Beware of the Bouncing Check: New Law Shoots Down Check Kiting

You don't have enough money in your banking account to cover the check you are about to write, but payday is just a day away and you have direct deposit. By the time that check reaches your bank, you'll have money to cover it, right? Maybe not. The Check Clearing for the 21st Century Act ("Check 21" for short) takes effect October 28, 2004, and greatly increases the likelihood that your check will bounce if you don't have sufficient funds in your account *at the time when you write it.*

Check 21 (12 U.S.C. 5001-5018, 12 CFR 229) speeds up the check clearing process by allowing banks greater use of electronic information in place of paper checks. Let's say you write a check to a department store. Under the paper check system, that store deposits the paper check with its bank, which will stamp it as received and may send it on to larger bank that acts as a clearinghouse. Eventually, the paper check arrives at your bank, which will transfer the amount indicated on the check to the bank that sent the check. Eventually, payment arrives at the department store's bank. Your check has cleared and your bank may send you the cancelled check along with your monthly statement. All of this stamping and receiving and sending of paper checks takes time, possibly several days. Under Check 21, the clearing process may take as little as a few minutes!

On October 28, 2004, banks will no longer be required to have your original check in order to record the transaction and to send information concerning it to other banks and to demand payment from your bank. Instead, the banks must use either an electronic copy of your check or a special paper copy called a substitute check. These documents can be sent as fast as an email. Once your bank receives the demand for payment from the requesting bank, it must debit your account the amount of the check you wrote. If the funds are not in your account, the check may be returned to the sender stamped with "NSF," for non-sufficient funds. This means your check just bounced.

In addition, it will become unlikely you will ever be able to get your original check back if you need it. For years, banks have not been required to maintain the original cancelled checks. This will remain the same under Check 21 – the bank only needs to keep some sort of copy of your check and can destroy the original. However, now that banks do not need the original checks in order to ensure payment from other banks, they will be more likely than ever to destroy those original paper checks.

Check 21 can adversely affect you in several ways:

-The practice of check kiting (writing check a with a view towards covering it with anticipated deposits) is likely to result in a bounced check. Further, banks and other businesses almost always charge a returned check fee, which in turn can cause other checks to bounce.

- Bank errors will be treated differently. Check 21 requires the bank to credit your account to fix the error. For example, if your bank debits your account twice for the same transaction, it will now have to replace the money while it investigates the problem. However, you have a limited time to complain.

-Stop payment requests will be more difficult to execute. By the time the bank receives your request, it is highly likely that it will already have paid the check.

-Disputes as to the genuineness of a check may be more difficult to resolve. A check copy or an electronic check is simply not as good as the original in determining whether the signature was forged. Consumers should be wary if asked by banks to waive any contractual or other rights they may have to retrieve an original or even a substitute check.

Check 21 is coming soon. Watch the activity in your account carefully to ensure there are no banking errors or forgeries. Don't waive any rights you may have to check originals or copies. And don't write checks unless you have the funds in your account to pay them *immediately*. Taking these steps will help you avoid bounced checks, late fees, and even prosecution under the UCMJ.