

## Right to Stop Payment

- Absolute right to stop payment for any reason or no reason at all. UCC 4-403(a)
- UCC doesn't regulate fees
- Must identify check "with reasonable certainty"; difficult for RCCs.
- Altered check (i.e., adding 4¢) not properly payable beyond authorized amount.
- Manipulations to defeat stop payment should be against public policy, unfair

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## UCC and Bounced checks: Re-presentment and return fees

- UCC silent on re-presentment (authority or # of times)
- If fee collected by RCC, UCC governs, fee must be authorized.

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## Right to Close Bank Account

- Customer “may stop payment .... or close the account by an order to the bank...” UCC 4-403(a)
- “stopping payment and closing an account is a service which depositors expect and are entitled to receive from banks notwithstanding its difficulty, inconvenience and expense.” UCC-404(a) cmt 1
- Order to close is an order not to honor new items (once bank has time to act).
- Future items are not properly payable.

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## Authorization of ACH Payments

- No general Reg E authorization rules
- NACHA Operating Rules:
  - clear and readily understandable terms
  - Web: evidence of consumer identity and consent; clear, conspicuous, identifiable, readable authorization terms
- Telephone authorizations: TSR, FDICPA, NACHA rules

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## Reg E: Unauthorized Charges

- “unauthorized”=“without actual authority ... and from which the consumer receives no benefit.” 12 CFR 1005.2(m)
- Bank must reverse unauthorized ACHs if given notice within 60 days of statement. If 60-120 days, up to \$500 liability.

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## Preauthorized EFTs

- Special Reg E rules apply to preauthorized electronic fund transfers (PEFTs)
- PEFT=“authorized in advance to recur at substantially regular intervals”
- Series of single payment loans can be PEFT

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## Authorization of PEFTs: Reg E

- Must be in “writing,” “readily identifiable as [an authorization] and the terms ... are clear and readily understandable.”
- Consumer must get a copy.
- Inconspicuous web disclosures, terms on another page, are not clear.
- If transfers vary in amount, must send 10-day advance notice. Consumer option of notice only if outside a range of amounts.

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## Stopping Payment of EFT

- NACHA: bank must honor stop payment of if given reas. time
- Reg E: PEFT only; right to stop if provide 3 biz days notice
- Notice can be oral but bank can require written confirmation, notice to payee, w/in 14 days
- Bank must block all future payments for the particular debit by that payee

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## Revoking Authorization of PEFT

- Caselaw: charge is unauthorized if authorization is revoked, even if contract requires longer notice.
- Banks shouldn't be able to charge a fee to *reverse* an unauthorized charge, but a fee for stopping it in the first place may be different.

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## Re-presentation and Return Fees by ACH

- NACHA: only 3 presentments of check or ACH (original plus 2 re-presentments)
- New NACHA bulletin on re-initiation
- Reg. E: Consumer authorizes one-time fee if she receives notice of return fees and goes forward with the transaction.  
§1005.3(b)(3).
- No UCC or Reg E rules on bank NSF fees (which are not a check, EFT or ACH).

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