

# Contents

About the Companion Website, Other Search Options . . . . .	ix
---	----

## Chapter 1

### First Considerations

1.1 About This Manual . . . . .	1
1.1.1 Organization of This Manual . . . . .	1
1.1.2 Payment Issues Discussed in Other NCLC Manuals . . . . .	1
1.2 Payment Systems in a Nutshell . . . . .	1
1.2.3 Other Consumer Payments . . . . .	1
1.3 Primary Sources of Law . . . . .	2
1.3.1 Uniform Commercial Code (UCC) . . . . .	2
1.3.4 Electronic Signatures and Records . . . . .	2
1.3.5 Truth in Lending Act . . . . .	2

## Chapter 2

### The Consumer's Payment by Personal Check

2.2 How Personal Check Payments Work . . . . .	3
2.2.4 Presentment; Depository, Intermediate, Collecting, and Payor Banks; "On Us" Checks . . . . .	3
2.3 UCC Regulation of Check Payments: The Basics . . . . .	3
2.3.3 Bank's UCC Duties of Good Faith and Ordinary Care . . . . .	3
2.4 Consumer Access to Cancelled Checks, Account Statements, and Other Information . . . . .	3
2.4.4 Notice to Consumers of Bank Fees . . . . .	3
2.5 Consumer Liability for Forged or Altered Checks, Unauthorized Telechecks . . . . .	4
2.5.1 General Rule That Consumer Not Liable . . . . .	4
2.5.1.2 Forged or Unauthorized Consumer Signature . . . . .	4
2.5.2 Negligence Can Cause Consumer Drawer to Be Liable for Unauthorized Use . . . . .	4
2.5.2.1 General . . . . .	4
2.5.2.2 Comparative Negligence . . . . .	4
2.5.3 Liability When Consumer Fails to Report Problem After Receiving Bank Statement . . . . .	4
2.5.3.3 Rules Concerning Subsequent Altered or Forged Checks . . . . .	4
2.5.3.4 Consumer Defenses Even When Consumer Fails to Report the Loss . . . . .	5
2.5.3.8 Variation of the UCC Rules by Agreement Between Consumer and Bank . . . . .	5
2.5.3.8.1 General . . . . .	5
2.5.4 Other Theories of Consumer Liability . . . . .	5
2.5.5 A Special Case: "Telechecks" or Preauthorized Drafts . . . . .	5
2.5.5.2 UCC Protections . . . . .	5
2.6 Check 21 and Substitute Checks . . . . .	5
2.6.2 Justification for Check 21 and Implications for Consumers . . . . .	5

2.7 Wrongful Dishonor; Not Sufficient Funds (NSF) Checks . . . . .	5
2.7.3 When Does an Overdraft Make a Check Not Properly Payable? . . . . .	5
2.7.3.1 Determining If an Overdraft Would Result . . . . .	5
2.7.3.2 Overdraft Protection May Require That Check Be Honored. . . . .	7
2.7.3.3 When Funds Sufficient to Pay Some, But Not All, Presented Checks . . . . .	7
2.7.4 Electronic Re-Presentation of Insufficient-Funds Checks. . . . .	7
2.7.4.2 The UCC, Not the EFTA, Applies to Most Aspects of an Electronic Re-Presentation . . . . .	7
2.7.4.3 EFTA Applies to Fee Charges for Re-Presented Checks . . . . .	7
2.7.4.4 NACHA Protections . . . . .	8
2.7.4.4.2 Only certain checks can be electronically re-presented. . . . .	8
2.7.4.4.3 Limits on the number of electronic re-presentments allowed . . . . .	8
2.7.4.4.4 Bad-check fees cannot be included in electronic re-presentation. . . . .	8
2.7.4.4.6 RCK authorization and notice . . . . .	8
2.7.4.4.7 The consumer's right to stop payment on an electronic re-presentation. . . . .	9
2.7.4.4.8 The consumer's right to a recredit for re-presentments not complying with NACHA rules . . . . .	9
2.7.4.4.9 Requirements that banks retain copies of RCK checks. . . . .	9
2.7.5 Consumer Liability for Not Sufficient Funds (NSF) Checks . . . . .	9
2.7.5.2 Civil Liability. . . . .	9
2.8 Consumer Attempts to Limit Payment: Post-Dated Checks, Stop Payment Orders, and Termination of Account or Joint Ownership . . . . .	10
2.8.1 Post-Dated Checks . . . . .	10
2.8.2 Right to Stop Payment . . . . .	10
2.8.2.7 Right to Payment by Check Cashers and Other Subsequent Holders of a Stopped Payment Check. . . . .	10
2.8.2.7.2 Rights of subsequent holders to sue on the check . . . . .	10
2.8.2.7.3 When is a subsequent check holder a holder in due course?. . . . .	10
2.8.2.7.4 Rights of the depository bank. . . . .	10
2.9 When Check Discharges Debt; Accord and Satisfaction . . . . .	10
2.9.3 Accord and Satisfaction. . . . .	10
<b>2.11 Overdraft Fees and Other Bank Account Fees . . . . .</b>	<b>10</b>
2.12 Remote Deposit Capture. . . . .	11

*new section*

## Chapter 3

### Check Payments to Consumers: Lost Checks, Funds Availability, and Check Cashing

3.3 Does a Consumer Cashing a Check Extinguish Consumer Rights or Act As Acceptance of an Offer? . . . . .	13
3.3.2 When Cashing a Check Results in a Contract for Goods or Services . . . . .	13
3.4 When Deposited Funds Become Available . . . . .	13
3.4.1 General. . . . .	13
3.4.2 Regulation CC's Funds Availability Schedule . . . . .	13
3.4.3 Next-Day Availability . . . . .	14
3.4.3.2 Limited Dollar Next-Day Availability for Any Type of Deposit . . . . .	14
3.4.4 Second-Day and Fifth-Day Availability . . . . .	14
3.4.5 One Day Extension for Certain Withdrawals. . . . .	14
3.4.6 Exceptions . . . . .	14
3.4.6.1 New Accounts . . . . .	14

3.4.6.3	Repeated Overdrafts . . . . .	14
3.4.6.5	Large Deposits and Re-Deposited Checks . . . . .	14
3.4.9	Remedies for Violation of the Availability Rules . . . . .	15
3.4.10	Fraud Based on Confusion Between Available Funds and Paid Checks . . . . .	15
3.5	Payee’s Attempts to Cash Check at Drawer’s Bank . . . . .	15
3.5.2	Can Drawer’s Bank Charge Payee a Fee to Cash a Check? . . . . .	15
3.5.2.1	General . . . . .	15
3.5.2.3	Special Treatment for National Banks . . . . .	15
3.6	Regulation of Check Cashers . . . . .	15
3.6.1	Introduction . . . . .	15
3.6.2	State Regulation . . . . .	15
3.6.4	Usury and Truth in Lending . . . . .	16
3.6.5	Other Federal Regulation . . . . .	16

Chapter 4

Electronic Transfers from the Consumer’s Account

4.1	Scope of This Chapter . . . . .	17
4.1.1	Topics Covered . . . . .	17
4.1.3	Scope of the EFTA . . . . .	17
4.1.3.1	Types of Accounts and Persons Covered . . . . .	17
4.1.3.1.1	General . . . . .	17
4.1.3.1.2	Coverage of prepaid card accounts . . . . .	18
4.1.3.2	Types of Transfers Covered; Checks That Become Electronic Transfers and Vice Versa . . . . .	18
4.1.4	Treatment of State Law . . . . .	20
4.1.5	NACHA Rules . . . . .	20
4.1.5.1	General . . . . .	20
4.1.5.2	How ACH Operates; NACHA Terminology . . . . .	20
4.1.5.3	Types of ACH Entries . . . . .	20
4.1.5.4	Electronic Signatures and Records . . . . .	21
4.2	Issuance of Debit and ATM Cards, Other Access Devices . . . . .	21
4.2.1	Types of Access Devices . . . . .	21
4.2.1.1	General . . . . .	21
4.2.2	Issuance of Unsolicited Access Devices . . . . .	21
4.2.4	Initial Disclosures . . . . .	21
4.2.4.3	Content of Initial Disclosures . . . . .	21
4.2.4.4	Overdraft Disclosure Requirements . . . . .	21
<b>4.2.4.5</b>	<b>Consumer Opt-In Required for ATM and One-Time Debit Card Overdrafts</b> . . . . .	22
<b>4.2.4.5.1</b>	<b>Scope</b> . . . . .	22
<b>4.2.4.5.2</b>	<b>Notice to be provided to the consumer</b> . . . . .	22
<b>4.2.4.5.3</b>	<b>Opt-in requirements</b> . . . . .	22
<b>4.2.4.5.4</b>	<b>Anti-evasion provisions</b> . . . . .	23
<b>4.2.4.5.5</b>	<b>Exceptions</b> . . . . .	23
4.3	Consumer Liability for Unauthorized Transfers . . . . .	24
4.3.1	When Is a Transfer Unauthorized? . . . . .	24
4.3.4	Unauthorized Charges That Appear on the Consumer’s Statement . . . . .	24
4.3.4.3	Liability for Subsequent Unauthorized Charges When Initial Charges Not Reported in Sixty Days . . . . .	24
4.3.4.3.3	Exception to sixty-day deadline and unlimited liability rule . . . . .	24
4.3.7	State Law and NACHA Policy on Data Breach Notification . . . . .	24
4.4	Procedures for Resolving Errors . . . . .	24
4.4.1	Errors Covered . . . . .	24
4.4.3	Institution’s Duty to Investigate . . . . .	24

*replacement subsection*

*new subsection  
new section*

4.5	Use of ATM and Debit Cards; Fees, Receipts, Errors, Violence . . . . .	24
4.5.1	Disclosure of ATM Fees . . . . .	24
4.5.4	Bank Liability for Violence at ATMs. . . . .	25
4.5.4.1	Introduction . . . . .	25
	<b>4.5.5 Other Fees . . . . .</b>	<b>25</b>
	<b>4.5A ADA Regulations Applicable to ATMs . . . . .</b>	<b>26</b>
4.6	Debit Card's Use to Purchase Goods or Services . . . . .	26
4.6.1	Disputing an Amount Charged to the Debit Card . . . . .	26
4.7	Electronic Check Conversion (ECC): Checks Used as Source Documents for Electronic Transfers . . . . .	27
4.7.1	The EFTA Applies to ECC . . . . .	27
4.7.4	Accounts Receivable Entries (ARC) . . . . .	27
4.7.4.1	Notice and Consumer Authorization . . . . .	27
4.7.4.2	NACHA Limitations for ARC Transfers . . . . .	28
4.7.4.4	Information on Periodic Statements . . . . .	28
4.7.4.5	Bank Warranties . . . . .	29
4.7.4.6	Consumer's Right to Stop Payment on ARC . . . . .	29
4.7.4.7	Right to a Recredit of ARC . . . . .	30
4.7.5	Point-of-Purchase Entries (POP) . . . . .	30
4.7.5.1	How POP operates . . . . .	30
4.7.5.2	Authorization for POP Entries and Information on Periodic Statements . . . . .	31
4.7.5.3	Bank Warranties in POP Entries . . . . .	32
4.7.5.4	Stop Payment Orders for POPs . . . . .	32
4.7.5.5	Consumer's Recredit Right for POP Entries. . . . .	32
4.7.5.8	Back Office Conversion (BOC) Entries . . . . .	33
4.7.5.9	Back Office Conversion (BOC) Warranties . . . . .	33
4.8	Sales Over the Telephone Leading to Electronic Transfers. . . . .	33
4.8.2	Establishing Authorization for a Telephone Transfer . . . . .	33
4.8.3	Consumer Recredit Rights for Unauthorized TEL Debits . . . . .	34
4.8.4	Stop Payment Orders . . . . .	35
	<b>4.8.4A Revocation of Authorization . . . . .</b>	<b>36</b>
4.8.5	When Telemarketer Already Possesses the Consumer's Bank Account Information . . . . .	36
4.8.5.2	Consumer Protections When Telemarketer Has Pre-Acquired Account Information . . . . .	36
4.8.6	NACHA Anti-Fraud Investigations of TEL Entries . . . . .	36
4.9	Internet-Based Transfers. . . . .	36
4.9.1	NACHA Rules for Internet-Initiated Entries (WEB). . . . .	36
4.9.2	NACHA Anti-Fraud and Security Protections for WEB Entries . . . . .	37
4.9.3	Internet Transactions and Consumers with Disabilities . . . . .	38
4.10	Electronic Transfers Relating to Internet Payday Loans . . . . .	38
	<b>4.11 Preauthorized Electronic Fund Transfers. . . . .</b>	<b>40</b>
	<b>4.11.1 Definition and Scope . . . . .</b>	<b>40</b>
	<b>4.11.2 Authorization for Fund Transfers Out of Consumer's Account . . . . .</b>	<b>41</b>
	<b>4.11.3 Disclosure When Transfer Is a Variable Amount . . . . .</b>	<b>43</b>
	<b>4.11.4 Right to Stop Payment. . . . .</b>	<b>43</b>
	<b>4.11.5 Compulsory Preauthorized Electronic Transfers Required by a Creditor . . . . .</b>	<b>44</b>
	<b>4.11.6 NACHA Rules . . . . .</b>	<b>46</b>
	<b>4.11.7 Fees For Checks and ACH Debits Returned For Insufficient Funds. . . . .</b>	<b>46</b>
4.12	New E-Commerce Payment Services . . . . .	48
4.13	Decoupled Debit Cards . . . . .	48
4.14	Account Aggregation . . . . .	49
4.14.1	The Basics. . . . .	49

*new subsection*

*replacement section*

	4.14.1.1 Introduction . . . . .	49
<i>new section</i>	<b>4.14A Document Retention Requirements</b> . . . . .	49
<i>new section</i>	<b>4.14B Interchange Fees, Merchant Discounts, and Related Issues</b> . . . . .	49
	4.15 Remedies for EFTA and NACHA Rule Violations . . . . .	51
	4.15.1 EFTA Remedies When Institution Fails to Follow Consumer Transfer Instructions—Section 1693h . . . . .	51
	4.15.2 Liability for Any EFTA Violation—Section 1693m . . . . .	51
	4.15.4 EFTA Statute of Limitations; Federal Court Jurisdiction . . . . .	51
	4.15.5 Can Consumers Seek Relief for NACHA Rule Violations? . . . . .	52
	4.15.6 NACHA Enforcement of Consumer Complaints . . . . .	52
	4.16 State Law Protections for Cardholders . . . . .	53
Chapter 5	Money Orders and International Wire Transfers, Cashier’s and Traveler’s Checks	
	5.1 Bank and Personal Money Orders . . . . .	55
	5.1.3 Applicable Law for Bank and Personal Money Orders . . . . .	55
<i>replacement heading</i>	<b>5.1.3.5 Applicability of Bank Secrecy Act and USA Patriot Act</b> . . . . .	55
	5.2 International Money Orders and Wire Transfers . . . . .	55
	5.2.1 Introduction . . . . .	55
<i>new subsection</i>	<b>5.2.1A Dodd-Frank Act Requires Enforceable Disclosures and Substantive Protections for Remittances</b> . . . . .	56
	<b>5.2.1A.1 Introduction</b> . . . . .	56
	<b>5.2.1A.2 Scope</b> . . . . .	56
	<b>5.2.1A.3 Disclosure Requirements for Remittances</b> . . . . .	57
	<b>5.2.1A.4 Error Resolution Requirements for Remittances</b> . . . . .	58
<i>replacement title</i>	<b>5.2.2 Other Applicable Laws</b> . . . . .	58
<i>replacement subsection</i>	<b>5.2.2.1 Introduction</b> . . . . .	58
	5.2.2.6 EFTA Application to International Wires . . . . .	58
	5.3 Prepaid Cards, Cell Phone, and Other New Remittance Systems . . . . .	59
Chapter 6	Credit Cards	
	6.1 The Basics . . . . .	61
	6.1.1 Introduction . . . . .	61
	6.1.2 Credit Card Payments Distinguished from Other Payment Methods . . . . .	61
	6.1.3 Types of Credit Cards . . . . .	61
	6.1.3.1 A Credit Card Need Not Be a Card . . . . .	61
	6.1.3.3 Secured Credit Cards . . . . .	62
	6.1.3.4 Multi-Function Credit Cards . . . . .	62
<i>new subsection</i>	<b>6.1.3.6 Prepaid Cards and Bank Accounts as Credit Cards</b> . . . . .	62
	6.1.4 Parties to Bank Credit Card Transactions . . . . .	62
	6.1.4.2 Parties’ Relationship When a Consumer Disputes a Charge . . . . .	62
<i>new subsection</i>	<b>6.1.4.3 The Merchant-Cardholder Relationship</b> . . . . .	62
	6.2 Terms of the Agreement Between Card Issuer and Card Holder . . . . .	62
	6.2.2 Card Issuer’s Unilateral Change of Terms . . . . .	62
	6.2.3 Typical Terms of Agreement . . . . .	62
<i>replacement sections</i>	<b>6.3 Consumer Rights When Issuer Submits Erroneous Credit Card Bill</b> . . . . .	63
	<b>6.3.1 Overview of Fair Credit Billing Act</b> . . . . .	63
	<b>6.3.2 Scope of Billing Error Procedures</b> . . . . .	63
	<b>6.3.2.1 Who Is Protected by Billing Error Procedures?</b> . . . . .	63
	<b>6.3.2.2 Billing Error Procedures Apply to All Forms of Open-End Credit</b> . . . . .	63
	<b>6.3.2.3 Exemption for Transactions Governed by Regulation E</b> . . . . .	64

6.3.2.4 Coverage of Third Party Payment Intermediaries . . . . .	64
6.3.3 Relationship of Billing Error Procedures to Other Claims . . . . .	64
6.3.4 Definition of Billing Error . . . . .	66
6.3.5 Notice of Billing Error . . . . .	68
6.3.5.1 General . . . . .	68
6.3.5.2 Timing of Notice . . . . .	68
6.3.5.3 Form of Notice . . . . .	68
6.3.5.4 Content of Notice . . . . .	69
6.3.5.5 When Does the Sixty-Day Period Begin to Run? . . . . .	70
6.3.5.6 Repeat Notices for the Same Error . . . . .	70
6.3.5.7 When Is a Second Billing Error Notice Permitted? . . . . .	70
6.3.6 Creditor's Interim Steps upon Notice of Billing Error . . . . .	71
6.3.6.1 General . . . . .	71
6.3.6.2 Acknowledgment of Receipt . . . . .	71
6.3.6.3 Right to Withhold Payment . . . . .	71
6.3.6.4 Collection of Disputed Amount . . . . .	71
6.3.6.5 Credit Reports and Billing Errors . . . . .	72
6.3.6.5.1 FCBA requirements . . . . .	72
6.3.6.5.2 Fair Credit Reporting Act requirements . . . . .	73
6.3.7 Creditor's Billing Error Investigation . . . . .	73
6.3.7.1 When Required . . . . .	73
6.3.7.2 Reasonable Investigation . . . . .	73
6.3.7.3 Time Limits for Investigation . . . . .	74
6.3.8 Resolution of Error . . . . .	74
6.3.8.1 Finality of Resolution . . . . .	74
6.3.8.2 Resolution Favoring the Consumer . . . . .	74
6.3.8.3 Resolution Not Favoring the Consumer . . . . .	75
6.3.8.4 Charges for Error-Resolution Procedure . . . . .	75
6.3.9 Remedies for Billing Error Violations . . . . .	76
6.3.9.1 Remedies under the FCBA . . . . .	76
6.3.9.2 Remedies under the Equal Credit Opportunity Act . . . . .	77
6.3.9.3 FCBA Preemption . . . . .	77
6.4 Customer's Liability for Unauthorized Use of a Credit Card . . . . .	77
6.4.1 General . . . . .	77
6.4.1.1 Introduction . . . . .	77
6.4.1.2 Scope . . . . .	77
6.4.1.2.1 Protections apply to all types of credit cards, including telephone cards . . . . .	77
6.4.1.2.2 Exclusion for convenience checks . . . . .	78
6.4.2 When Is Use Authorized? . . . . .	78
6.4.2.1 Description of Authorized Users . . . . .	78
6.4.2.2 Misuse by Authorized Users . . . . .	79
6.4.2.3 Is a User an Authorized User? . . . . .	80
6.4.3 Benefit to the Cardholder . . . . .	81
6.4.4 Conditions for Creditor Imposing \$50 Liability . . . . .	81
6.4.5 Cardholder Notice to Card Issuer of Unauthorized Use . . . . .	82
6.4.6 Investigation Procedures . . . . .	83
6.4.7 Resolution; Adverse Credit Reports . . . . .	84
6.4.8 Remedies to Enforce Unauthorized Use Protections . . . . .	84
6.5 Cardholder's Claims and Defenses . . . . .	85
6.5.1 General . . . . .	85
6.5.2 When Is a Credit Card Issuer Subject to Claims and Defenses? . . . . .	86
6.5.3 Types of Actionable Claims and Defenses . . . . .	86
6.5.4 Preconditions for Cardholder Asserting Claims or Defenses . . . . .	87
6.5.5 Relationship to Bill Error Disputes and Claims of Unauthorized Use . . . . .	88

<b>6.5.6 Nature of the Consumer’s Rights to Withhold Payment</b> . . . . .	88
<b>6.5.7 Adverse Credit Reports; Collection Activity</b> . . . . .	88
6.7 Credit Card Restrictions on Telemarketers . . . . .	89
6.7.3 Preacquired Account Telemarketing . . . . .	89
6.7.3.5 Other Legal Protections Concerning Preacquired Account Telemarketing . . . . .	89
6.8 Authorized User’s Liability to the Card Issuer . . . . .	89
6.9 State Law Protections for Cardholders . . . . .	89

Chapter 7

Prepaid, Gift, Payroll, Telephone and Other Stored Value Cards

*replacement subsection*

7.1 Overview . . . . .	91
7.1.1 Introduction . . . . .	91
7.1.3 Relation of Stored Value to Debit Cards . . . . .	91
<b>7.1.4 Prepaid Cards with Credit Features</b> . . . . .	91
<b>7.1.4.1 Overview</b> . . . . .	91
<b>7.1.4.2 Laws Limiting Credit on Prepaid Cards</b> . . . . .	92
<b>7.1.4.3 Prepaid Cards as “Credit Cards”</b> . . . . .	93
<b>7.1.4.4 Preemption Issues Involving Credit on Prepaid Cards</b> . . . . .	94
7.1.5 Relation of Stored Value Cards to Cash and Checks . . . . .	95
7.1.6 Identifying the Party Responsible to the Consumer Concerning Issuance of the Card . . . . .	95
7.1.7 Regulation of Stored Value Cards . . . . .	95
7.1.7.1 Limited Applicable Law . . . . .	95
7.1.7.2 FRB and ABA Studies . . . . .	95
7.1.7.3 Application of EFTA and Regulation E . . . . .	95
7.1.7.4 Application of Other Law by Analogy . . . . .	96

*replacement subsection  
new section*

7.2 The Stored Value Card Agreement, Disclosures, and Requirements for Consumer Identification . . . . .	96
<b>7.2.3 Consumer Identification to Activate a Card</b> . . . . .	96
<b>7.2A Fees on Prepaid and Other Stored Value Cards</b> . . . . .	97
<b>7.2A.1 Overview</b> . . . . .	97
<b>7.2A.2 Overdraft and ATM Fees Restricted by Dodd-Frank Interchange         Fee Provision</b> . . . . .	97
<b>7.2A.3 Other Limits on Overdraft Fees on Prepaid Cards</b> . . . . .	99
<b>7.2A.4 Limits on Other Types of Prepaid Card Fees</b> . . . . .	99
7.4 When Card Does Not Function Properly . . . . .	100
7.4.1 Defective Cards . . . . .	100
7.5 Redemption of Unused Value; Card Expiration . . . . .	100
7.5.1 Consumer’s Right to Redeem Unused Value Before Card Expiration . . . . .	100
7.5.2 Redemption Rights After a Card Expires . . . . .	100
7.6 Lost and Stolen Cards; Unauthorized Use . . . . .	100
7.7 Prepaid Telephone Cards . . . . .	101
7.8 Gift Cards . . . . .	101
7.8.1 Federal Gift Card Rules . . . . .	101
7.8.2 State Statutes . . . . .	101
7.8.3 Federal Agency Regulation . . . . .	103
7.8.4 Litigation . . . . .	103
7.9 Payroll Cards . . . . .	103
7.9.1 Description . . . . .	103
7.9.3 Regulation E Applicability . . . . .	104
7.9.4 State Regulation . . . . .	104
7.10 Government Issued Prepaid Cards . . . . .	104
<b>7.10.2 Direct Express Card for Federal Payments</b> . . . . .	104
<b>7.10.2.1 Introduction</b> . . . . .	104

*replacement heading*

	<b>7.10.2.3 Alternative Methods of Receiving Social Security and SSI Benefits</b> . . . . .	105
	<b>7.10.2.4 Use and Terms of the Direct Express Card</b> . . . . .	105
	<b>7.10.2.6 Protection from Attachment or Garnishment</b> . . . . .	105
	7.10.3 Other Government Benefit Prepaid Cards . . . . .	105
<i>new subsection</i>	7.10.3.1 Introduction. . . . .	105
	<b>7.10.3.1A Prepaid Cards Distinguished from EBT Cards</b> . . . . .	106
	7.10.3.2 The EFTA Applies to Non-Needs-Tested Government Payments . .	107
	7.10.3.4 Other Laws Governing Government Payment Cards; State Can Also Negotiate Card Terms . . . . .	108
	7.10.3.5 Pro-Consumer Card Terms. . . . .	109
<i>new section</i>	<b>7.10A Rebate Cards</b> . . . . .	109
	7.11 Consumer Remedies. . . . .	109

Chapter 8

Electronic Benefit Transfer (EBT)

8.1 Overview . . . . .	111
8.1.3 Card-Based EBT Systems . . . . .	111
8.1.3.1 General . . . . .	111
8.2 Sources of Legal Guidance and Applicable Law. . . . .	111
8.2.1 General . . . . .	111
8.2.2 Rights Based on State Agency Contract with Private Vendor. . . . .	112
8.2.2.1 Standards Imposed by State on Private Vendor. . . . .	112
8.2.2.2 Advocacy Before State Agencies Concerning Terms of Vendor Contract . . . . .	112
8.2.2.3 Consumer's Rights As Third-Party Beneficiary to Contract with Private Vendor. . . . .	112
8.2.4 Supplemental Nutrition Assistance Program (SNAP) Regulations . . . . .	113
8.2.4.1 General . . . . .	113
8.2.5 Enforcement of Federal Constitutional and Statutory Law . . . . .	113
8.3 EBT Card Issuance, PIN Selection, and Replacement Cards. . . . .	113
8.3.3 Personal Identification Numbers (PINs) . . . . .	113
8.3.3.2 Advantages of PIN Selection over PIN Assignment. . . . .	113
8.3.4 Replacement Cards and PINs . . . . .	113
8.3.4.1 General . . . . .	113
8.4 Recipient EBT Training . . . . .	113
8.4.1 General . . . . .	113
8.4.2 Written Training Materials . . . . .	113
8.5 Recipient Access to EBT Benefits . . . . .	114
8.5.1 Access to SNAP Benefits. . . . .	114
8.5.1.1 General . . . . .	114
8.5.3 System Downtime and Back-Up Systems . . . . .	114
8.5.3.1 General . . . . .	114
8.5.3.2 Manual Vouchers for Food Stamps . . . . .	114
8.6 Recipient EBT Charges . . . . .	114
8.6.1 No Charge for Access to Food Stamp Benefits . . . . .	114
8.6.2 Recipients Typically Charged a Fee to Access EBT Cash Benefits . . . . .	114
8.6.2.1 No Federal Restrictions. . . . .	114
8.6.6 Merchant Assessment of Food-Stamp-Related Fees to EBT Contractor . . .	116
8.7 Security and Privacy . . . . .	116
8.7.1 Data and Account Security. . . . .	116
8.7.3 Lost or Stolen EBT Cards and PINs . . . . .	116
8.7.3.2 Food Stamps . . . . .	116
8.7.5 Privacy Issues . . . . .	116
8.7.5.2 Privacy Issues Relating to EBT Delivery of Food Stamps . . . . .	116

8.8	Error Resolution and Maintaining EBT Account Records . . . . .	116
8.8.2	Food Stamp Error Resolution . . . . .	116
8.8.2.1	Recipient Rights to Notice and Fair Hearing . . . . .	116
8.8.2.2	When Agency Incorrectly Credits Recipient's Account. . . . .	116
8.8.2.3	Correcting System Errors . . . . .	116
8.8.2.4	Insufficient Funds Payments. . . . .	117
8.8.5	Lost or Stolen Cards . . . . .	117
8.8.7	Maintaining EBT Account Records: Transaction Histories. . . . .	117
8.9	Meeting Recipients' Special Needs; ATM Access for the Disabled . . . . .	117
8.9.2	Americans with Disabilities Act . . . . .	117
8.9.2.1	Applicability to EBT and Other ATM Transactions . . . . .	117
8.9.6	Recipients with Mental Illness, Group Living Facilities, the Homeless, and Homeless Meal Providers. . . . .	117
8.9.6.2	Issuing Cards, PINs, and Training Materials to Homeless Recipients. . . . .	117
8.9.6.2.4	State must provide appropriate assistance to recipients . . . . .	117

Chapter 9

Federal Government and Other Direct Deposits to Consumer  
Accounts

	9.1 Overview . . . . .	119
<i>replacement subsection</i>	<b>9.1.1 Electronic Transfer of Federal Benefits and EFT 99</b> . . . . .	119
	9.1.2 Current Methods of Transferring Federal Benefits to Consumers . . . . .	120
	9.2 EFTA Regulation of Direct Deposits into a Consumer's Account . . . . .	120
	9.2.2 Correcting Errors in Direct Deposits . . . . .	120
	9.3 Direct Deposit of Federal Benefits to a Qualifying Financial Institution. . . . .	120
	9.3.1 General. . . . .	120
	9.3.2 Potential Pitfalls of Direct Deposit of Federal Benefits . . . . .	121
	9.3.2.2 Overdraft Loans: Expensive Temporary Credit for Federal Benefit Recipients . . . . .	121
<i>new subsection</i>	<b>9.3.2.4 Watershed Treasury Rule Protects Exempt Federal Benefits from Garnishment</b> . . . . .	121
<i>new subsection</i>	<b>9.3.2A Direct Deposit of Federal Payments onto Privately Chosen Prepaid Cards and Other Accounts Not in the Individual's Name.</b> . . . . .	121
<i>new subsection</i>	<b>9.3.2B Direct Deposit of Federal Payments to Individuals Who Do Not Designate an Account</b> . . . . .	123
	<b>9.3.2B.1 Overview</b> . . . . .	123
	<b>9.3.2B.2 Individuals Filing a Claim for a Federal Payment On or After May 1, 2011</b> . . . . .	123
	<b>9.3.2B.3 Individuals Filing for or Receiving Payments by Check Prior to May 1, 2011</b> . . . . .	123
	<b>9.3.2B.4 Special Rules for Individuals Born Prior to May 1, 1921.</b> . . . .	124
	<b>9.3.2B.5 Waivers Permitted</b> . . . . .	124
	<b>9.3.2B.6 Other Exceptions to Requirement for Electronic Transfer</b> . . . .	124
	9.3.3 Illegal Assignments of Benefits. . . . .	125
	9.4 When Bank Fronts for Check Cashier in Electronic Transfer of Consumer's Federal Payments . . . . .	125
	9.4.4 Is the Arrangement Legal?. . . . .	125
	9.4.4.1 No Explicit Authorization . . . . .	125
	9.4.4.2 Conflict with Statutory and Regulatory Language . . . . .	125
	9.5 Electronic Transfer Accounts (ETAs) . . . . .	126
	9.5.1 General. . . . .	126

Chapter 10

Involuntary Payments from Bank Accounts: Garnishment, Setoff, and Collateral Seizures

	10.2 Consumer Protections from Bank Account Seizures . . . . .	127
	10.2.1 Overview . . . . .	127
	10.2.2 Protections That Apply Explicitly to Funds in Bank Accounts . . . . .	127
	10.2.3 State Wildcard Exemptions May Apply to Bank Accounts . . . . .	128
	10.2.4 Bank Accounts Held Jointly or As Tenancies by the Entirety . . . . .	129
	10.2.5 Exempt Benefit Payments Deposited in Bank Accounts . . . . .	129
	10.2.5.2 Exempt Federal Benefits Payments . . . . .	129
	10.2.5.3 State Law Exemptions for Public Benefits, Retirement Pay, and Other Special Payments . . . . .	129
	10.2.5.4 Are Benefits Exempt Once Deposited in a Bank Account? . . . . .	130
<i>new subsection</i>	<b>10.2.5.4A Exceptions to Protections for Exempt Funds in Bank                 Accounts</b> . . . . .	131
	10.2.5.5 Commingling in Bank Accounts of Exempt and Non-Exempt Funds . . . . .	131
<i>new subsection</i>	<b>10.2.5.6 Commingling Funds in Joint Accounts</b> . . . . .	132
	<b>10.2.5.6.1 General</b> . . . . .	132
	<b>10.2.5.6.2 The contract approach</b> . . . . .	133
	<b>10.2.5.6.3 The net contribution approach</b> . . . . .	135
	10.2.6 Protections for Wages Deposited in Bank Accounts . . . . .	137
	10.2.6.2 Do Wage Protections Apply to Earnings Deposited in a Bank Account? . . . . .	137
	10.3 Procedures to Garnish a Consumer’s Bank Account . . . . .	138
<i>new subsection</i>	<b>10.3.1A Watershed Treasury Rule Protects Exempt Federal Benefits             from Garnishment</b> . . . . .	138
	<b>10.3.1A.1 Introduction</b> . . . . .	138
	<b>10.3.1A.2 How the New Rule Will Operate</b> . . . . .	138
	<b>10.3.1A.3 Exceptions for Debts Owed to Federal Government or                 State Child Support Agency</b> . . . . .	139
	<b>10.3.1A.4 A Self-Executing Protection; Debtor No Longer Has                 Burden of Asserting Exemption at Any Stage for                 Protected Amounts</b> . . . . .	139
	<b>10.3.1A.5 Commingled Funds, Co-Owners, Lump-Sum Payments</b> . . . . .	140
	<b>10.3.1A.6 Continuing Garnishments and Repeat Garnishments</b> . . . . .	140
	<b>10.3.1A.7 What If the Debtor Wants to Pay the Debt?</b> . . . . .	140
	<b>10.3.1A.8 Benefits the New Rule Does and Does Not Cover</b> . . . . .	140
	<b>10.3.1A.9 Advising Clients: How to Make the Most of the New                 Protections</b> . . . . .	141
	<b>10.3.1A.10 Direct Express Card Is a Watertight Way to Protect                 Full Amount of Social Security and SSI Benefits</b> . . . . .	141
	<b>10.3.1A.11 Treasury Rule Preempts Weaker State Laws but                 Preserves Stronger Ones</b> . . . . .	141
	<b>10.3.1A.12 An Opening for Advocacy in the States</b> . . . . .	142
	<b>10.3.1A.13 The Next Frontier: Bank Setoff and Bank Fees</b> . . . . .	142
	10.3.2 Roadmap to Legal Analysis . . . . .	143
	10.3.3 Bank Account Freezes, Garnishment, and Due Process . . . . .	143
	10.3.4 Current Electronic Banking Technology Change the Constitutional Balancing When Banks Freeze Exempt Assets . . . . .	143
	10.3.6 Due Process Rights to Notice and a Hearing . . . . .	143
	10.3.6.1 Notice of Bank Account Garnishment . . . . .	143
	10.3.6.4 Debtor Has a Right to a Prompt Hearing . . . . .	144
	10.3.7 Causes of Action for Improper Garnishment of Exempt Funds . . . . .	144
	10.4 Bank Setoff . . . . .	144

Contents / 2011 Supplement

	10.4.1 General . . . . .	144
	10.4.2 Federal Limits on Bank Setoff . . . . .	145
	10.4.2.1 Federal Limitation on Bank Setoff of Credit Card Debt . . . . .	145
	10.4.2.2 Setoff After Consumer Files for Bankruptcy . . . . .	145
<i>new subsection</i>	<b>10.4.4A Challenging Banks' Fee Assessments</b> . . . . .	145
	10.4.6 Debts That May Be Set Off . . . . .	145
	10.4.6.1 Debts Must Be Mutual . . . . .	145
	10.4.6.2 Debt Must Have Matured . . . . .	145
	10.4.7 Accounts That Can Be Set Off . . . . .	146
	10.4.7.1 Account Must Be in Debtor's Name . . . . .	146
	10.4.7.2 Special Purpose Accounts . . . . .	146
<i>new subsection</i>	<b>10.4.7.2A Commingling Funds</b> . . . . .	146
	10.4.7.3 Joint Accounts . . . . .	146
	10.4.8 Are Funds Exempt from Garnishment Also Exempt from Setoff? . . . . .	147
	10.4.9 Remedies for Wrongful Setoff . . . . .	147
	10.5 Security Interest in Deposit Accounts . . . . .	147
<i>new section</i>	<b>10.6 Garnishing Bank Accounts Across State Lines</b> . . . . .	147
Chapter 11	Electronic Records, Contracts, Disclosures, and Signatures	
	11.1 General—Replacing Paper with Electronic Media . . . . .	149
	11.1.1 Introduction . . . . .	149
	11.1.2 When Can Electronic Records and Electronic Signatures Replace Paper? . . . . .	149
	11.1.2.2 What This Chapter Is <i>Not</i> About . . . . .	149
	11.1.2.3 Electronic Record Satisfies Writing Requirement . . . . .	149
	11.1.2.4 Electronic Signatures Can Satisfy Legal Requirement for a Signature . . . . .	149
	11.2 Scope and Coverage of E-Sign and UETA . . . . .	150
	11.2.2 Exemptions . . . . .	150
	11.2.2.2 Consumer Notices Exempted from E-Sign and UETA . . . . .	150
<i>new subsection</i>	<b>11.2.3A Implicit Consent to Electronic Transactions</b> . . . . .	150
	11.3 Consumer Protections Applicable to Electronic Records Replacing Paper . . . . .	150
	11.3.4 Consumer Protections Under UETA . . . . .	150
	11.3.4.2 UETA's Consumer Protection—A Party Cannot Be Required to Use Electronic Records . . . . .	150
	11.3.5 Consent Under E-Sign . . . . .	150
	11.3.5.1 Consumer Not Required to Accept Electronic Records . . . . .	150
	11.3.6 Ability to Retain and Accurately Reproduce Records; Oral Records . . . . .	151
	11.3.6.2 Does an Oral Record Qualify As an Electronic Record? . . . . .	151
	11.7 Electronic Signatures . . . . .	151
	11.7.1 Enforceability of Electronic Signatures Under E-Sign and UETA . . . . .	151
	11.7.2 Examples of Electronic Signatures . . . . .	151
	11.7.4 Special Issues with Electronic Signatures . . . . .	152
	11.7.4.2 E-Sign and UETA Attribution and Authentication Standards . . . . .	152
	11.7.4.3 Electronic Signatures May Serve as Authentication . . . . .	152
	11.7.5 Is the Signature Associated with the Contract? . . . . .	152
Appendix B	Federal Check Regulation: Check 21, Funds Availability, and Check Collections	
	B.2 Regulation CC . . . . .	153
<i>new section</i>	<b>B.7 FDIC Overdraft Guidance</b> . . . . .	180

Appendix D	Electronic Fund Transfer	
	D.1 The Electronic Fund Transfer Act . . . . .	187
<i>new section</i>	<b>D.2 Regulation E on Electronic Fund Transfers.</b> . . . .	200
	D.3 Official Staff Interpretations Regarding Regulation E . . . . .	208
Appendix E	Truth in Savings	
	E.1 Truth in Savings Act . . . . .	221
	E.2 Regulation DD . . . . .	223
	E.3 Official Staff Commentary to Regulation DD . . . . .	223
Appendix F	Truth in Lending Provisions Regarding Defenses to Credit Card Charges	
	F.1 Truth in Lending Act Provisions . . . . .	225
	F.2 Regulation Z Provisions . . . . .	227
	F.3 Official Staff Commentary on Regulation Z. . . . .	231
Appendix G	Stored Value and Prepaid Cards	
	G.4 U.S. Department of Labor—Unemployment Insurance and Prepaid Cards . . . . .	247
	G.4.1 Labor Secretary’s Letter on Unemployment Insurance Prepaid Card Usage and Issues . . . . .	247
	G.4.2 Department of Labor Guidance on Unemployment Insurance Prepaid Cards . . . . .	254
Appendix H	Electronic Payment of Needs-Based Government Benefits (Electronic Benefits Transfer—EBT)	
<i>replacement section</i>	<b>H.1 Department of Agriculture SNAP Regulations Relating to EBT</b> . . . . .	261
<i>replacement section</i>	<b>H.2 EBT State Contact Information</b> . . . . .	279
<i>replacement section</i>	<b>H.3 Information on EBT Programs</b> . . . . .	296
	<b>H.3.1 Summary of Selected Characteristics of State EBT Systems.</b> . . . .	296
	<b>H.3.2 WIC EBT Status Report.</b> . . . .	303
	<b>H.3.3 Supplemental Nutrition Assistance Program (Food Stamps) EBT-Related FAQ</b> . . . . .	309
<i>new section</i>	<b>H.4 Electronic Benefits Transfer (EBT) Highlights.</b> . . . .	310
	H.5 EBT Rules and Regulations . . . . .	311
Appendix I	EFT 99 and ETA Materials	
	I.3 ETA Information . . . . .	313
<i>replacement section</i>	<b>I.5 Direct Express Card.</b> . . . .	313
<i>new section</i>	<b>I.6 Department of Treasury Rule Requiring Direct Deposit of Federal Payments.</b> . . . .	322
	I.7 Department of Treasury Interim Rule on Federal Payments Delivered to Prepaid Debit Cards . . . . .	344
Appendix J	Protection of Exempt Funds in Bank Accounts . . . . .	351
Appendix K	Electronic Signatures and Records	
	K.1 Electronic Signatures in Global and National Commerce Act . . . . .	355

**Appendix L**  
*new appendix*

**Treasury Rule Protecting Electronically-Deposited Exempt  
Federal Benefits** . . . . . 357

Index . . . . . 363

Quick Reference to Consumer Credit and Sales Legal Practice Series . . . 393

