making a payment (called the "originator") transmits directly an instruction to a bank to make a payment to a third person (called the "beneficiary"). Article 4A covers the issuance and acceptance of a payment order from a customer to a bank, the [EXECUTION](#) of a payment order by a receiving bank and the actual payment of the payment order.

Letters of Credit

Article 5 of the Uniform Commercial Code governs transactions involving the issuance of letters of credit. Such letters of credit are generally issued when a party (the "applicant") applies for credit in a transaction of some sort with a third party (the "beneficiary"). The bank will issue a letter of credit to the [BENEFICIARY](#) prior to the transaction. This letter is a definite undertaking by the bank to honor the letter of credit at the time the beneficiary presents this letter. Article 5 governs issuance, amendments, cancellation, duration, transfer, and assignment of letters of credit. It also defines the rights and obligations of the parties involved in the

issuance of a letter of credit.

Secured Transactions

When a bank agrees to enter into a loan with a bank customer, the bank will most likely acquire a security interest in property owned or purchased by the customer. This transaction, called a secured transaction, governed by Article 9 of the Uniform Commercial Code. Article 9 was substantially revised in 2000, and the vast majority of states have now adopted the revised version. The security interest provides protection for the bank in case the customer fails to pay a debt owed to the bank, even if the customer enters into [BANKRUPTCY](#). A number of steps must be followed for the bank to "perfect" the security interest, including the filing of documents with the secretary of state or other appropriate officer in the state where the customer resides.

Federal Reserve System

The Federal Reserve Board has been delegated significant responsibility related to the implementation of laws governing banks and banking. The Board has issued more than thirty major regulations on a variety of issues affecting the banking industry. When a check passes through the Federal Reserve System, Regulation J applies. This regulation governs the collection of checks and other items by Federal Reserve Banks, as well as many funds transfers. This regulation also establishes procedures, responsibilities, and duties among Federal Reserve banks, the payors, and other senders of checks through the Federal Reserve System, and the senders of wire transmissions. Regulation J is contained in Title 12 of the **CODE OF FEDERAL REGULATIONS**, Part 210.

A second significant regulation promulgated by the Federal Reserve Board is Regulation CC, which governs the availability of funds in a bank customer's account. This regulation also governs the collection of checks. Under this regulation, cash deposits made by a customer into a bank account must be available to the customer no later than the end of the business day after the day the funds were deposited. The next-day rule also applies to several check deposits, as defined by the regulation, although banks are not required to make funds available for as long as five days after deposit for many other types of checks. Regulation CC also governs the payment of interest, the responsibilities of various banks regarding the return of checks. Liabilities to the bank for failure to adhere to these rules are defined by the regulation. Regulation CC is contained in Title 12 of the Code of Federal Regulations, Part 229.

Other Federal Reserve Board regulations cover a variety of transactions under a myriad of statutes. These include such provisions as those requiring equal credit opportunity; transfer of electronic funds; consumer leasing; privacy of consumer financial information; and truth in lending.

Insurance of Deposits

Congress in 1933 established the Federal Deposit Insurance Corporation, which is funded by premiums paid by member institutions. If a customer holds an account at a bank that is a member institution of the FDIC, the customer's accounts are insured for an aggregate total of \$100,000. Banks that are member institutions are required to display prominently signs indicating that the bank is a member of the FDIC or a sign that states "Deposits Federally Insured to \$100,000—Backed by the Full Faith and Credit of the United States Government." This applies to many banks that are chartered either federally or by way of state [STATUTE](#).

Interest Rates Charged by Banks

The federal government until the early 1980s regulated interest rates charged on bank accounts. Interest rates on savings accounts were generally limited, while interest rates on other types of accounts were generally prohibited. The Depository Institutions Deregulation Act of 1980 and Garn-St. Germain Depository Institutions Act eliminated restrictions and prohibitions on interest rates on savings, checking, money market and other types of accounts.

Truth in Lending

The Truth in Lending Act, which was part of the **CONSUMER CREDIT PROTECTION ACT**, provides protection to consumers by requiring lenders to disclose costs and terms related to a loan. Most of these disclosures are contained in a loan application. Lenders must include several of the following items:

- Terms and costs of loan plans, including annual percentage rates, fees, and points
- The total amount of principal being financed
- Payment due dates, including provisions for late payment fees
- Details of variable-interest loans
- Total amount of finance charges
- Details about whether a loan is assumable
- Application fees
- Pre-payment penalties

The Truth in Lending Act also requires lenders to make certain disclosures regarding advertisements for loan rates and terms. Specific terms of the credit must be disclosed, and if the advertisement indicates a rate, it must be stated in terms of an [ANNUAL PERCENTAGE RATE](#), which takes into account additional costs incurred relating to the loan. Other restrictions on advertising loan rates also apply. If a bank or other lending institution fails to adhere to the provision of the Truth in Lending Act, severe penalties apply.

The Federal Reserve Board has been delegated authority to prescribe regulations to enforce the provisions of the Truth in Lending Act. These regulations are contained in Regulation Z of the Board.

Usury Laws

Every state establishes a ceiling interest rate that can be charged by creditors. If a [CREDITOR](#) charges an interest rate higher than the rate established by the state, the penalties to the creditor can be severe. Such penalties may include the [FORFEITURE](#) of the principal debt owed to the creditor by the [DEBTOR](#). Debtors that are subjected to high interest rates should consult the [USURY](#) laws in that state to determine whether these laws may apply.

Crimes Related to Banks and Banking

Congress has promulgated a number of criminal statutes applicable to crimes against banks and banking institutions. Some crimes are related to more violent acts, such as robbery, while others focus on nonviolent crimes, such as money laundering. Each of the crimes listed below is contained in Title 18 of the United States Code.

- Bank [BRIBERY](#) is prohibited under Title 18, sections 212 through 215.
- Theft by a bank officer or employee is prohibited under Title 18, section 656.
- False bank entry is prohibited under Title 18, section 1005.
- False statements to the FDIC are prohibited under Title 18, section 1007.
- Bank fraud is prohibited under Title 18, section 1344.
- Obstruction of an examination of a financial institution is prohibited under Title 18, section 1517.
- Money laundering is prohibited under Title 18, sections 1956 through 1960.
- Bank robbery is prohibited under Title 18, section 2113.
- Crimes involving coins and currency are prohibited under provisions in Title 18, Chapter 17.

State Laws Governing Banks, Banking, and Lending

All U. S. states have adopted at least a portion of the Uniform Commercial Code, including Articles 3 (1990 version), 4 (1990 version), 4A (1989 version), and 5 (1995 version). Article 9 was last revised in 2000, with the previous major revision occurring in 1972. Most state laws governing banks, banking, and lending are consistent from one state to the next. Moreover, due to federal regulation of banks and banking, states are rather limited in their ability to enact laws that differ from the majority of states.

ALABAMA: Adopted Articles 3 and 4 in 1995; Article 4A in 1992; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

ALASKA: Adopted Articles 3 and 4 in 1993; Article 4A in 1993; and Article 5 in 1999. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

ARIZONA: Adopted Articles 3 and 4 in 1993; Article 4A in 1991; and Article 5 in 1996. The state has adopted the Revised Article 9 (2000).

ARKANSAS: Adopted Articles 3 and 4 in 1991; Article 4A in 1991; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

CALIFORNIA: Adopted Articles 3 and 4 in 1992; Article 4A in 1990; and Article 5 in 1996. The state has adopted the Revised Article 9 (2000).

COLORADO: Adopted Articles 3 and 4 in 1994; Article 4A in 1990; and Article 5 in 1996. The state has adopted the Revised Article 9 (2000).

CONNECTICUT: Adopted Articles 3 and 4 in 1991; Article 4A in 1990; and Article 5 in 1996. The state has adopted the Revised Article 9 (2000).

DELAWARE: Adopted Articles 3 and 4 in 1995; Article 4A in 1992; and Article 5 in 1998. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

FLORIDA: Adopted Articles 3 and 4 in 1992; Article 4A in 1991; and Article 5 in 1999. The state has adopted the Revised Article 9 (2000).

GEORGIA: Adopted Articles 3 and 4 in 1996; Article 4A in 1993. The state has adopted the Revised Article 9 (2000).

HAWAII: Adopted Articles 3 and 4 in 1991; Article 4A in 1991; and Article 5 in 1996. The state adopted the

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majority of the provisions in the Revised Article 9 (2000) in 2000.

IDAHO: Adopted Articles 3 and 4 in 1993; Article 4A in 1991; and Article 5 in 1996. The state has adopted the Revised Article 9 (2000).

ILLINOIS: Adopted Articles 3 and 4 in 1991; Article 4A in 1990; and Article 5 in 1996. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

INDIANA: Adopted Articles 3 and 4 in 1991; Article 4A in 1991; and Article 5 in 1996. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

IOWA: Adopted Articles 3 and 4 in 1994; Article 4A in 1992; and Article 5 in 1996. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

KANSAS: Adopted Articles 3 and 4 in 1991; Article 4A in 1990; and Article 5 in 1996. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

KENTUCKY: Adopted Articles 3 and 4 in 1996; Article 4A in 1992; and Article 5 in 2000. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

LOUISIANA: Adopted Articles 3 and 4 in 1992; Article 4A in 1990; and Article 5 in 1999. The state has adopted the Revised Article 9 (2000).

MAINE: Adopted Articles 3 and 4 in 1993; Article 4A in 1992; and Article 5 in 1997. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

MARYLAND: Adopted Articles 3 and 4 in 1996; Article 4A in 1992; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

MASSACHUSETTS: Adopted Articles 3 and 4 in 1998; Article 4A in 1992; and Article 5 in 1998. The state has adopted the Revised Article 9 (2000).

MICHIGAN: Adopted Articles 3 and 4 in 1993; Article 4A in 1992; and Article 5 in 1992. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

MINNESOTA: Adopted Articles 3 and 4 in 1992; Article 4A in 1990; and Article 5 in 1997. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

MISSISSIPPI: Adopted Articles 3 and 4 in 1995; Article 4A in 1992; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

MISSOURI: Adopted Articles 3 and 4 in 1992; Article 4A in 1992; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

MONTANA: Adopted Articles 3 and 4 in 1991; Article 4A in 1991; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

NEBRASKA: Adopted Articles 3 and 4 in 1991; Article 4A in 1991; and Article 5 in 1996. The state has adopted the Revised Article 9 (2000).

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NEVADA: Adopted Articles 3 and 4 in 1993; Article 4A in 1991; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

NEW HAMPSHIRE: Adopted Articles 3 and 4 in 1993; Article 4A in 1993; and Article 5 in 1998. The state has adopted the Revised Article 9 (2000).

NEW JERSEY: Adopted Articles 3 and 4 in 1995; Article 4A in 1995; and Article 5 in 1998. The state has adopted the Revised Article 9 (2000).

NEW MEXICO: Adopted Articles 3 and 4 in 1992; Article 4A in 1992; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

NEW YORK: Adopted older uniform law on negotiable instruments in 1897; Article 4A in 1990; and Article 5 in 2000. The state has adopted the Revised Article 9 (2000).

NORTH CAROLINA: Adopted Articles 3 and 4 in 1995; Article 4A in 1993; and Article 5 in 1999. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

NORTH DAKOTA: Adopted Articles 3 and 4 in 1991; Article 4A in 1991; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

OHIO: Adopted Articles 3 and 4 in 1994; Article 4A in 1991; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

OKLAHOMA: Adopted Articles 3 and 4 in 1991; Article 4A in 1990; and Article 5 in 1996. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

OREGON: Adopted Articles 3 and 4 in 1995; Article 4A in 1992; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

PENNSYLVANIA: Adopted Articles 3 and 4 in 1992; Article 4A in 1992; and Article 5 in 2001. The state has adopted the Revised Article 9 (2000).

RHODE ISLAND: Adopted Articles 3 and 4 in 2000; Article 4A in 1991; and Article 5 in 2000. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

SOUTH CAROLINA: Adopted older uniform law on negotiable instruments in 1914; Article 4A in 1996; and Article 5 in 2001. The state has adopted the Revised Article 9 (2000).

SOUTH DAKOTA: Adopted Articles 3 and 4 in 1994; Article 4A in 1991; and Article 5 in 1998. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

TENNESSEE: Adopted Articles 3 and 4 in 1994; Article 4A in 1991; and Article 5 in 1998. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

TEXAS: Adopted Articles 3 and 4 in 1994; Article 4A in 1991; and Article 5 in 1998. The state has adopted the Revised Article 9 (2000).

UTAH: Adopted Articles 3 and 4 in 1993; Article 4A in 1990; and Article 5 in 1997. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

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VERMONT: Adopted Articles 3 and 4 in 1994; Article 4A in 1994; and Article 5 in 1998. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

VIRGINIA: Adopted Articles 3 and 4 in 1992; Article 4A in 1990; and Article 5 in 1997. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

WASHINGTON: Adopted Articles 3 and 4 in 1994; Article 4A in 1991; and Article 5 in 1998. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

WEST VIRGINIA: Adopted Articles 3 and 4 in 1993; Article 4A in 1990; and Article 5 in 1996. The state adopted the majority of the provisions in the Revised Article 9 (2000) in 2000.

WISCONSIN: Adopted Articles 3 and 4 in 1996; and Article 4A in 1992. The state has adopted the Revised Article 9 (2000).

WYOMING: Adopted Articles 3 and 4 in 1991; Article 4A in 1991; and Article 5 in 1997. The state has adopted the Revised Article 9 (2000).

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Organizations

Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs

20th and C Streets, NW, MS 804

Washington, DC 20551 USA

Phone: (202) 452-3667

URL: <http://www.federalreserve.gov/>

Federal Deposit Insurance Corporation (FDIC)

550 17th Street, NW

Washington, DC 20429-9990 USA

Phone: (877) ASK-FDIC

URL: <http://www.fdic.gov>

National Conference of Commissioners on Uniform State Laws (NCCUSL)

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E-Mail: nccusl@nccusl.org
URL: <http://www.nccusl.org/>

Office of the Comptroller of the Currency, Customer Assistance Group

1301 McKinney, Suite 3710
Houston, TX 77010 USA
Phone: (800) 613-6743
URL: <http://www.occ.treas.gov/>

Office of Thrift Supervision, Consumer Program Division

1700 G Street, NW
Washington, DC 20552 USA
Phone: (800) 842-6929
URL: <http://www.ots.treas.gov>

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