

(PRE-FILED)

By: Chairman, Finance Committee (Commission on Uniform State Laws)

Requested: October 31, 1995

Introduced and read first time: January 10, 1996

Assigned to: Finance

Committee Report: Favorable

Senate action: Adopted

Read second time: March 6, 1996

CHAPTER ____

1 AN ACT concerning

2 **Uniform Commercial Code - Negotiable Instruments - Revision**

3 FOR the purpose of adopting the revised Title 3 of the Uniform Commercial Code;
4 altering certain requirements, prohibitions, and authorizations with regard to
5 negotiable instruments; providing for a certain statute of limitations for actions
6 arising under Title 3; amending Title 4 of the Uniform Commercial Code to provide
7 for truncation agreements between banks, a statute of limitations, and certain
8 warranties; making certain conforming changes to certain titles of the Uniform
9 Commercial Code; defining and redefining certain terms; providing for a delayed
10 effective date; and generally relating to the law concerning negotiable instruments.

11 BY repealing

12 Article - Commercial Law
13 Section 3-101 through 3-805, inclusive, and the title "Title 3. Commercial Paper";
14 and 4-109, 4-205, 4-207, and 4-211
15 Annotated Code of Maryland
16 (1992 Replacement Volume and 1995 Supplement)

17 BY repealing and reenacting, with amendments,

18 Article - Commercial Law
19 Section 1-201(20), (24), and (43), 1-207, 2-511(3), 4-101, 4-102, 4-103, 4-104,
20 4-105, 4-106, 4-107, 4-108, 4-201, 4-202, 4-203, 4-204, 4-206, 4-208, 4-209,
21 4-210, 4-212, 4-213, 4-214, 4-301 through 4-403, inclusive, and 4-405 through
22 4-504, inclusive
23 Annotated Code of Maryland
24 (1992 Replacement Volume and 1995 Supplement)

2

1 BY adding to
2 Article - Commercial Law
3 Section 3-101 through 3-119, inclusive, to be under the new subtitle "Subtitle 1.
4 General Provisions and Definitions"; 3-201 through 3-207, inclusive, to be
5 under the new subtitle "Subtitle 2. Negotiation, Transfer, and Indorsement";
6 3-301 through 3-312, inclusive, to be under the new subtitle "Subtitle 3.
7 Enforcement of Instruments"; 3-401 through 3-420, inclusive, to be under the
8 new subtitle "Subtitle 4. Liability of Parties"; 3-501 through 3-505, inclusive,
9 to be under the new subtitle "Subtitle 5. Dishonor"; 3-601 through 3-605,
10 inclusive, to be under the new subtitle "Subtitle 6. Discharge and Payment";
11 and the new title "Title 3. Negotiable Instruments"; and 4-106, 4-110, 4-111,
12 4-205, 4-207, 4-208, 4-209, and 4-213
13 Annotated Code of Maryland
14 (1992 Replacement Volume and 1995 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article - Commercial Law
17 Section 4-404
18 Annotated Code of Maryland
19 (1992 Replacement Volume and 1995 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That Section(s) 3-101 through 3-805, inclusive, and the title "Title 3.
22 Commercial Paper" of Article - Commercial Law of the Annotated Code of Maryland be
23 repealed.

24 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
25 read as follows:

26 **Article - Commercial Law**

27 1-201.

28 Subject to additional definitions contained in the subsequent titles of this article
29 which are applicable to specific titles or subtitles thereof, and unless the context
30 otherwise requires, in Titles 1 through 10 of this article:

31 (20) "Holder" [means a person who is in possession of a document of title or an
32 instrument or a certificated investment security drawn, issued or indorsed to him or his
33 order or to bearer or in blank] WITH RESPECT TO A NEGOTIABLE INSTRUMENT,
34 MEANS THE PERSON IN POSSESSION IF THE INSTRUMENT IS PAYABLE TO BEARER
35 OR, IN THE CASE OF AN INSTRUMENT PAYABLE TO AN IDENTIFIED PERSON, IF THE
36 IDENTIFIED PERSON IS IN POSSESSION. "HOLDER" WITH RESPECT TO A DOCUMENT
37 OF TITLE MEANS THE PERSON IN POSSESSION IF THE GOODS ARE DELIVERABLE TO
38 BEARER OR TO THE ORDER OF THE PERSON IN POSSESSION.

39 (24) "Money" means a medium of exchange authorized or adopted by a domestic
40 or foreign government [as a part of its currency] AND INCLUDES A MONETARY UNIT
41 OF ACCOUNT ESTABLISHED BY AN INTERGOVERNMENTAL ORGANIZATION OR BY
42 AGREEMENT BETWEEN TWO OR MORE NATIONS.

3

1 (43) "Unauthorized signature [or indorsement]" means one made without actual,
2 implied or apparent authority and includes a forgery.

3 1-207.

4 (1) A party who with explicit reservation of rights performs or promises
5 performance or assents to performance in a manner demanded or offered by the other
6 party does not thereby prejudice the rights reserved. Such words as "without prejudice,"
7 "under protest" or the like are sufficient.

8 (2) SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO AN ACCORD AND
9 SATISFACTION.

10 2-511.

11 (3) Subject to the provisions of Titles 1 through 10 of this article on the effect of
12 an instrument on an obligation [(§ 3-802)] (§ 3-310), payment by check is conditional and
13 is defeated as between the parties by dishonor of the check on due presentment.

14 TITLE 3. NEGOTIABLE INSTRUMENTS.

15 SUBTITLE 1. GENERAL PROVISIONS AND DEFINITIONS.

16 3-101.

17 THIS TITLE MAY BE CITED AS MARYLAND UNIFORM COMMERCIAL CODE -
18 NEGOTIABLE INSTRUMENTS.

19 3-102.

20 (A) THIS TITLE APPLIES TO NEGOTIABLE INSTRUMENTS. IT DOES NOT APPLY
21 TO MONEY, TO PAYMENT ORDERS GOVERNED BY TITLE 4A, OR TO SECURITIES
22 GOVERNED BY TITLE 8.

23 (B) IF THERE IS CONFLICT BETWEEN THIS TITLE AND TITLE 4 OR 9, TITLES 4
24 AND 9 GOVERN.

25 (C) REGULATIONS OF THE BOARD OF GOVERNORS OF THE FEDERAL
26 RESERVE SYSTEM AND OPERATING CIRCULARS OF THE FEDERAL RESERVE BANKS
27 SUPERSEDE ANY INCONSISTENT PROVISION OF THIS TITLE TO THE EXTENT OF THE
28 INCONSISTENCY.

29 3-103.

30 (A) IN THIS TITLE:

31 (1) "ACCEPTOR" MEANS A DRAWEE WHO HAS ACCEPTED A DRAFT.

32 (2) "DRAWEE" MEANS A PERSON ORDERED IN A DRAFT TO MAKE
33 PAYMENT.

34 (3) "DRAWER" MEANS A PERSON WHO SIGNS OR IS IDENTIFIED IN A
35 DRAFT AS A PERSON ORDERING PAYMENT.

4

1 (4) "GOOD FAITH" MEANS HONESTY IN FACT AND THE OBSERVANCE OF
2 REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING.

3 (5) "MAKER" MEANS A PERSON WHO SIGNS OR IS IDENTIFIED IN A NOTE
4 AS A PERSON UNDERTAKING TO PAY.

5 (6) "ORDER" MEANS A WRITTEN INSTRUCTION TO PAY MONEY SIGNED
6 BY THE PERSON GIVING THE INSTRUCTION. THE INSTRUCTION MAY BE ADDRESSED
7 TO ANY PERSON, INCLUDING THE PERSON GIVING THE INSTRUCTION, OR TO ONE
8 OR MORE PERSONS JOINTLY OR IN THE ALTERNATIVE BUT NOT IN SUCCESSION. AN
9 AUTHORIZATION TO PAY IS NOT AN ORDER UNLESS THE PERSON AUTHORIZED TO
10 PAY IS ALSO INSTRUCTED TO PAY.

11 (7) "ORDINARY CARE" IN THE CASE OF A PERSON ENGAGED IN
12 BUSINESS MEANS OBSERVANCE OF REASONABLE COMMERCIAL STANDARDS,
13 PREVAILING IN THE AREA IN WHICH THE PERSON IS LOCATED, WITH RESPECT TO
14 THE BUSINESS IN WHICH THE PERSON IS ENGAGED. IN THE CASE OF A BANK THAT
15 TAKES AN INSTRUMENT FOR PROCESSING FOR COLLECTION OR PAYMENT BY
16 AUTOMATED MEANS, REASONABLE COMMERCIAL STANDARDS DO NOT REQUIRE
17 THE BANK TO EXAMINE THE INSTRUMENT IF THE FAILURE TO EXAMINE DOES NOT
18 VIOLATE THE BANK'S PRESCRIBED PROCEDURES AND THE BANK'S PROCEDURES DO
19 NOT VARY UNREASONABLY FROM GENERAL BANKING USAGE NOT DISAPPROVED
20 BY THIS TITLE OR TITLE 4.

21 (8) "PARTY" MEANS A PARTY TO AN INSTRUMENT.

22 (9) "PROMISE" MEANS A WRITTEN UNDERTAKING TO PAY MONEY
23 SIGNED BY THE PERSON UNDERTAKING TO PAY. AN ACKNOWLEDGMENT OF AN
24 OBLIGATION BY THE OBLIGOR IS NOT A PROMISE UNLESS THE OBLIGOR ALSO
25 UNDERTAKES TO PAY THE OBLIGATION.

26 (10) "PROVE" WITH RESPECT TO A FACT MEANS TO MEET THE BURDEN
27 OF ESTABLISHING THE FACT (§ 1-201(8)).

28 (11) "REMITTER" MEANS A PERSON WHO PURCHASES AN INSTRUMENT
29 FROM ITS ISSUER IF THE INSTRUMENT IS PAYABLE TO AN IDENTIFIED PERSON
30 OTHER THAN THE PURCHASER.

31 (B) OTHER DEFINITIONS APPLYING TO THIS TITLE AND THE SECTIONS IN
32 WHICH THEY APPEAR ARE:

33	"ACCEPTANCE"	§ 3-409
34	"ACCOMMODATED PARTY"	§ 3-419
35	"ACCOMMODATION PARTY"	§ 3-419
36	"ALTERATION"	§ 3-407
37	"ANOMALOUS INDORSEMENT"	§ 3-205
38	"BLANK INDORSEMENT"	§ 3-205
39	"CASHIER'S CHECK"	§ 3-104
40	"CERTIFICATE OF DEPOSIT"	§ 3-104
41	"CERTIFIED CHECK"	§ 3-409
42	"CHECK"	§ 3-104
43	"CONSIDERATION"	§ 3-303

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1 "DRAFT"	§ 3-104	
2 "HOLDER IN DUE COURSE"		§ 3-302
3 "INCOMPLETE INSTRUMENT"		§ 3-115
4 "INDORSEMENT"	§ 3-204	
5 "INDORSER"	§ 3-204	
6 "INSTRUMENT"	§ 3-104	
7 "ISSUE"	§ 3-105	
8 "ISSUER"	§ 3-105	
9 "NEGOTIABLE INSTRUMENT"		§ 3-104
10 "NEGOTIATION"	§ 3-201	
11 "NOTE"	§ 3-104	
12 "PAYABLE AT A DEFINITE TIME"		§ 3-108
13 "PAYABLE ON DEMAND"		§ 3-108
14 "PAYABLE TO BEARER"		§ 3-109
15 "PAYABLE TO ORDER"		§ 3-109
16 "PAYMENT"	§ 3-602	
17 "PERSON ENTITLED TO ENFORCE"		§ 3-301
18 "PRESENTMENT"	§ 3-501	
19 "REACQUISITION"	§ 3-207	
20 "SPECIAL INDORSEMENT"		§ 3-205
21 "TELLER'S CHECK"	§ 3-104	
22 "TRANSFER OF INSTRUMENT"		§ 3-203
23 "TRAVELER'S CHECK"		§ 3-104
24 "VALUE"	§ 3-303	

25 (C) THE FOLLOWING DEFINITIONS IN OTHER TITLES APPLY TO THIS TITLE:

26 "BANK"	§ 4-105	
27 "BANKING DAY"	§ 4-104	
28 "CLEARING HOUSE"	§ 4-104	
29 "COLLECTING BANK"	§ 4-105	
30 "DEPOSITARY BANK"	§ 4-105	
31 "DOCUMENTARY DRAFT"	§ 4-104	
32 "INTERMEDIARY BANK"	§ 4-105	
33 "ITEM"	§ 4-104	
34 "PAYOR BANK"	§ 4-105	
35 "SUSPENDS PAYMENTS"	§ 4-104	

36 (D) IN ADDITION, TITLE 1 CONTAINS GENERAL DEFINITIONS AND PRINCIPLES
37 OF CONSTRUCTION AND INTERPRETATION APPLICABLE THROUGHOUT THIS TITLE.

38 3-104.

39 (A) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D), "NEGOTIABLE
40 INSTRUMENT" MEANS AN UNCONDITIONAL PROMISE OR ORDER TO PAY A FIXED
41 AMOUNT OF MONEY, WITH OR WITHOUT INTEREST OR OTHER CHARGES DESCRIBED
42 IN THE PROMISE OR ORDER, IF IT:

43 (1) IS PAYABLE TO BEARER OR TO ORDER AT THE TIME IT IS ISSUED OR
44 FIRST COMES INTO POSSESSION OF A HOLDER;

1 (2) IS PAYABLE ON DEMAND OR AT A DEFINITE TIME; AND

2 (3) DOES NOT STATE ANY OTHER UNDERTAKING OR INSTRUCTION BY
3 THE PERSON PROMISING OR ORDERING PAYMENT TO DO ANY ACT IN ADDITION TO
4 THE PAYMENT OF MONEY, BUT THE PROMISE OR ORDER MAY CONTAIN (I) AN
5 UNDERTAKING OR POWER TO GIVE, MAINTAIN, OR PROTECT COLLATERAL TO
6 SECURE PAYMENT, (II) AN AUTHORIZATION OR POWER TO THE HOLDER TO
7 CONFESS JUDGMENT OR REALIZE ON OR DISPOSE OF COLLATERAL, OR (III) A
8 WAIVER OF THE BENEFIT OF ANY LAW INTENDED FOR THE ADVANTAGE OR
9 PROTECTION OF AN OBLIGOR.

10 (B) "INSTRUMENT" MEANS A NEGOTIABLE INSTRUMENT.

11 (C) AN ORDER THAT MEETS ALL OF THE REQUIREMENTS OF SUBSECTION (A),
12 EXCEPT PARAGRAPH (1), AND OTHERWISE FALLS WITHIN THE DEFINITION OF
13 "CHECK" IN SUBSECTION (F) IS A NEGOTIABLE INSTRUMENT AND A CHECK.

14 (D) A PROMISE OR ORDER OTHER THAN A CHECK IS NOT AN INSTRUMENT IF,
15 AT THE TIME IT IS ISSUED OR FIRST COMES INTO POSSESSION OF A HOLDER, IT
16 CONTAINS A CONSPICUOUS STATEMENT, HOWEVER EXPRESSED, TO THE EFFECT
17 THAT THE PROMISE OR ORDER IS NOT NEGOTIABLE OR IS NOT AN INSTRUMENT
18 GOVERNED BY THIS TITLE.

19 (E) AN INSTRUMENT IS A "NOTE" IF IT IS A PROMISE AND IS A "DRAFT" IF IT
20 IS AN ORDER. IF AN INSTRUMENT FALLS WITHIN THE DEFINITION OF BOTH "NOTE"
21 AND "DRAFT", A PERSON ENTITLED TO ENFORCE THE INSTRUMENT MAY TREAT IT
22 AS EITHER.

23 (F) "CHECK" MEANS (I) A DRAFT, OTHER THAN A DOCUMENTARY DRAFT,
24 PAYABLE ON DEMAND AND DRAWN ON A BANK OR (II) A CASHIER'S CHECK OR
25 TELLER'S CHECK. AN INSTRUMENT MAY BE A CHECK EVEN THOUGH IT IS
26 DESCRIBED ON ITS FACE BY ANOTHER TERM, SUCH AS "MONEY ORDER".

27 (G) "CASHIER'S CHECK" MEANS A DRAFT WITH RESPECT TO WHICH THE
28 DRAWER AND DRAWEE ARE THE SAME BANK OR BRANCHES OF THE SAME BANK.

29 (H) "TELLER'S CHECK" MEANS A DRAFT DRAWN BY A BANK (I) ON ANOTHER
30 BANK, OR (II) PAYABLE AT OR THROUGH A BANK.

31 (I) "TRAVELER'S CHECK" MEANS AN INSTRUMENT THAT (I) IS PAYABLE ON
32 DEMAND, (II) IS DRAWN ON OR PAYABLE AT OR THROUGH A BANK, (III) IS
33 DESIGNATED BY THE TERM "TRAVELER'S CHECK" OR BY A SUBSTANTIALLY
34 SIMILAR TERM, AND (IV) REQUIRES, AS A CONDITION TO PAYMENT, A
35 COUNTERSIGNATURE BY A PERSON WHOSE SPECIMEN SIGNATURE APPEARS ON THE
36 INSTRUMENT.

37 (J) "CERTIFICATE OF DEPOSIT" MEANS AN INSTRUMENT CONTAINING AN
38 ACKNOWLEDGMENT BY A BANK THAT A SUM OF MONEY HAS BEEN RECEIVED BY
39 THE BANK AND A PROMISE BY THE BANK TO REPAY THE SUM OF MONEY. A
40 CERTIFICATE OF DEPOSIT IS A NOTE OF THE BANK.

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1 3-105.

2 (A) "ISSUE" MEANS THE FIRST DELIVERY OF AN INSTRUMENT BY THE MAKER
3 OR DRAWER, WHETHER TO A HOLDER OR NONHOLDER, FOR THE PURPOSE OF
4 GIVING RIGHTS ON THE INSTRUMENT TO ANY PERSON.

5 (B) AN UNISSUED INSTRUMENT, OR AN UNISSUED INCOMPLETE INSTRUMENT
6 THAT IS COMPLETED, IS BINDING ON THE MAKER OR DRAWER, BUT NONISSUANCE
7 IS A DEFENSE. AN INSTRUMENT THAT IS CONDITIONALLY ISSUED OR IS ISSUED FOR
8 A SPECIAL PURPOSE IS BINDING ON THE MAKER OR DRAWER, BUT FAILURE OF THE
9 CONDITION OR SPECIAL PURPOSE TO BE FULFILLED IS A DEFENSE.

10 (C) "ISSUER" APPLIES TO ISSUED AND UNISSUED INSTRUMENTS AND MEANS
11 A MAKER OR DRAWER OF AN INSTRUMENT.

12 3-106.

13 (A) EXCEPT AS PROVIDED IN THIS SECTION, FOR THE PURPOSES OF § 3-104(A),
14 A PROMISE OR ORDER IS UNCONDITIONAL UNLESS IT STATES (I) AN EXPRESS
15 CONDITION TO PAYMENT, (II) THAT THE PROMISE OR ORDER IS SUBJECT TO OR
16 GOVERNED BY ANOTHER WRITING, OR (III) THAT RIGHTS OR OBLIGATIONS WITH
17 RESPECT TO THE PROMISE OR ORDER ARE STATED IN ANOTHER WRITING. A
18 REFERENCE TO ANOTHER WRITING DOES NOT OF ITSELF MAKE THE PROMISE OR
19 ORDER CONDITIONAL.

20 (B) A PROMISE OR ORDER IS NOT MADE CONDITIONAL (I) BY A REFERENCE
21 TO ANOTHER WRITING FOR A STATEMENT OF RIGHTS WITH RESPECT TO
22 COLLATERAL, PREPAYMENT, OR ACCELERATION, OR (II) BECAUSE PAYMENT IS
23 LIMITED TO RESORT TO A PARTICULAR FUND OR SOURCE.

24 (C) IF A PROMISE OR ORDER REQUIRES, AS A CONDITION TO PAYMENT, A
25 COUNTERSIGNATURE BY A PERSON WHOSE SPECIMEN SIGNATURE APPEARS ON THE
26 PROMISE OR ORDER, THE CONDITION DOES NOT MAKE THE PROMISE OR ORDER
27 CONDITIONAL FOR THE PURPOSES OF § 3-104(A). IF THE PERSON WHOSE SPECIMEN
28 SIGNATURE APPEARS ON AN INSTRUMENT FAILS TO COUNTERSIGN THE
29 INSTRUMENT, THE FAILURE TO COUNTERSIGN IS A DEFENSE TO THE OBLIGATION
30 OF THE ISSUER, BUT THE FAILURE DOES NOT PREVENT A TRANSFEREE OF THE
31 INSTRUMENT FROM BECOMING A HOLDER OF THE INSTRUMENT.

32 (D) IF A PROMISE OR ORDER AT THE TIME IT IS ISSUED OR FIRST COMES INTO
33 POSSESSION OF A HOLDER CONTAINS A STATEMENT, REQUIRED BY APPLICABLE
34 STATUTORY OR ADMINISTRATIVE LAW, TO THE EFFECT THAT THE RIGHTS OF A
35 HOLDER OR TRANSFEREE ARE SUBJECT TO CLAIMS OR DEFENSES THAT THE ISSUER
36 COULD ASSERT AGAINST THE ORIGINAL PAYEE, THE PROMISE OR ORDER IS NOT
37 THEREBY MADE CONDITIONAL FOR THE PURPOSES OF § 3-104(A); BUT IF THE
38 PROMISE OR ORDER IS AN INSTRUMENT, THERE CANNOT BE A HOLDER IN DUE
39 COURSE OF THE INSTRUMENT.

40 3-107.

41 UNLESS THE INSTRUMENT OTHERWISE PROVIDES, AN INSTRUMENT THAT
42 STATES THE AMOUNT PAYABLE IN FOREIGN MONEY MAY BE PAID IN THE FOREIGN

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1 MONEY OR IN AN EQUIVALENT AMOUNT IN DOLLARS CALCULATED BY USING THE
2 CURRENT BANK-OFFERED SPOT RATE AT THE PLACE OF PAYMENT FOR THE
3 PURCHASE OF DOLLARS ON THE DAY ON WHICH THE INSTRUMENT IS PAID.

4 3-108.

5 (A) A PROMISE OR ORDER IS "PAYABLE ON DEMAND" IF IT (I) STATES THAT
6 IT IS PAYABLE ON DEMAND OR AT SIGHT, OR OTHERWISE INDICATES THAT IT IS
7 PAYABLE AT THE WILL OF THE HOLDER, OR (II) DOES NOT STATE ANY TIME OF
8 PAYMENT.

9 (B) A PROMISE OR ORDER IS "PAYABLE AT A DEFINITE TIME" IF IT IS
10 PAYABLE ON ELAPSE OF A DEFINITE PERIOD OF TIME AFTER SIGHT OR
11 ACCEPTANCE OR AT A FIXED DATE OR DATES OR AT A TIME OR TIMES READILY
12 ASCERTAINABLE AT THE TIME THE PROMISE OR ORDER IS ISSUED, SUBJECT TO
13 RIGHTS OF (I) PREPAYMENT, (II) ACCELERATION, (III) EXTENSION AT THE OPTION
14 OF THE HOLDER, OR (IV) EXTENSION TO A FURTHER DEFINITE TIME AT THE OPTION
15 OF THE MAKER OR ACCEPTOR OR AUTOMATICALLY UPON OR AFTER A SPECIFIED
16 ACT OR EVENT.

17 (C) IF AN INSTRUMENT, PAYABLE AT A FIXED DATE, IS ALSO PAYABLE UPON
18 DEMAND MADE BEFORE THE FIXED DATE, THE INSTRUMENT IS PAYABLE ON
19 DEMAND UNTIL THE FIXED DATE AND, IF DEMAND FOR PAYMENT IS NOT MADE
20 BEFORE THAT DATE, BECOMES PAYABLE AT A DEFINITE TIME ON THE FIXED DATE.

21 3-109.

22 (A) A PROMISE OR ORDER IS PAYABLE TO BEARER IF IT:

23 (1) STATES THAT IT IS PAYABLE TO BEARER OR TO THE ORDER OF
24 BEARER OR OTHERWISE INDICATES THAT THE PERSON IN POSSESSION OF THE
25 PROMISE OR ORDER IS ENTITLED TO PAYMENT;

26 (2) DOES NOT STATE A PAYEE; OR

27 (3) STATES THAT IT IS PAYABLE TO OR TO THE ORDER OF CASH OR
28 OTHERWISE INDICATES THAT IT IS NOT PAYABLE TO AN IDENTIFIED PERSON.

29 (B) A PROMISE OR ORDER THAT IS NOT PAYABLE TO BEARER IS PAYABLE TO
30 ORDER IF IT IS PAYABLE (I) TO THE ORDER OF AN IDENTIFIED PERSON OR (II) TO AN
31 IDENTIFIED PERSON OR ORDER. A PROMISE OR ORDER THAT IS PAYABLE TO
32 ORDER IS PAYABLE TO THE IDENTIFIED PERSON.

33 (C) AN INSTRUMENT PAYABLE TO BEARER MAY BECOME PAYABLE TO AN
34 IDENTIFIED PERSON IF IT IS SPECIALLY INDORSED PURSUANT TO § 3-205(A). AN
35 INSTRUMENT PAYABLE TO AN IDENTIFIED PERSON MAY BECOME PAYABLE TO
36 BEARER IF IT IS INDORSED IN BLANK PURSUANT TO § 3-205(B).

37 3-110.

38 (A) THE PERSON TO WHOM AN INSTRUMENT IS INITIALLY PAYABLE IS
39 DETERMINED BY THE INTENT OF THE PERSON, WHETHER OR NOT AUTHORIZED,
40 SIGNING AS, OR IN THE NAME OR BEHALF OF, THE ISSUER OF THE INSTRUMENT. THE

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1 INSTRUMENT IS PAYABLE TO THE PERSON INTENDED BY THE SIGNER EVEN IF THAT
2 PERSON IS IDENTIFIED IN THE INSTRUMENT BY A NAME OR OTHER IDENTIFICATION
3 THAT IS NOT THAT OF THE INTENDED PERSON. IF MORE THAN ONE PERSON SIGNS IN
4 THE NAME OR BEHALF OF THE ISSUER OF AN INSTRUMENT AND ALL THE SIGNERS
5 DO NOT INTEND THE SAME PERSON AS PAYEE, THE INSTRUMENT IS PAYABLE TO
6 ANY PERSON INTENDED BY ONE OR MORE OF THE SIGNERS.

7 (B) IF THE SIGNATURE OF THE ISSUER OF AN INSTRUMENT IS MADE BY
8 AUTOMATED MEANS, SUCH AS A CHECK-WRITING MACHINE, THE PAYEE OF THE
9 INSTRUMENT IS DETERMINED BY THE INTENT OF THE PERSON WHO SUPPLIED THE
10 NAME OR IDENTIFICATION OF THE PAYEE, WHETHER OR NOT AUTHORIZED TO DO
11 SO.

12 (C) A PERSON TO WHOM AN INSTRUMENT IS PAYABLE MAY BE IDENTIFIED IN
13 ANY WAY, INCLUDING BY NAME, IDENTIFYING NUMBER, OFFICE, OR ACCOUNT
14 NUMBER. FOR THE PURPOSE OF DETERMINING THE HOLDER OF AN INSTRUMENT,
15 THE FOLLOWING RULES APPLY:

16 (1) IF AN INSTRUMENT IS PAYABLE TO AN ACCOUNT AND THE
17 ACCOUNT IS IDENTIFIED ONLY BY NUMBER, THE INSTRUMENT IS PAYABLE TO THE
18 PERSON TO WHOM THE ACCOUNT IS PAYABLE. IF AN INSTRUMENT IS PAYABLE TO
19 AN ACCOUNT IDENTIFIED BY NUMBER AND BY THE NAME OF A PERSON, THE
20 INSTRUMENT IS PAYABLE TO THE NAMED PERSON, WHETHER OR NOT THAT PERSON
21 IS THE OWNER OF THE ACCOUNT IDENTIFIED BY NUMBER.

22 (2) IF AN INSTRUMENT IS PAYABLE TO:

23 (I) A TRUST, AN ESTATE, OR A PERSON DESCRIBED AS TRUSTEE
24 OR REPRESENTATIVE OF A TRUST OR ESTATE, THE INSTRUMENT IS PAYABLE TO
25 THE TRUSTEE, THE REPRESENTATIVE, OR A SUCCESSOR OF EITHER, WHETHER OR
26 NOT THE BENEFICIARY OR ESTATE IS ALSO NAMED;

27 (II) A PERSON DESCRIBED AS AGENT OR SIMILAR
28 REPRESENTATIVE OF A NAMED OR IDENTIFIED PERSON, THE INSTRUMENT IS
29 PAYABLE TO THE REPRESENTED PERSON, THE REPRESENTATIVE, OR A SUCCESSOR
30 OF THE REPRESENTATIVE;

31 (III) A FUND OR ORGANIZATION THAT IS NOT A LEGAL ENTITY,
32 THE INSTRUMENT IS PAYABLE TO A REPRESENTATIVE OF THE MEMBERS OF THE
33 FUND OR ORGANIZATION; OR

34 (IV) AN OFFICE OR TO A PERSON DESCRIBED AS HOLDING AN
35 OFFICE, THE INSTRUMENT IS PAYABLE TO THE NAMED PERSON, THE INCUMBENT OF
36 THE OFFICE, OR A SUCCESSOR TO THE INCUMBENT.

37 (D) IF AN INSTRUMENT IS PAYABLE TO TWO OR MORE PERSONS
38 ALTERNATIVELY, IT IS PAYABLE TO ANY OF THEM AND MAY BE NEGOTIATED,
39 DISCHARGED, OR ENFORCED BY ANY OR ALL OF THEM IN POSSESSION OF THE
40 INSTRUMENT. IF AN INSTRUMENT IS PAYABLE TO TWO OR MORE PERSONS NOT
41 ALTERNATIVELY, IT IS PAYABLE TO ALL OF THEM AND MAY BE NEGOTIATED,
42 DISCHARGED, OR ENFORCED ONLY BY ALL OF THEM. IF AN INSTRUMENT PAYABLE
43 TO TWO OR MORE PERSONS IS AMBIGUOUS AS TO WHETHER IT IS PAYABLE TO THE

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1 PERSONS ALTERNATIVELY, THE INSTRUMENT IS PAYABLE TO THE PERSONS
2 ALTERNATIVELY.

3 3-111.

4 EXCEPT AS OTHERWISE PROVIDED FOR ITEMS IN TITLE 4, AN INSTRUMENT IS
5 PAYABLE AT THE PLACE OF PAYMENT STATED IN THE INSTRUMENT. IF NO PLACE OF
6 PAYMENT IS STATED, AN INSTRUMENT IS PAYABLE AT THE ADDRESS OF THE
7 DRAWEE OR MAKER STATED IN THE INSTRUMENT. IF NO ADDRESS IS STATED, THE
8 PLACE OF PAYMENT IS THE PLACE OF BUSINESS OF THE DRAWEE OR MAKER. IF A
9 DRAWEE OR MAKER HAS MORE THAN ONE PLACE OF BUSINESS, THE PLACE OF
10 PAYMENT IS ANY PLACE OF BUSINESS OF THE DRAWEE OR MAKER CHOSEN BY THE
11 PERSON ENTITLED TO ENFORCE THE INSTRUMENT. IF THE DRAWEE OR MAKER HAS
12 NO PLACE OF BUSINESS, THE PLACE OF PAYMENT IS THE RESIDENCE OF THE
13 DRAWEE OR MAKER.

14 3-112.

15 (A) UNLESS OTHERWISE PROVIDED IN THE INSTRUMENT, (I) AN INSTRUMENT
16 IS NOT PAYABLE WITH INTEREST, AND (II) INTEREST ON AN INTEREST-BEARING
17 INSTRUMENT IS PAYABLE FROM THE DATE OF THE INSTRUMENT.

18 (B) INTEREST MAY BE STATED IN AN INSTRUMENT AS A FIXED OR VARIABLE
19 AMOUNT OF MONEY OR IT MAY BE EXPRESSED AS A FIXED OR VARIABLE RATE OR
20 RATES. THE AMOUNT OR RATE OF INTEREST MAY BE STATED OR DESCRIBED IN THE
21 INSTRUMENT IN ANY MANNER AND MAY REQUIRE REFERENCE TO INFORMATION
22 NOT CONTAINED IN THE INSTRUMENT. IF AN INSTRUMENT PROVIDES FOR
23 INTEREST, BUT THE AMOUNT OF INTEREST PAYABLE CANNOT BE ASCERTAINED
24 FROM THE DESCRIPTION, INTEREST IS PAYABLE AT THE JUDGMENT RATE IN EFFECT
25 AT THE PLACE OF PAYMENT OF THE INSTRUMENT AND AT THE TIME INTEREST
26 FIRST ACCRUES.

27 3-113.

28 (A) AN INSTRUMENT MAY BE ANTEDATED OR POSTDATED. THE DATE
29 STATED DETERMINES THE TIME OF PAYMENT IF THE INSTRUMENT IS PAYABLE AT A
30 FIXED PERIOD AFTER DATE. EXCEPT AS PROVIDED IN § 4-401(C), AN INSTRUMENT
31 PAYABLE ON DEMAND IS NOT PAYABLE BEFORE THE DATE OF THE INSTRUMENT.

32 (B) IF AN INSTRUMENT IS UNDATED, ITS DATE IS THE DATE OF ITS ISSUE OR,
33 IN THE CASE OF AN UNISSUED INSTRUMENT, THE DATE IT FIRST COMES INTO
34 POSSESSION OF A HOLDER.

35 3-114.

36 IF AN INSTRUMENT CONTAINS CONTRADICTORY TERMS, TYPEWRITTEN TERMS
37 PREVAIL OVER PRINTED TERMS, HANDWRITTEN TERMS PREVAIL OVER BOTH, AND
38 WORDS PREVAIL OVER NUMBERS.

39 3-115.

40 (A) "INCOMPLETE INSTRUMENT" MEANS A SIGNED WRITING, WHETHER OR
41 NOT ISSUED BY THE SIGNER, THE CONTENTS OF WHICH SHOW AT THE TIME OF

11

1 SIGNING THAT IT IS INCOMPLETE BUT THAT THE SIGNER INTENDED IT TO BE
2 COMPLETED BY THE ADDITION OF WORDS OR NUMBERS.

3 (B) SUBJECT TO SUBSECTION (C), IF AN INCOMPLETE INSTRUMENT IS AN
4 INSTRUMENT UNDER § 3-104, IT MAY BE ENFORCED ACCORDING TO ITS TERMS IF IT
5 IS NOT COMPLETED, OR ACCORDING TO ITS TERMS AS AUGMENTED BY
6 COMPLETION. IF AN INCOMPLETE INSTRUMENT IS NOT AN INSTRUMENT UNDER §
7 3-104, BUT, AFTER COMPLETION, THE REQUIREMENTS OF § 3-104 ARE MET, THE
8 INSTRUMENT MAY BE ENFORCED ACCORDING TO ITS TERMS AS AUGMENTED BY
9 COMPLETION.

10 (C) IF WORDS OR NUMBERS ARE ADDED TO AN INCOMPLETE INSTRUMENT
11 WITHOUT AUTHORITY OF THE SIGNER, THERE IS AN ALTERATION OF THE
12 INCOMPLETE INSTRUMENT UNDER § 3-407.

13 (D) THE BURDEN OF ESTABLISHING THAT WORDS OR NUMBERS WERE
14 ADDED TO AN INCOMPLETE INSTRUMENT WITHOUT AUTHORITY OF THE SIGNER IS
15 ON THE PERSON ASSERTING THE LACK OF AUTHORITY.

16 3-116.

17 (A) EXCEPT AS OTHERWISE PROVIDED IN THE INSTRUMENT, TWO OR MORE
18 PERSONS WHO HAVE THE SAME LIABILITY ON AN INSTRUMENT AS MAKERS,
19 DRAWERS, ACCEPTORS, INDORSERS WHO INDORSE AS JOINT PAYEES, OR
20 ANOMALOUS INDORSERS ARE JOINTLY AND SEVERALLY LIABLE IN THE CAPACITY
21 IN WHICH THEY SIGN.

22 (B) EXCEPT AS PROVIDED IN § 3-419(E) OR BY AGREEMENT OF THE AFFECTED
23 PARTIES, A PARTY HAVING JOINT AND SEVERAL LIABILITY WHO PAYS THE
24 INSTRUMENT IS ENTITLED TO RECEIVE FROM ANY PARTY HAVING THE SAME JOINT
25 AND SEVERAL LIABILITY CONTRIBUTION IN ACCORDANCE WITH APPLICABLE LAW.

26 (C) DISCHARGE OF ONE PARTY HAVING JOINT AND SEVERAL LIABILITY BY A
27 PERSON ENTITLED TO ENFORCE THE INSTRUMENT DOES NOT AFFECT THE RIGHT
28 UNDER SUBSECTION (B) OF A PARTY HAVING THE SAME JOINT AND SEVERAL
29 LIABILITY TO RECEIVE CONTRIBUTION FROM THE PARTY DISCHARGED.

30 3-117.

31 SUBJECT TO APPLICABLE LAW REGARDING EXCLUSION OF PROOF OF
32 CONTEMPORANEOUS OR PREVIOUS AGREEMENTS, THE OBLIGATION OF A PARTY TO
33 AN INSTRUMENT TO PAY THE INSTRUMENT MAY BE MODIFIED, SUPPLEMENTED, OR
34 NULLIFIED BY A SEPARATE AGREEMENT OF THE OBLIGOR AND A PERSON
35 ENTITLED TO ENFORCE THE INSTRUMENT, IF THE INSTRUMENT IS ISSUED OR THE
36 OBLIGATION IS INCURRED IN RELIANCE ON THE AGREEMENT OR AS PART OF THE
37 SAME TRANSACTION GIVING RISE TO THE AGREEMENT. TO THE EXTENT AN
38 OBLIGATION IS MODIFIED, SUPPLEMENTED, OR NULLIFIED BY AN AGREEMENT
39 UNDER THIS SECTION, THE AGREEMENT IS A DEFENSE TO THE OBLIGATION.

40 3-118.

41 (A) EXCEPT AS PROVIDED IN SUBSECTION (E), AN ACTION TO ENFORCE THE
42 OBLIGATION OF A PARTY TO PAY A NOTE PAYABLE AT A DEFINITE TIME MUST BE

12

1 COMMENCED WITHIN 6 YEARS AFTER THE DUE DATE OR DATES STATED IN THE
2 NOTE OR, IF A DUE DATE IS ACCELERATED, WITHIN 6 YEARS AFTER THE
3 ACCELERATED DUE DATE.

4 (B) EXCEPT AS PROVIDED IN SUBSECTION (D) OR (E), IF DEMAND FOR
5 PAYMENT IS MADE TO THE MAKER OF A NOTE PAYABLE ON DEMAND, AN ACTION
6 TO ENFORCE THE OBLIGATION OF A PARTY TO PAY THE NOTE MUST BE
7 COMMENCED WITHIN 6 YEARS AFTER THE DEMAND. IF NO DEMAND FOR PAYMENT
8 IS MADE TO THE MAKER, AN ACTION TO ENFORCE THE NOTE IS BARRED IF NEITHER
9 PRINCIPAL NOR INTEREST ON THE NOTE HAS BEEN PAID FOR A CONTINUOUS
10 PERIOD OF 10 YEARS.

11 (C) EXCEPT AS PROVIDED IN SUBSECTION (D), AN ACTION TO ENFORCE THE
12 OBLIGATION OF A PARTY TO AN UNACCEPTED DRAFT TO PAY THE DRAFT MUST BE
13 COMMENCED WITHIN 3 YEARS AFTER DISHONOR OF THE DRAFT OR 10 YEARS
14 AFTER THE DATE OF THE DRAFT, WHICHEVER PERIOD EXPIRES FIRST.

15 (D) AN ACTION TO ENFORCE THE OBLIGATION OF THE ACCEPTOR OF A
16 CERTIFIED CHECK OR THE ISSUER OF A TELLER'S CHECK, CASHIER'S CHECK, OR
17 TRAVELER'S CHECK MUST BE COMMENCED WITHIN 3 YEARS AFTER DEMAND FOR
18 PAYMENT IS MADE TO THE ACCEPTOR OR ISSUER, AS THE CASE MAY BE.

19 (E) AN ACTION TO ENFORCE THE OBLIGATION OF A PARTY TO A
20 CERTIFICATE OF DEPOSIT TO PAY THE INSTRUMENT MUST BE COMMENCED WITHIN
21 6 YEARS AFTER DEMAND FOR PAYMENT IS MADE TO THE MAKER, BUT IF THE
22 INSTRUMENT STATES A DUE DATE AND THE MAKER IS NOT REQUIRED TO PAY
23 BEFORE THAT DATE, THE 6-YEAR PERIOD BEGINS WHEN A DEMAND FOR PAYMENT
24 IS IN EFFECT AND THE DUE DATE HAS PASSED.

25 (F) AN ACTION TO ENFORCE THE OBLIGATION OF A PARTY TO PAY AN
26 ACCEPTED DRAFT, OTHER THAN A CERTIFIED CHECK, MUST BE COMMENCED (I)
27 WITHIN 6 YEARS AFTER THE DUE DATE OR DATES STATED IN THE DRAFT OR
28 ACCEPTANCE IF THE OBLIGATION OF THE ACCEPTOR IS PAYABLE AT A DEFINITE
29 TIME, OR (II) WITHIN 6 YEARS AFTER THE DATE OF THE ACCEPTANCE IF THE
30 OBLIGATION OF THE ACCEPTOR IS PAYABLE ON DEMAND.

31 (G) UNLESS GOVERNED BY OTHER LAW REGARDING CLAIMS FOR
32 INDEMNITY OR CONTRIBUTION, AN ACTION (I) FOR CONVERSION OF AN
33 INSTRUMENT, FOR MONEY HAD AND RECEIVED, OR LIKE ACTION BASED ON
34 CONVERSION, (II) FOR BREACH OF WARRANTY, OR (III) TO ENFORCE AN
35 OBLIGATION, DUTY, OR RIGHT ARISING UNDER THIS ARTICLE AND NOT GOVERNED
36 BY THIS SECTION MUST BE COMMENCED WITHIN 3 YEARS AFTER THE CAUSE OF
37 ACTION ACCRUES.

38 3-119.

39 IN AN ACTION FOR BREACH OF AN OBLIGATION FOR WHICH A THIRD PERSON
40 IS ANSWERABLE OVER PURSUANT TO THIS TITLE OR TITLE 4, THE DEFENDANT MAY
41 GIVE THE THIRD PERSON WRITTEN NOTICE OF THE LITIGATION, AND THE PERSON
42 NOTIFIED MAY THEN GIVE SIMILAR NOTICE TO ANY OTHER PERSON WHO IS
43 ANSWERABLE OVER. IF THE NOTICE STATES (I) THAT THE PERSON NOTIFIED MAY

13

1 COME IN AND DEFEND AND (II) THAT FAILURE TO DO SO WILL BIND THE PERSON
2 NOTIFIED IN AN ACTION LATER BROUGHT BY THE PERSON GIVING THE NOTICE AS
3 TO ANY DETERMINATION OF FACT COMMON TO THE TWO LITIGATIONS, THE
4 PERSON NOTIFIED IS SO BOUND UNLESS AFTER SEASONABLE RECEIPT OF THE
5 NOTICE THE PERSON NOTIFIED DOES COME IN AND DEFEND.

6 SUBTITLE 2. NEGOTIATION, TRANSFER, AND INDORSEMENT.

7 3-201.

8 (A) "NEGOTIATION" MEANS A TRANSFER OF POSSESSION, WHETHER
9 VOLUNTARY OR INVOLUNTARY, OF AN INSTRUMENT BY A PERSON OTHER THAN
10 THE ISSUER TO A PERSON WHO THEREBY BECOMES ITS HOLDER.

11 (B) EXCEPT FOR NEGOTIATION BY A REMITTER, IF AN INSTRUMENT IS
12 PAYABLE TO AN IDENTIFIED PERSON, NEGOTIATION REQUIRES TRANSFER OF
13 POSSESSION OF THE INSTRUMENT AND ITS INDORSEMENT BY THE HOLDER. IF AN
14 INSTRUMENT IS PAYABLE TO BEARER, IT MAY BE NEGOTIATED BY TRANSFER OF
15 POSSESSION ALONE.

16 3-202.

17 (A) NEGOTIATION IS EFFECTIVE EVEN IF OBTAINED (I) FROM AN INFANT, A
18 CORPORATION EXCEEDING ITS POWERS, OR A PERSON WITHOUT CAPACITY, (II) BY
19 FRAUD, DURESS, OR MISTAKE, OR (III) IN BREACH OF DUTY OR AS PART OF AN
20 ILLEGAL TRANSACTION.

21 (B) TO THE EXTENT PERMITTED BY OTHER LAW, NEGOTIATION MAY BE
22 RESCINDED OR MAY BE SUBJECT TO OTHER REMEDIES, BUT THOSE REMEDIES MAY
23 NOT BE ASSERTED AGAINST A SUBSEQUENT HOLDER IN DUE COURSE OR A PERSON
24 PAYING THE INSTRUMENT IN GOOD FAITH AND WITHOUT KNOWLEDGE OF FACTS
25 THAT ARE A BASIS FOR RESCISSION OR OTHER REMEDY.

26 3-203.

27 (A) AN INSTRUMENT IS TRANSFERRED WHEN IT IS DELIVERED BY A PERSON
28 OTHER THAN ITS ISSUER FOR THE PURPOSE OF GIVING TO THE PERSON RECEIVING
29 DELIVERY THE RIGHT TO ENFORCE THE INSTRUMENT.

30 (B) TRANSFER OF AN INSTRUMENT, WHETHER OR NOT THE TRANSFER IS A
31 NEGOTIATION, VESTS IN THE TRANSFEREE ANY RIGHT OF THE TRANSFEROR TO
32 ENFORCE THE INSTRUMENT, INCLUDING ANY RIGHT AS A HOLDER IN DUE COURSE,
33 BUT THE TRANSFEREE CANNOT ACQUIRE RIGHTS OF A HOLDER IN DUE COURSE BY
34 A TRANSFER, DIRECTLY OR INDIRECTLY, FROM A HOLDER IN DUE COURSE IF THE
35 TRANSFEREE ENGAGED IN FRAUD OR ILLEGALITY AFFECTING THE INSTRUMENT.

36 (C) UNLESS OTHERWISE AGREED, IF AN INSTRUMENT IS TRANSFERRED FOR
37 VALUE AND THE TRANSFEREE DOES NOT BECOME A HOLDER BECAUSE OF LACK OF
38 INDORSEMENT BY THE TRANSFEROR, THE TRANSFEREE HAS A SPECIFICALLY
39 ENFORCEABLE RIGHT TO THE UNQUALIFIED INDORSEMENT OF THE TRANSFEROR,
40 BUT NEGOTIATION OF THE INSTRUMENT DOES NOT OCCUR UNTIL THE
41 INDORSEMENT IS MADE.

14

1 (D) IF A TRANSFEROR PURPORTS TO TRANSFER LESS THAN THE ENTIRE
2 INSTRUMENT, NEGOTIATION OF THE INSTRUMENT DOES NOT OCCUR. THE
3 TRANSFEREE OBTAINS NO RIGHTS UNDER THIS TITLE AND HAS ONLY THE RIGHTS
4 OF A PARTIAL ASSIGNEE.

5 3-204.

6 (A) "INDORSEMENT" MEANS A SIGNATURE, OTHER THAN THAT OF A SIGNER
7 AS MAKER, DRAWER, OR ACCEPTOR, THAT ALONE OR ACCOMPANIED BY OTHER
8 WORDS IS MADE ON AN INSTRUMENT FOR THE PURPOSE OF (I) NEGOTIATING THE
9 INSTRUMENT, (II) RESTRICTING PAYMENT OF THE INSTRUMENT, OR (III) INCURRING
10 INDORSER'S LIABILITY ON THE INSTRUMENT, BUT REGARDLESS OF THE INTENT OF
11 THE SIGNER, A SIGNATURE AND ITS ACCOMPANYING WORDS IS AN INDORSEMENT
12 UNLESS THE ACCOMPANYING WORDS, TERMS OF THE INSTRUMENT, PLACE OF THE
13 SIGNATURE, OR OTHER CIRCUMSTANCES UNAMBIGUOUSLY INDICATE THAT THE
14 SIGNATURE WAS MADE FOR A PURPOSE OTHER THAN INDORSEMENT. FOR THE
15 PURPOSE OF DETERMINING WHETHER A SIGNATURE IS MADE ON AN INSTRUMENT,
16 A PAPER AFFIXED TO THE INSTRUMENT IS A PART OF THE INSTRUMENT.

17 (B) "INDORSER" MEANS A PERSON WHO MAKES AN INDORSEMENT.

18 (C) FOR THE PURPOSE OF DETERMINING WHETHER THE TRANSFEREE OF AN
19 INSTRUMENT IS A HOLDER, AN INDORSEMENT THAT TRANSFERS A SECURITY
20 INTEREST IN THE INSTRUMENT IS EFFECTIVE AS AN UNQUALIFIED INDORSEMENT
21 OF THE INSTRUMENT.

22 (D) IF AN INSTRUMENT IS PAYABLE TO A HOLDER UNDER A NAME THAT IS
23 NOT THE NAME OF THE HOLDER, INDORSEMENT MAY BE MADE BY THE HOLDER IN
24 THE NAME STATED IN THE INSTRUMENT OR IN THE HOLDER'S NAME OR BOTH, BUT
25 SIGNATURE IN BOTH NAMES MAY BE REQUIRED BY A PERSON PAYING OR TAKING
26 THE INSTRUMENT FOR VALUE OR COLLECTION.

27 3-205.

28 (A) IF AN INDORSEMENT IS MADE BY THE HOLDER OF AN INSTRUMENT,
29 WHETHER PAYABLE TO AN IDENTIFIED PERSON OR PAYABLE TO BEARER, AND THE
30 INDORSEMENT IDENTIFIES A PERSON TO WHOM IT MAKES THE INSTRUMENT
31 PAYABLE, IT IS A "SPECIAL INDORSEMENT". WHEN SPECIALLY INDORSED, AN
32 INSTRUMENT BECOMES PAYABLE TO THE IDENTIFIED PERSON AND MAY BE
33 NEGOTIATED ONLY BY THE INDORSEMENT OF THAT PERSON. THE PRINCIPLES
34 STATED IN § 3-110 APPLY TO SPECIAL INDORSEMENTS.

35 (B) IF AN INDORSEMENT IS MADE BY THE HOLDER OF AN INSTRUMENT AND
36 IT IS NOT A SPECIAL INDORSEMENT, IT IS A "BLANK INDORSEMENT". WHEN
37 INDORSED IN BLANK, AN INSTRUMENT BECOMES PAYABLE TO BEARER AND MAY BE
38 NEGOTIATED BY TRANSFER OF POSSESSION ALONE UNTIL SPECIALLY INDORSED.

39 (C) THE HOLDER MAY CONVERT A BLANK INDORSEMENT THAT CONSISTS
40 ONLY OF A SIGNATURE INTO A SPECIAL INDORSEMENT BY WRITING, ABOVE THE
41 SIGNATURE OF THE INDORSER, WORDS IDENTIFYING THE PERSON TO WHOM THE
42 INSTRUMENT IS MADE PAYABLE.

15

1 (D) "ANOMALOUS INDORSEMENT" MEANS AN INDORSEMENT MADE BY A
2 PERSON WHO IS NOT THE HOLDER OF THE INSTRUMENT. AN ANOMALOUS
3 INDORSEMENT DOES NOT AFFECT THE MANNER IN WHICH THE INSTRUMENT MAY
4 BE NEGOTIATED.

5 3-206.

6 (A) AN INDORSEMENT LIMITING PAYMENT TO A PARTICULAR PERSON OR
7 OTHERWISE PROHIBITING FURTHER TRANSFER OR NEGOTIATION OF THE
8 INSTRUMENT IS NOT EFFECTIVE TO PREVENT FURTHER TRANSFER OR
9 NEGOTIATION OF THE INSTRUMENT.

10 (B) AN INDORSEMENT STATING A CONDITION TO THE RIGHT OF THE
11 INDORSEE TO RECEIVE PAYMENT DOES NOT AFFECT THE RIGHT OF THE INDORSEE
12 TO ENFORCE THE INSTRUMENT. A PERSON PAYING THE INSTRUMENT OR TAKING IT
13 FOR VALUE OR COLLECTION MAY DISREGARD THE CONDITION, AND THE RIGHTS
14 AND LIABILITIES OF THAT PERSON ARE NOT AFFECTED BY WHETHER THE
15 CONDITION HAS BEEN FULFILLED.

16 (C) IF AN INSTRUMENT BEARS AN INDORSEMENT (I) DESCRIBED IN § 4-201(B),
17 OR (II) IN BLANK OR TO A PARTICULAR BANK USING THE WORDS "FOR DEPOSIT",
18 "FOR COLLECTION", OR OTHER WORDS INDICATING A PURPOSE OF HAVING THE
19 INSTRUMENT COLLECTED BY A BANK FOR THE INDORSER OR FOR A PARTICULAR
20 ACCOUNT, THE FOLLOWING RULES APPLY:

21 (1) A PERSON, OTHER THAN A BANK, WHO PURCHASES THE
22 INSTRUMENT WHEN SO INDORSED CONVERTS THE INSTRUMENT UNLESS THE
23 AMOUNT PAID FOR THE INSTRUMENT IS RECEIVED BY THE INDORSER OR APPLIED
24 CONSISTENTLY WITH THE INDORSEMENT.

25 (2) A DEPOSITARY BANK THAT PURCHASES THE INSTRUMENT OR
26 TAKES IT FOR COLLECTION WHEN SO INDORSED CONVERTS THE INSTRUMENT
27 UNLESS THE AMOUNT PAID BY THE BANK WITH RESPECT TO THE INSTRUMENT IS
28 RECEIVED BY THE INDORSER OR APPLIED CONSISTENTLY WITH THE INDORSEMENT.

29 (3) A PAYOR BANK THAT IS ALSO THE DEPOSITARY BANK OR THAT
30 TAKES THE INSTRUMENT FOR IMMEDIATE PAYMENT OVER THE COUNTER FROM A
31 PERSON OTHER THAN A COLLECTING BANK CONVERTS THE INSTRUMENT UNLESS
32 THE PROCEEDS OF THE INSTRUMENT ARE RECEIVED BY THE INDORSER OR
33 APPLIED CONSISTENTLY WITH THE INDORSEMENT.

34 (4) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (3), A PAYOR
35 BANK OR INTERMEDIARY BANK MAY DISREGARD THE INDORSEMENT AND IS NOT
36 LIABLE IF THE PROCEEDS OF THE INSTRUMENT ARE NOT RECEIVED BY THE
37 INDORSER OR APPLIED CONSISTENTLY WITH THE INDORSEMENT.

38 (D) EXCEPT FOR AN INDORSEMENT COVERED BY SUBSECTION (C), IF AN
39 INSTRUMENT BEARS AN INDORSEMENT USING WORDS TO THE EFFECT THAT
40 PAYMENT IS TO BE MADE TO THE INDORSEE AS AGENT, TRUSTEE, OR OTHER
41 FIDUCIARY FOR THE BENEFIT OF THE INDORSER OR ANOTHER PERSON, THE
42 FOLLOWING RULES APPLY:

16

1 (1) UNLESS THERE IS NOTICE OF BREACH OF FIDUCIARY DUTY AS
2 PROVIDED IN § 3-307, A PERSON WHO PURCHASES THE INSTRUMENT FROM THE
3 INDORSEE OR TAKES THE INSTRUMENT FROM THE INDORSEE FOR COLLECTION OR
4 PAYMENT MAY PAY THE PROCEEDS OF PAYMENT OR THE VALUE GIVEN FOR THE
5 INSTRUMENT TO THE INDORSEE WITHOUT REGARD TO WHETHER THE INDORSEE
6 VIOLATES A FIDUCIARY DUTY TO THE INDORSER.

7 (2) A SUBSEQUENT TRANSFEREE OF THE INSTRUMENT OR PERSON
8 WHO PAYS THE INSTRUMENT IS NEITHER GIVEN NOTICE NOR OTHERWISE
9 AFFECTED BY THE RESTRICTION IN THE INDORSEMENT UNLESS THE TRANSFEREE
10 OR PAYOR KNOWS THAT THE FIDUCIARY DEALT WITH THE INSTRUMENT OR ITS
11 PROCEEDS IN BREACH OF FIDUCIARY DUTY.

12 (E) THE PRESENCE ON AN INSTRUMENT OF AN INDORSEMENT TO WHICH
13 THIS SECTION APPLIES DOES NOT PREVENT A PURCHASER OF THE INSTRUMENT
14 FROM BECOMING A HOLDER IN DUE COURSE OF THE INSTRUMENT UNLESS THE
15 PURCHASER IS A CONVERTER UNDER SUBSECTION (C) OR HAS NOTICE OR
16 KNOWLEDGE OF BREACH OF FIDUCIARY DUTY AS STATED IN SUBSECTION (D).

17 (F) IN AN ACTION TO ENFORCE THE OBLIGATION OF A PARTY TO PAY THE
18 INSTRUMENT, THE OBLIGOR HAS A DEFENSE IF PAYMENT WOULD VIOLATE AN
19 INDORSEMENT TO WHICH THIS SECTION APPLIES AND THE PAYMENT IS NOT
20 PERMITTED BY THIS SECTION.

21 3-207.

22 REACQUISITION OF AN INSTRUMENT OCCURS IF IT IS TRANSFERRED TO A
23 FORMER HOLDER, BY NEGOTIATION OR OTHERWISE. A FORMER HOLDER WHO
24 REACQUIRES THE INSTRUMENT MAY CANCEL INDORSEMENTS MADE AFTER THE
25 REACQUIRER FIRST BECAME A HOLDER OF THE INSTRUMENT. IF THE
26 CANCELLATION CAUSES THE INSTRUMENT TO BE PAYABLE TO THE REACQUIRER
27 OR TO BEARER, THE REACQUIRER MAY NEGOTIATE THE INSTRUMENT. AN
28 INDORSER WHOSE INDORSEMENT IS CANCELED IS DISCHARGED, AND THE
29 DISCHARGE IS EFFECTIVE AGAINST ANY SUBSEQUENT HOLDER.

30 SUBTITLE 3. ENFORCEMENT OF INSTRUMENTS.

31 3-301.

32 "PERSON ENTITLED TO ENFORCE" AN INSTRUMENT MEANS (I) THE HOLDER OF
33 THE INSTRUMENT, (II) A NONHOLDER IN POSSESSION OF THE INSTRUMENT WHO
34 HAS THE RIGHTS OF A HOLDER, OR (III) A PERSON NOT IN POSSESSION OF THE
35 INSTRUMENT WHO IS ENTITLED TO ENFORCE THE INSTRUMENT PURSUANT TO §
36 3-309 OR § 3-418(D). A PERSON MAY BE A PERSON ENTITLED TO ENFORCE THE
37 INSTRUMENT EVEN THOUGH THE PERSON IS NOT THE OWNER OF THE INSTRUMENT
38 OR IS IN WRONGFUL POSSESSION OF THE INSTRUMENT.

39 3-302.

40 (A) SUBJECT TO SUBSECTION (C) AND § 3-106(D), "HOLDER IN DUE COURSE"
41 MEANS THE HOLDER OF AN INSTRUMENT IF:

17

1 (1) THE INSTRUMENT WHEN ISSUED OR NEGOTIATED TO THE HOLDER
2 DOES NOT BEAR SUCH APPARENT EVIDENCE OF FORGERY OR ALTERATION OR IS
3 NOT OTHERWISE SO IRREGULAR OR INCOMPLETE AS TO CALL INTO QUESTION ITS
4 AUTHENTICITY; AND

5 (2) THE HOLDER TOOK THE INSTRUMENT (I) FOR VALUE, (II) IN GOOD
6 FAITH, (III) WITHOUT NOTICE THAT THE INSTRUMENT IS OVERDUE OR HAS BEEN
7 DISHONORED OR THAT THERE IS AN UNCURED DEFAULT WITH RESPECT TO
8 PAYMENT OF ANOTHER INSTRUMENT ISSUED AS PART OF THE SAME SERIES, (IV)
9 WITHOUT NOTICE THAT THE INSTRUMENT CONTAINS AN UNAUTHORIZED
10 SIGNATURE OR HAS BEEN ALTERED, (V) WITHOUT NOTICE OF ANY CLAIM TO THE
11 INSTRUMENT DESCRIBED IN § 3-306, AND (VI) WITHOUT NOTICE THAT ANY PARTY
12 HAS A DEFENSE OR CLAIM IN RECOUPMENT DESCRIBED IN § 3-305(A).

13 (B) NOTICE OF DISCHARGE OF A PARTY, OTHER THAN DISCHARGE IN AN
14 INSOLVENCY PROCEEDING, IS NOT NOTICE OF A DEFENSE UNDER SUBSECTION (A),
15 BUT DISCHARGE IS EFFECTIVE AGAINST A PERSON WHO BECAME A HOLDER IN DUE
16 COURSE WITH NOTICE OF THE DISCHARGE. PUBLIC FILING OR RECORDING OF A
17 DOCUMENT DOES NOT OF ITSELF CONSTITUTE NOTICE OF A DEFENSE, CLAIM IN
18 RECOUPMENT, OR CLAIM TO THE INSTRUMENT.

19 (C) EXCEPT TO THE EXTENT A TRANSFEROR OR PREDECESSOR IN INTEREST
20 HAS RIGHTS AS A HOLDER IN DUE COURSE, A PERSON DOES NOT ACQUIRE RIGHTS
21 OF A HOLDER IN DUE COURSE OF AN INSTRUMENT TAKEN (I) BY LEGAL PROCESS OR
22 BY PURCHASE IN AN EXECUTION, BANKRUPTCY, OR CREDITOR'S SALE OR SIMILAR
23 PROCEEDING, (II) BY PURCHASE AS PART OF A BULK TRANSACTION NOT IN
24 ORDINARY COURSE OF BUSINESS OF THE TRANSFEROR, OR (III) AS THE SUCCESSOR
25 IN INTEREST TO AN ESTATE OR OTHER ORGANIZATION.

26 (D) IF, UNDER § 3-303(A)(1), THE PROMISE OF PERFORMANCE THAT IS THE
27 CONSIDERATION FOR AN INSTRUMENT HAS BEEN PARTIALLY PERFORMED, THE
28 HOLDER MAY ASSERT RIGHTS AS A HOLDER IN DUE COURSE OF THE INSTRUMENT
29 ONLY TO THE FRACTION OF THE AMOUNT PAYABLE UNDER THE INSTRUMENT
30 EQUAL TO THE VALUE OF THE PARTIAL PERFORMANCE DIVIDED BY THE VALUE OF
31 THE PROMISED PERFORMANCE.

32 (E) IF (I) THE PERSON ENTITLED TO ENFORCE AN INSTRUMENT HAS ONLY A
33 SECURITY INTEREST IN THE INSTRUMENT AND (II) THE PERSON OBLIGED TO PAY
34 THE INSTRUMENT HAS A DEFENSE, CLAIM IN RECOUPMENT, OR CLAIM TO THE
35 INSTRUMENT THAT MAY BE ASSERTED AGAINST THE PERSON WHO GRANTED THE
36 SECURITY INTEREST, THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT MAY
37 ASSERT RIGHTS AS A HOLDER IN DUE COURSE ONLY TO AN AMOUNT PAYABLE
38 UNDER THE INSTRUMENT WHICH, AT THE TIME OF ENFORCEMENT OF THE
39 INSTRUMENT, DOES NOT EXCEED THE AMOUNT OF THE UNPAID OBLIGATION
40 SECURED.

41 (F) TO BE EFFECTIVE, NOTICE MUST BE RECEIVED AT A TIME AND IN A
42 MANNER THAT GIVES A REASONABLE OPPORTUNITY TO ACT ON IT.

43 (G) THIS SECTION IS SUBJECT TO ANY LAW LIMITING STATUS AS A HOLDER IN
44 DUE COURSE IN PARTICULAR CLASSES OF TRANSACTIONS.

18

1 3-303.

2 (A) AN INSTRUMENT IS ISSUED OR TRANSFERRED FOR VALUE IF:

3 (1) THE INSTRUMENT IS ISSUED OR TRANSFERRED FOR A PROMISE OF
4 PERFORMANCE, TO THE EXTENT THE PROMISE HAS BEEN PERFORMED;

5 (2) THE TRANSFEREE ACQUIRES A SECURITY INTEREST OR OTHER
6 LIEN IN THE INSTRUMENT OTHER THAN A LIEN OBTAINED BY JUDICIAL
7 PROCEEDING;

8 (3) THE INSTRUMENT IS ISSUED OR TRANSFERRED AS PAYMENT OF, OR
9 AS SECURITY FOR, AN ANTECEDENT CLAIM AGAINST ANY PERSON, WHETHER OR
10 NOT THE CLAIM IS DUE;

11 (4) THE INSTRUMENT IS ISSUED OR TRANSFERRED IN EXCHANGE FOR
12 A NEGOTIABLE INSTRUMENT; OR

13 (5) THE INSTRUMENT IS ISSUED OR TRANSFERRED IN EXCHANGE FOR
14 THE INCURRING OF AN IRREVOCABLE OBLIGATION TO A THIRD PARTY BY THE
15 PERSON TAKING THE INSTRUMENT.

16 (B) "CONSIDERATION" MEANS ANY CONSIDERATION SUFFICIENT TO
17 SUPPORT A SIMPLE CONTRACT. THE DRAWER OR MAKER OF AN INSTRUMENT HAS A
18 DEFENSE IF THE INSTRUMENT IS ISSUED WITHOUT CONSIDERATION. IF AN
19 INSTRUMENT IS ISSUED FOR A PROMISE OF PERFORMANCE, THE ISSUER HAS A
20 DEFENSE TO THE EXTENT PERFORMANCE OF THE PROMISE IS DUE AND THE
21 PROMISE HAS NOT BEEN PERFORMED. IF AN INSTRUMENT IS ISSUED FOR VALUE AS
22 STATED IN SUBSECTION (A), THE INSTRUMENT IS ALSO ISSUED FOR
23 CONSIDERATION.

24 3-304.

25 (A) AN INSTRUMENT PAYABLE ON DEMAND BECOMES OVERDUE AT THE
26 EARLIEST OF THE FOLLOWING TIMES:

27 (1) ON THE DAY AFTER THE DAY DEMAND FOR PAYMENT IS DULY
28 MADE;

29 (2) IF THE INSTRUMENT IS A CHECK, 90 DAYS AFTER ITS DATE; OR

30 (3) IF THE INSTRUMENT IS NOT A CHECK, WHEN THE INSTRUMENT HAS
31 BEEN OUTSTANDING FOR A PERIOD OF TIME AFTER ITS DATE WHICH IS
32 UNREASONABLY LONG UNDER THE CIRCUMSTANCES OF THE PARTICULAR CASE IN
33 LIGHT OF THE NATURE OF THE INSTRUMENT AND USAGE OF THE TRADE.

34 (B) WITH RESPECT TO AN INSTRUMENT PAYABLE AT A DEFINITE TIME THE
35 FOLLOWING RULES APPLY:

36 (1) IF THE PRINCIPAL IS PAYABLE IN INSTALLMENTS AND A DUE DATE
37 HAS NOT BEEN ACCELERATED, THE INSTRUMENT BECOMES OVERDUE UPON
38 DEFAULT UNDER THE INSTRUMENT FOR NONPAYMENT OF AN INSTALLMENT, AND
39 THE INSTRUMENT REMAINS OVERDUE UNTIL THE DEFAULT IS CURED.

19

1 (2) IF THE PRINCIPAL IS NOT PAYABLE IN INSTALLMENTS AND THE DUE
2 DATE HAS NOT BEEN ACCELERATED, THE INSTRUMENT BECOMES OVERDUE ON
3 THE DAY AFTER THE DUE DATE.

4 (3) IF A DUE DATE WITH RESPECT TO PRINCIPAL HAS BEEN
5 ACCELERATED, THE INSTRUMENT BECOMES OVERDUE ON THE DAY AFTER THE
6 ACCELERATED DUE DATE.

7 (C) UNLESS THE DUE DATE OF PRINCIPAL HAS BEEN ACCELERATED, AN
8 INSTRUMENT DOES NOT BECOME OVERDUE IF THERE IS DEFAULT IN PAYMENT OF
9 INTEREST BUT NO DEFAULT IN PAYMENT OF PRINCIPAL.

10 3-305.

11 (A) EXCEPT AS STATED IN SUBSECTION (B), THE RIGHT TO ENFORCE THE
12 OBLIGATION OF A PARTY TO PAY AN INSTRUMENT IS SUBJECT TO THE FOLLOWING:

13 (1) A DEFENSE OF THE OBLIGOR BASED ON (I) INFANCY OF THE
14 OBLIGOR TO THE EXTENT IT IS A DEFENSE TO A SIMPLE CONTRACT, (II) DURESS,
15 LACK OF LEGAL CAPACITY, OR ILLEGALITY OF THE TRANSACTION WHICH, UNDER
16 OTHER LAW, NULLIFIES THE OBLIGATION OF THE OBLIGOR, (III) FRAUD THAT
17 INDUCED THE OBLIGOR TO SIGN THE INSTRUMENT WITH NEITHER KNOWLEDGE
18 NOR REASONABLE OPPORTUNITY TO LEARN OF ITS CHARACTER OR ITS ESSENTIAL
19 TERMS, OR (IV) DISCHARGE OF THE OBLIGOR IN INSOLVENCY PROCEEDINGS;

20 (2) A DEFENSE OF THE OBLIGOR STATED IN ANOTHER SECTION OF THIS
21 TITLE OR A DEFENSE OF THE OBLIGOR THAT WOULD BE AVAILABLE IF THE PERSON
22 ENTITLED TO ENFORCE THE INSTRUMENT WERE ENFORCING A RIGHT TO PAYMENT
23 UNDER A SIMPLE CONTRACT; AND

24 (3) A CLAIM IN RECOUPMENT OF THE OBLIGOR AGAINST THE
25 ORIGINAL PAYEE OF THE INSTRUMENT IF THE CLAIM AROSE FROM THE
26 TRANSACTION THAT GAVE RISE TO THE INSTRUMENT; BUT THE CLAIM OF THE
27 OBLIGOR MAY BE ASSERTED AGAINST A TRANSFEREE OF THE INSTRUMENT ONLY
28 TO REDUCE THE AMOUNT OWING ON THE INSTRUMENT AT THE TIME THE ACTION IS
29 BROUGHT.

30 (B) THE RIGHT OF A HOLDER IN DUE COURSE TO ENFORCE THE OBLIGATION
31 OF A PARTY TO PAY THE INSTRUMENT IS SUBJECT TO DEFENSES OF THE OBLIGOR
32 STATED IN SUBSECTION (A)(1), BUT IS NOT SUBJECT TO DEFENSES OF THE OBLIGOR
33 STATED IN SUBSECTION (A)(2) OR CLAIMS IN RECOUPMENT STATED IN SUBSECTION
34 (A)(3) AGAINST A PERSON OTHER THAN THE HOLDER.

35 (C) EXCEPT AS STATED IN SUBSECTION (D), IN AN ACTION TO ENFORCE THE
36 OBLIGATION OF A PARTY TO PAY THE INSTRUMENT, THE OBLIGOR MAY NOT
37 ASSERT AGAINST THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT A
38 DEFENSE, CLAIM IN RECOUPMENT, OR CLAIM TO THE INSTRUMENT (§ 3-306) OF
39 ANOTHER PERSON, BUT THE OTHER PERSON'S CLAIM TO THE INSTRUMENT MAY BE
40 ASSERTED BY THE OBLIGOR IF THE OTHER PERSON IS JOINED IN THE ACTION AND
41 PERSONALLY ASSERTS THE CLAIM AGAINST THE PERSON ENTITLED TO ENFORCE
42 THE INSTRUMENT. AN OBLIGOR IS NOT OBLIGED TO PAY THE INSTRUMENT IF THE
43 PERSON SEEKING ENFORCEMENT OF THE INSTRUMENT DOES NOT HAVE RIGHTS OF

20

1 A HOLDER IN DUE COURSE AND THE OBLIGOR PROVES THAT THE INSTRUMENT IS A
2 LOST OR STOLEN INSTRUMENT.

3 (D) IN AN ACTION TO ENFORCE THE OBLIGATION OF AN ACCOMMODATION
4 PARTY TO PAY AN INSTRUMENT, THE ACCOMMODATION PARTY MAY ASSERT
5 AGAINST THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT ANY DEFENSE OR
6 CLAIM IN RECOUPMENT UNDER SUBSECTION (A) THAT THE ACCOMMODATED
7 PARTY COULD ASSERT AGAINST THE PERSON ENTITLED TO ENFORCE THE
8 INSTRUMENT, EXCEPT THE DEFENSES OF DISCHARGE IN INSOLVENCY
9 PROCEEDINGS, INFANCY, AND LACK OF LEGAL CAPACITY.

10 3-306.

11 A PERSON TAKING AN INSTRUMENT, OTHER THAN A PERSON HAVING RIGHTS
12 OF A HOLDER IN DUE COURSE, IS SUBJECT TO A CLAIM OF A PROPERTY OR
13 POSSESSORY RIGHT IN THE INSTRUMENT OR ITS PROCEEDS, INCLUDING A CLAIM TO
14 RESCIND A NEGOTIATION AND TO RECOVER THE INSTRUMENT OR ITS PROCEEDS. A
15 PERSON HAVING RIGHTS OF A HOLDER IN DUE COURSE TAKES FREE OF THE CLAIM
16 TO THE INSTRUMENT.

17 3-307.

18 (A) IN THIS SECTION:

19 (1) "FIDUCIARY" MEANS AN AGENT, TRUSTEE, PARTNER, CORPORATE
20 OFFICER OR DIRECTOR, OR OTHER REPRESENTATIVE OWING A FIDUCIARY DUTY
21 WITH RESPECT TO AN INSTRUMENT.

22 (2) "REPRESENTED PERSON" MEANS THE PRINCIPAL, BENEFICIARY,
23 PARTNERSHIP, CORPORATION, OR OTHER PERSON TO WHOM THE DUTY STATED IN
24 PARAGRAPH (1) IS OWED.

25 (B) IF (I) AN INSTRUMENT IS TAKEN FROM A FIDUCIARY FOR PAYMENT OR
26 COLLECTION OR FOR VALUE, (II) THE TAKER HAS KNOWLEDGE OF THE FIDUCIARY
27 STATUS OF THE FIDUCIARY, AND (III) THE REPRESENTED PERSON MAKES A CLAIM
28 TO THE INSTRUMENT OR ITS PROCEEDS ON THE BASIS THAT THE TRANSACTION OF
29 THE FIDUCIARY IS A BREACH OF FIDUCIARY DUTY, THE FOLLOWING RULES APPLY:

30 (1) NOTICE OF BREACH OF FIDUCIARY DUTY BY THE FIDUCIARY IS
31 NOTICE OF THE CLAIM OF THE REPRESENTED PERSON.

32 (2) IN THE CASE OF AN INSTRUMENT PAYABLE TO THE REPRESENTED
33 PERSON OR THE FIDUCIARY AS SUCH, THE TAKER HAS NOTICE OF THE BREACH OF
34 FIDUCIARY DUTY IF THE INSTRUMENT IS (I) TAKEN IN PAYMENT OF OR AS
35 SECURITY FOR A DEBT KNOWN BY THE TAKER TO BE THE PERSONAL DEBT OF THE
36 FIDUCIARY, (II) TAKEN IN A TRANSACTION KNOWN BY THE TAKER TO BE FOR THE
37 PERSONAL BENEFIT OF THE FIDUCIARY, OR (III) DEPOSITED TO AN ACCOUNT
38 OTHER THAN AN ACCOUNT OF THE FIDUCIARY, AS SUCH, OR AN ACCOUNT OF THE
39 REPRESENTED PERSON.

40 (3) IF AN INSTRUMENT IS ISSUED BY THE REPRESENTED PERSON OR
41 THE FIDUCIARY AS SUCH, AND MADE PAYABLE TO THE FIDUCIARY PERSONALLY,
42 THE TAKER DOES NOT HAVE NOTICE OF THE BREACH OF FIDUCIARY DUTY.

21

1 (4) IF AN INSTRUMENT IS ISSUED BY THE REPRESENTED PERSON OR
2 THE FIDUCIARY AS SUCH, TO THE TAKER AS PAYEE, THE TAKER HAS NOTICE OF THE
3 BREACH OF FIDUCIARY DUTY IF THE INSTRUMENT IS (I) TAKEN IN PAYMENT OF OR
4 AS SECURITY FOR A DEBT KNOWN BY THE TAKER TO BE THE PERSONAL DEBT OF
5 THE FIDUCIARY, (II) TAKEN IN A TRANSACTION KNOWN BY THE TAKER TO BE FOR
6 THE PERSONAL BENEFIT OF THE FIDUCIARY, OR (III) DEPOSITED TO AN ACCOUNT
7 OTHER THAN AN ACCOUNT OF THE FIDUCIARY, AS SUCH, OR AN ACCOUNT OF THE
8 REPRESENTED PERSON.

9 3-308.

10 (A) IN AN ACTION WITH RESPECT TO AN INSTRUMENT, THE AUTHENTICITY
11 OF, AND AUTHORITY TO MAKE, EACH SIGNATURE ON THE INSTRUMENT IS
12 ADMITTED UNLESS SPECIFICALLY DENIED IN THE PLEADINGS. IF THE VALIDITY OF
13 A SIGNATURE IS DENIED IN THE PLEADINGS, THE BURDEN OF ESTABLISHING
14 VALIDITY IS ON THE PERSON CLAIMING VALIDITY, BUT THE SIGNATURE IS
15 PRESUMED TO BE AUTHENTIC AND AUTHORIZED UNLESS THE ACTION IS TO
16 ENFORCE THE LIABILITY OF THE PURPORTED SIGNER AND THE SIGNER IS DEAD OR
17 INCOMPETENT AT THE TIME OF TRIAL OF THE ISSUE OF VALIDITY OF THE
18 SIGNATURE. IF AN ACTION TO ENFORCE THE INSTRUMENT IS BROUGHT AGAINST A
19 PERSON AS THE UNDISCLOSED PRINCIPAL OF A PERSON WHO SIGNED THE
20 INSTRUMENT AS A PARTY TO THE INSTRUMENT, THE PLAINTIFF HAS THE BURDEN
21 OF ESTABLISHING THAT THE DEFENDANT IS LIABLE ON THE INSTRUMENT AS A
22 REPRESENTED PERSON UNDER § 3-402(A).

23 (B) IF THE VALIDITY OF SIGNATURES IS ADMITTED OR PROVED AND THERE
24 IS COMPLIANCE WITH SUBSECTION (A), A PLAINTIFF PRODUCING THE INSTRUMENT
25 IS ENTITLED TO PAYMENT IF THE PLAINTIFF PROVES ENTITLEMENT TO ENFORCE
26 THE INSTRUMENT UNDER § 3-301, UNLESS THE DEFENDANT PROVES A DEFENSE OR
27 CLAIM IN RECOUPMENT. IF A DEFENSE OR CLAIM IN RECOUPMENT IS PROVED, THE
28 RIGHT TO PAYMENT OF THE PLAINTIFF IS SUBJECT TO THE DEFENSE OR CLAIM,
29 EXCEPT TO THE EXTENT THE PLAINTIFF PROVES THAT THE PLAINTIFF HAS RIGHTS
30 OF A HOLDER IN DUE COURSE WHICH ARE NOT SUBJECT TO THE DEFENSE OR
31 CLAIM.

32 3-309.

33 (A) A PERSON NOT IN POSSESSION OF AN INSTRUMENT IS ENTITLED TO
34 ENFORCE THE INSTRUMENT IF (I) THE PERSON WAS IN POSSESSION OF THE
35 INSTRUMENT AND ENTITLED TO ENFORCE IT WHEN LOSS OF POSSESSION
36 OCCURRED, (II) THE LOSS OF POSSESSION WAS NOT THE RESULT OF A TRANSFER BY
37 THE PERSON OR A LAWFUL SEIZURE, AND (III) THE PERSON CANNOT REASONABLY
38 OBTAIN POSSESSION OF THE INSTRUMENT BECAUSE THE INSTRUMENT WAS
39 DESTROYED, ITS WHEREABOUTS CANNOT BE DETERMINED, OR IT IS IN THE
40 WRONGFUL POSSESSION OF AN UNKNOWN PERSON OR A PERSON THAT CANNOT BE
41 FOUND OR IS NOT AMENABLE TO SERVICE OF PROCESS.

42 (B) A PERSON SEEKING ENFORCEMENT OF AN INSTRUMENT UNDER
43 SUBSECTION (A) MUST PROVE THE TERMS OF THE INSTRUMENT AND THE PERSON'S
44 RIGHT TO ENFORCE THE INSTRUMENT. IF THAT PROOF IS MADE, § 3-308 APPLIES TO
45 THE CASE AS IF THE PERSON SEEKING ENFORCEMENT HAD PRODUCED THE

22

1 INSTRUMENT. THE COURT MAY NOT ENTER JUDGMENT IN FAVOR OF THE PERSON
2 SEEKING ENFORCEMENT UNLESS IT FINDS THAT THE PERSON REQUIRED TO PAY
3 THE INSTRUMENT IS ADEQUATELY PROTECTED AGAINST LOSS THAT MIGHT OCCUR
4 BY REASON OF A CLAIM BY ANOTHER PERSON TO ENFORCE THE INSTRUMENT.
5 ADEQUATE PROTECTION MAY BE PROVIDED BY ANY REASONABLE MEANS.

6 3-310.

7 (A) UNLESS OTHERWISE AGREED, IF A CERTIFIED CHECK, CASHIER'S CHECK,
8 OR TELLER'S CHECK IS TAKEN FOR AN OBLIGATION, THE OBLIGATION IS
9 DISCHARGED TO THE SAME EXTENT DISCHARGE WOULD RESULT IF AN AMOUNT OF
10 MONEY EQUAL TO THE AMOUNT OF THE INSTRUMENT WERE TAKEN IN PAYMENT
11 OF THE OBLIGATION. DISCHARGE OF THE OBLIGATION DOES NOT AFFECT ANY
12 LIABILITY THAT THE OBLIGOR MAY HAVE AS AN INDORSER OF THE INSTRUMENT.

13 (B) UNLESS OTHERWISE AGREED AND EXCEPT AS PROVIDED IN SUBSECTION
14 (A), IF A NOTE OR AN UNCERTIFIED CHECK IS TAKEN FOR AN OBLIGATION, THE
15 OBLIGATION IS SUSPENDED TO THE SAME EXTENT THE OBLIGATION WOULD BE
16 DISCHARGED IF AN AMOUNT OF MONEY EQUAL TO THE AMOUNT OF THE
17 INSTRUMENT WERE TAKEN, AND THE FOLLOWING RULES APPLY:

18 (1) IN THE CASE OF AN UNCERTIFIED CHECK, SUSPENSION OF THE
19 OBLIGATION CONTINUES UNTIL DISHONOR OF THE CHECK OR UNTIL IT IS PAID OR
20 CERTIFIED. PAYMENT OR CERTIFICATION OF THE CHECK RESULTS IN DISCHARGE
21 OF THE OBLIGATION TO THE EXTENT OF THE AMOUNT OF THE CHECK.

22 (2) IN THE CASE OF A NOTE, SUSPENSION OF THE OBLIGATION
23 CONTINUES UNTIL DISHONOR OF THE NOTE OR UNTIL IT IS PAID. PAYMENT OF THE
24 NOTE RESULTS IN DISCHARGE OF THE OBLIGATION TO THE EXTENT OF THE
25 PAYMENT.

26 (3) EXCEPT AS PROVIDED IN PARAGRAPH (4), IF THE CHECK OR NOTE IS
27 DISHONORED AND THE OBLIGEE OF THE OBLIGATION FOR WHICH THE
28 INSTRUMENT WAS TAKEN IS THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT,
29 THE OBLIGEE MAY ENFORCE EITHER THE INSTRUMENT OR THE OBLIGATION. IN
30 THE CASE OF AN INSTRUMENT OF A THIRD PERSON WHICH IS NEGOTIATED TO THE
31 OBLIGEE BY THE OBLIGOR, DISCHARGE OF THE OBLIGOR ON THE INSTRUMENT
32 ALSO DISCHARGES THE OBLIGATION.

33 (4) IF THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT TAKEN
34 FOR AN OBLIGATION IS A PERSON OTHER THAN THE OBLIGEE, THE OBLIGEE MAY
35 NOT ENFORCE THE OBLIGATION TO THE EXTENT THE OBLIGATION IS SUSPENDED.
36 IF THE OBLIGEE IS THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT BUT NO
37 LONGER HAS POSSESSION OF IT BECAUSE IT WAS LOST, STOLEN, OR DESTROYED,
38 THE OBLIGATION MAY NOT BE ENFORCED TO THE EXTENT OF THE AMOUNT
39 PAYABLE ON THE INSTRUMENT, AND TO THAT EXTENT THE OBLIGEE'S RIGHTS
40 AGAINST THE OBLIGOR ARE LIMITED TO ENFORCEMENT OF THE INSTRUMENT.

41 (C) IF AN INSTRUMENT OTHER THAN ONE DESCRIBED IN SUBSECTION (A) OR
42 (B) IS TAKEN FOR AN OBLIGATION, THE EFFECT IS (1) THAT STATED IN SUBSECTION

23

1 (A) IF THE INSTRUMENT IS ONE ON WHICH A BANK IS LIABLE AS MAKER OR
2 ACCEPTOR, OR (II) THAT STATED IN SUBSECTION (B) IN ANY OTHER CASE.

3 3-311.

4 (A) IF A PERSON AGAINST WHOM A CLAIM IS ASSERTED PROVES THAT (I)
5 THAT PERSON IN GOOD FAITH TENDERED AN INSTRUMENT TO THE CLAIMANT AS
6 FULL SATISFACTION OF THE CLAIM, (II) THE AMOUNT OF THE CLAIM WAS
7 UNLIQUIDATED OR SUBJECT TO A BONA FIDE DISPUTE, AND (III) THE CLAIMANT
8 OBTAINED PAYMENT OF THE INSTRUMENT, THE FOLLOWING SUBSECTIONS APPLY.

9 (B) UNLESS SUBSECTION (C) APPLIES, THE CLAIM IS DISCHARGED IF THE
10 PERSON AGAINST WHOM THE CLAIM IS ASSERTED PROVES THAT THE INSTRUMENT
11 OR AN ACCOMPANYING WRITTEN COMMUNICATION CONTAINED A CONSPICUOUS
12 STATEMENT TO THE EFFECT THAT THE INSTRUMENT WAS TENDERED AS FULL
13 SATISFACTION OF THE CLAIM.

14 (C) SUBJECT TO SUBSECTION (D), A CLAIM IS NOT DISCHARGED UNDER
15 SUBSECTION (B) IF EITHER OF THE FOLLOWING APPLIES:

16 (1) THE CLAIMANT, IF AN ORGANIZATION, PROVES THAT (I) WITHIN A
17 REASONABLE TIME BEFORE THE TENDER, THE CLAIMANT SENT A CONSPICUOUS
18 STATEMENT TO THE PERSON AGAINST WHOM THE CLAIM IS ASSERTED THAT
19 COMMUNICATIONS CONCERNING DISPUTED DEBTS, INCLUDING AN INSTRUMENT
20 TENDERED AS FULL SATISFACTION OF A DEBT, ARE TO BE SENT TO A DESIGNATED
21 PERSON, OFFICE, OR PLACE, AND (II) THE INSTRUMENT OR ACCOMPANYING
22 COMMUNICATION WAS NOT RECEIVED BY THAT DESIGNATED PERSON, OFFICE, OR
23 PLACE.

24 (2) THE CLAIMANT, WHETHER OR NOT AN ORGANIZATION, PROVES
25 THAT WITHIN 90 DAYS AFTER PAYMENT OF THE INSTRUMENT, THE CLAIMANT
26 TENDERED REPAYMENT OF THE AMOUNT OF THE INSTRUMENT TO THE PERSON
27 AGAINST WHOM THE CLAIM IS ASSERTED. THIS PARAGRAPH DOES NOT APPLY IF
28 THE CLAIMANT IS AN ORGANIZATION THAT SENT A STATEMENT COMPLYING WITH
29 PARAGRAPH (1)(I).

30 (D) A CLAIM IS DISCHARGED IF THE PERSON AGAINST WHOM THE CLAIM IS
31 ASSERTED PROVES THAT WITHIN A REASONABLE TIME BEFORE COLLECTION OF
32 THE INSTRUMENT WAS INITIATED, THE CLAIMANT, OR AN AGENT OF THE
33 CLAIMANT HAVING DIRECT RESPONSIBILITY WITH RESPECT TO THE DISPUTED
34 OBLIGATION, KNEW THAT THE INSTRUMENT WAS TENDERED IN FULL
35 SATISFACTION OF THE CLAIM.

36 3-312.

37 (A) IN THIS SECTION:

38 (1) "CHECK" MEANS A CASHIER'S CHECK, TELLER'S CHECK, OR
39 CERTIFIED CHECK.

40 (2) "CLAIMANT" MEANS A PERSON WHO CLAIMS THE RIGHT TO
41 RECEIVE THE AMOUNT OF A CASHIER'S CHECK, TELLER'S CHECK, OR CERTIFIED
42 CHECK THAT WAS LOST, DESTROYED, OR STOLEN.

1 (3) "DECLARATION OF LOSS" MEANS A WRITTEN STATEMENT, MADE
2 UNDER PENALTY OF PERJURY, TO THE EFFECT THAT (I) THE DECLARER LOST
3 POSSESSION OF A CHECK, (II) THE DECLARER IS THE DRAWER OR PAYEE OF THE
4 CHECK, IN THE CASE OF A CERTIFIED CHECK, OR THE REMITTER OR PAYEE OF THE
5 CHECK, IN THE CASE OF A CASHIER'S CHECK OR TELLER'S CHECK, (III) THE LOSS OF
6 POSSESSION WAS NOT THE RESULT OF A TRANSFER BY THE DECLARER OR A
7 LAWFUL SEIZURE, AND (IV) THE DECLARER CANNOT REASONABLY OBTAIN
8 POSSESSION OF THE CHECK BECAUSE THE CHECK WAS DESTROYED, ITS
9 WHEREABOUTS CANNOT BE DETERMINED, OR IT IS IN THE WRONGFUL POSSESSION
10 OF AN UNKNOWN PERSON OR A PERSON THAT CANNOT BE FOUND OR IS NOT
11 AMENABLE TO SERVICE OF PROCESS.

12 (4) "OBLIGATED BANK" MEANS THE ISSUER OF A CASHIER'S CHECK OR
13 TELLER'S CHECK OR THE ACCEPTOR OF A CERTIFIED CHECK.

14 (B) A CLAIMANT MAY ASSERT A CLAIM TO THE AMOUNT OF A CHECK BY A
15 COMMUNICATION TO THE OBLIGATED BANK DESCRIBING THE CHECK WITH
16 REASONABLE CERTAINTY AND REQUESTING PAYMENT OF THE AMOUNT OF THE
17 CHECK, IF (I) THE CLAIMANT IS THE DRAWER OR PAYEE OF A CERTIFIED CHECK OR
18 THE REMITTER OR PAYEE OF A CASHIER'S CHECK OR TELLER'S CHECK, (II) THE
19 COMMUNICATION CONTAINS OR IS ACCOMPANIED BY A DECLARATION OF LOSS OF
20 THE CLAIMANT WITH RESPECT TO THE CHECK, (III) THE COMMUNICATION IS
21 RECEIVED AT A TIME AND IN A MANNER AFFORDING THE BANK A REASONABLE
22 TIME TO ACT ON IT BEFORE THE CHECK IS PAID, AND (IV) THE CLAIMANT PROVIDES
23 REASONABLE IDENTIFICATION IF REQUESTED BY THE OBLIGATED BANK. DELIVERY
24 OF A DECLARATION OF LOSS IS A WARRANTY OF THE TRUTH OF THE STATEMENTS
25 MADE IN THE DECLARATION. IF A CLAIM IS ASSERTED IN COMPLIANCE WITH THIS
26 SUBSECTION, THE FOLLOWING RULES APPLY:

27 (1) THE CLAIM BECOMES ENFORCEABLE AT THE LATER OF (I) THE TIME
28 THE CLAIM IS ASSERTED, OR (II) THE 90TH DAY FOLLOWING THE DATE OF THE
29 CHECK, IN THE CASE OF A CASHIER'S CHECK OR TELLER'S CHECK, OR THE 90TH DAY
30 FOLLOWING THE DATE OF THE ACCEPTANCE, IN THE CASE OF A CERTIFIED CHECK.

31 (2) UNTIL THE CLAIM BECOMES ENFORCEABLE, IT HAS NO LEGAL
32 EFFECT AND THE OBLIGATED BANK MAY PAY THE CHECK OR, IN THE CASE OF A
33 TELLER'S CHECK, MAY PERMIT THE DRAWEE TO PAY THE CHECK. PAYMENT TO A
34 PERSON ENTITLED TO ENFORCE THE CHECK DISCHARGES ALL LIABILITY OF THE
35 OBLIGATED BANK WITH RESPECT TO THE CHECK.

36 (3) IF THE CLAIM BECOMES ENFORCEABLE BEFORE THE CHECK IS
37 PRESENTED FOR PAYMENT, THE OBLIGATED BANK IS NOT OBLIGED TO PAY THE
38 CHECK.

39 (4) WHEN THE CLAIM BECOMES ENFORCEABLE, THE OBLIGATED BANK
40 BECOMES OBLIGED TO PAY THE AMOUNT OF THE CHECK TO THE CLAIMANT IF
41 PAYMENT OF THE CHECK HAS NOT BEEN MADE TO A PERSON ENTITLED TO
42 ENFORCE THE CHECK. SUBJECT TO § 4-302(A)(1), PAYMENT TO THE CLAIMANT
43 DISCHARGES ALL LIABILITY OF THE OBLIGATED BANK WITH RESPECT TO THE
44 CHECK.

25

1 (C) IF THE OBLIGATED BANK PAYS THE AMOUNT OF A CHECK TO A
2 CLAIMANT UNDER SUBSECTION (B)(4) AND THE CHECK IS PRESENTED FOR PAYMENT
3 BY A PERSON HAVING RIGHTS OF A HOLDER IN DUE COURSE, THE CLAIMANT IS
4 OBLIGED TO (I) REFUND THE PAYMENT TO THE OBLIGATED BANK IF THE CHECK IS
5 PAID, OR (II) PAY THE AMOUNT OF THE CHECK TO THE PERSON HAVING RIGHTS OF
6 A HOLDER IN DUE COURSE IF THE CHECK IS DISHONORED.

7 (D) IF A CLAIMANT HAS THE RIGHT TO ASSERT A CLAIM UNDER SUBSECTION
8 (B) AND IS ALSO A PERSON ENTITLED TO ENFORCE A CASHIER'S CHECK, TELLER'S
9 CHECK, OR CERTIFIED CHECK WHICH IS LOST, DESTROYED, OR STOLEN, THE
10 CLAIMANT MAY ASSERT RIGHTS WITH RESPECT TO THE CHECK EITHER UNDER THIS
11 SECTION OR § 3-309.

12 SUBTITLE 4. LIABILITY OF PARTIES.

13 3-401.

14 (A) A PERSON IS NOT LIABLE ON AN INSTRUMENT UNLESS (I) THE PERSON
15 SIGNED THE INSTRUMENT, OR (II) THE PERSON IS REPRESENTED BY AN AGENT OR
16 REPRESENTATIVE WHO SIGNED THE INSTRUMENT AND THE SIGNATURE IS BINDING
17 ON THE REPRESENTED PERSON UNDER § 3-402.

18 (B) A SIGNATURE MAY BE MADE (I) MANUALLY OR BY MEANS OF A DEVICE
19 OR MACHINE, AND (II) BY THE USE OF ANY NAME, INCLUDING A TRADE OR
20 ASSUMED NAME, OR BY A WORD, MARK, OR SYMBOL EXECUTED OR ADOPTED BY A
21 PERSON WITH PRESENT INTENTION TO AUTHENTICATE A WRITING.

22 3-402.

23 (A) IF A PERSON ACTING, OR PURPORTING TO ACT, AS A REPRESENTATIVE
24 SIGNS AN INSTRUMENT BY SIGNING EITHER THE NAME OF THE REPRESENTED
25 PERSON OR THE NAME OF THE SIGNER, THE REPRESENTED PERSON IS BOUND BY
26 THE SIGNATURE TO THE SAME EXTENT THE REPRESENTED PERSON WOULD BE
27 BOUND IF THE SIGNATURE WERE ON A SIMPLE CONTRACT. IF THE REPRESENTED
28 PERSON IS BOUND, THE SIGNATURE OF THE REPRESENTATIVE IS THE "AUTHORIZED
29 SIGNATURE OF THE REPRESENTED PERSON" AND THE REPRESENTED PERSON IS
30 LIABLE ON THE INSTRUMENT, WHETHER OR NOT IDENTIFIED IN THE INSTRUMENT.

31 (B) IF A REPRESENTATIVE SIGNS THE NAME OF THE REPRESENTATIVE TO AN
32 INSTRUMENT AND THE SIGNATURE IS AN AUTHORIZED SIGNATURE OF THE
33 REPRESENTED PERSON, THE FOLLOWING RULES APPLY:

34 (1) IF THE FORM OF THE SIGNATURE SHOWS UNAMBIGUOUSLY THAT
35 THE SIGNATURE IS MADE ON BEHALF OF THE REPRESENTED PERSON WHO IS
36 IDENTIFIED IN THE INSTRUMENT, THE REPRESENTATIVE IS NOT LIABLE ON THE
37 INSTRUMENT.

38 (2) SUBJECT TO SUBSECTION (C), IF (I) THE FORM OF THE SIGNATURE
39 DOES NOT SHOW UNAMBIGUOUSLY THAT THE SIGNATURE IS MADE IN A
40 REPRESENTATIVE CAPACITY OR (II) THE REPRESENTED PERSON IS NOT IDENTIFIED
41 IN THE INSTRUMENT, THE REPRESENTATIVE IS LIABLE ON THE INSTRUMENT TO A
42 HOLDER IN DUE COURSE THAT TOOK THE INSTRUMENT WITHOUT NOTICE THAT

26

1 THE REPRESENTATIVE WAS NOT INTENDED TO BE LIABLE ON THE INSTRUMENT.
2 WITH RESPECT TO ANY OTHER PERSON, THE REPRESENTATIVE IS LIABLE ON THE
3 INSTRUMENT UNLESS THE REPRESENTATIVE PROVES THAT THE ORIGINAL PARTIES
4 DID NOT INTEND THE REPRESENTATIVE TO BE LIABLE ON THE INSTRUMENT.

5 (C) IF A REPRESENTATIVE SIGNS THE NAME OF THE REPRESENTATIVE AS
6 DRAWER OF A CHECK WITHOUT INDICATION OF THE REPRESENTATIVE STATUS AND
7 THE CHECK IS PAYABLE FROM AN ACCOUNT OF THE REPRESENTED PERSON WHO IS
8 IDENTIFIED ON THE CHECK, THE SIGNER IS NOT LIABLE ON THE CHECK IF THE
9 SIGNATURE IS AN AUTHORIZED SIGNATURE OF THE REPRESENTED PERSON.

10 3-403.

11 (A) UNLESS OTHERWISE PROVIDED IN THIS TITLE OR TITLE 4, AN
12 UNAUTHORIZED SIGNATURE IS INEFFECTIVE EXCEPT AS THE SIGNATURE OF THE
13 UNAUTHORIZED SIGNER IN FAVOR OF A PERSON WHO IN GOOD FAITH PAYS THE
14 INSTRUMENT OR TAKES IT FOR VALUE. AN UNAUTHORIZED SIGNATURE MAY BE
15 RATIFIED FOR ALL PURPOSES OF THIS TITLE.

16 (B) IF THE SIGNATURE OF MORE THAN ONE PERSON IS REQUIRED TO
17 CONSTITUTE THE AUTHORIZED SIGNATURE OF AN ORGANIZATION, THE
18 SIGNATURE OF THE ORGANIZATION IS UNAUTHORIZED IF ONE OF THE REQUIRED
19 SIGNATURES IS LACKING.

20 (C) THE CIVIL OR CRIMINAL LIABILITY OF A PERSON WHO MAKES AN
21 UNAUTHORIZED SIGNATURE IS NOT AFFECTED BY ANY PROVISION OF THIS TITLE
22 WHICH MAKES THE UNAUTHORIZED SIGNATURE EFFECTIVE FOR THE PURPOSES OF
23 THIS TITLE.

24 3-404.

25 (A) IF AN IMPOSTOR, BY USE OF THE MAILS OR OTHERWISE, INDUCES THE
26 ISSUER OF AN INSTRUMENT TO ISSUE THE INSTRUMENT TO THE IMPOSTOR, OR TO A
27 PERSON ACTING IN CONCERT WITH THE IMPOSTOR, BY IMPERSONATING THE PAYEE
28 OF THE INSTRUMENT OR A PERSON AUTHORIZED TO ACT FOR THE PAYEE, AN
29 INDORSEMENT OF THE INSTRUMENT BY ANY PERSON IN THE NAME OF THE PAYEE
30 IS EFFECTIVE AS THE INDORSEMENT OF THE PAYEE IN FAVOR OF A PERSON WHO, IN
31 GOOD FAITH, PAYS THE INSTRUMENT OR TAKES IT FOR VALUE OR FOR
32 COLLECTION.

33 (B) IF (I) A PERSON WHOSE INTENT DETERMINES TO WHOM AN INSTRUMENT
34 IS PAYABLE (§ 3-110(A) OR (B)) DOES NOT INTEND THE PERSON IDENTIFIED AS PAYEE
35 TO HAVE ANY INTEREST IN THE INSTRUMENT, OR (II) THE PERSON IDENTIFIED AS
36 PAYEE OF AN INSTRUMENT IS A FICTITIOUS PERSON, THE FOLLOWING RULES APPLY
37 UNTIL THE INSTRUMENT IS NEGOTIATED BY SPECIAL INDORSEMENT:

38 (1) ANY PERSON IN POSSESSION OF THE INSTRUMENT IS ITS HOLDER.

39 (2) AN INDORSEMENT BY ANY PERSON IN THE NAME OF THE PAYEE
40 STATED IN THE INSTRUMENT IS EFFECTIVE AS THE INDORSEMENT OF THE PAYEE IN
41 FAVOR OF A PERSON WHO, IN GOOD FAITH, PAYS THE INSTRUMENT OR TAKES IT
42 FOR VALUE OR FOR COLLECTION.

1 (C) UNDER SUBSECTION (A) OR (B), AN INDORSEMENT IS MADE IN THE NAME
2 OF A PAYEE IF (I) IT IS MADE IN A NAME SUBSTANTIALLY SIMILAR TO THAT OF THE
3 PAYEE OR (II) THE INSTRUMENT, WHETHER OR NOT INDORSED, IS DEPOSITED IN A
4 DEPOSITARY BANK TO AN ACCOUNT IN A NAME SUBSTANTIALLY SIMILAR TO THAT
5 OF THE PAYEE.

6 (D) WITH RESPECT TO AN INSTRUMENT TO WHICH SUBSECTION (A) OR (B)
7 APPLIES, IF A PERSON PAYING THE INSTRUMENT OR TAKING IT FOR VALUE OR FOR
8 COLLECTION FAILS TO EXERCISE ORDINARY CARE IN PAYING OR TAKING THE
9 INSTRUMENT AND THAT FAILURE SUBSTANTIALLY CONTRIBUTES TO LOSS
10 RESULTING FROM PAYMENT OF THE INSTRUMENT, THE PERSON BEARING THE LOSS
11 MAY RECOVER FROM THE PERSON FAILING TO EXERCISE ORDINARY CARE TO THE
12 EXTENT THE FAILURE TO EXERCISE ORDINARY CARE CONTRIBUTED TO THE LOSS.

13 3-405.

14 (A) IN THIS SECTION:

15 (1) "EMPLOYEE" INCLUDES AN INDEPENDENT CONTRACTOR AND
16 EMPLOYEE OF AN INDEPENDENT CONTRACTOR RETAINED BY THE EMPLOYER.

17 (2) "FRAUDULENT INDORSEMENT" MEANS (I) IN THE CASE OF AN
18 INSTRUMENT PAYABLE TO THE EMPLOYER, A FORGED INDORSEMENT PURPORTING
19 TO BE THAT OF THE EMPLOYER, OR (II) IN THE CASE OF AN INSTRUMENT WITH
20 RESPECT TO WHICH THE EMPLOYER IS THE ISSUER, A FORGED INDORSEMENT
21 PURPORTING TO BE THAT OF THE PERSON IDENTIFIED AS PAYEE.

22 (3) "RESPONSIBILITY" WITH RESPECT TO INSTRUMENTS MEANS
23 AUTHORITY (I) TO SIGN OR INDORSE INSTRUMENTS ON BEHALF OF THE EMPLOYER,
24 (II) TO PROCESS INSTRUMENTS RECEIVED BY THE EMPLOYER FOR BOOKKEEPING
25 PURPOSES, FOR DEPOSIT TO AN ACCOUNT, OR FOR OTHER DISPOSITION, (III) TO
26 PREPARE OR PROCESS INSTRUMENTS FOR ISSUE IN THE NAME OF THE EMPLOYER,
27 (IV) TO SUPPLY INFORMATION DETERMINING THE NAMES OR ADDRESSES OF
28 PAYEES OF INSTRUMENTS TO BE ISSUED IN THE NAME OF THE EMPLOYER, (V) TO
29 CONTROL THE DISPOSITION OF INSTRUMENTS TO BE ISSUED IN THE NAME OF THE
30 EMPLOYER, OR (VI) TO ACT OTHERWISE WITH RESPECT TO INSTRUMENTS IN A
31 RESPONSIBLE CAPACITY. "RESPONSIBILITY" DOES NOT INCLUDE AUTHORITY THAT
32 MERELY ALLOWS AN EMPLOYEE TO HAVE ACCESS TO INSTRUMENTS OR BLANK OR
33 INCOMPLETE INSTRUMENT FORMS THAT ARE BEING STORED OR TRANSPORTED OR
34 ARE PART OF INCOMING OR OUTGOING MAIL, OR SIMILAR ACCESS.

35 (B) FOR THE PURPOSE OF DETERMINING THE RIGHTS AND LIABILITIES OF A
36 PERSON WHO, IN GOOD FAITH, PAYS AN INSTRUMENT OR TAKES IT FOR VALUE OR
37 FOR COLLECTION, IF AN EMPLOYER ENTRUSTED AN EMPLOYEE WITH
38 RESPONSIBILITY WITH RESPECT TO THE INSTRUMENT AND THE EMPLOYEE OR A
39 PERSON ACTING IN CONCERT WITH THE EMPLOYEE MAKES A FRAUDULENT
40 INDORSEMENT OF THE INSTRUMENT, THE INDORSEMENT IS EFFECTIVE AS THE
41 INDORSEMENT OF THE PERSON TO WHOM THE INSTRUMENT IS PAYABLE IF IT IS
42 MADE IN THE NAME OF THAT PERSON. IF THE PERSON PAYING THE INSTRUMENT OR
43 TAKING IT FOR VALUE OR FOR COLLECTION FAILS TO EXERCISE ORDINARY CARE
44 IN PAYING OR TAKING THE INSTRUMENT AND THAT FAILURE SUBSTANTIALLY

28

1 CONTRIBUTES TO LOSS RESULTING FROM THE FRAUD, THE PERSON BEARING THE
2 LOSS MAY RECOVER FROM THE PERSON FAILING TO EXERCISE ORDINARY CARE TO
3 THE EXTENT THE FAILURE TO EXERCISE ORDINARY CARE CONTRIBUTED TO THE
4 LOSS.

5 (C) UNDER SUBSECTION (B), AN INDORSEMENT IS MADE IN THE NAME OF
6 THE PERSON TO WHOM AN INSTRUMENT IS PAYABLE IF (I) IT IS MADE IN A NAME
7 SUBSTANTIALLY SIMILAR TO THE NAME OF THAT PERSON OR (II) THE INSTRUMENT,
8 WHETHER OR NOT INDORSED, IS DEPOSITED IN A DEPOSITARY BANK TO AN
9 ACCOUNT IN A NAME SUBSTANTIALLY SIMILAR TO THE NAME OF THAT PERSON.

10 3-406.

11 (A) A PERSON WHOSE FAILURE TO EXERCISE ORDINARY CARE
12 SUBSTANTIALLY CONTRIBUTES TO AN ALTERATION OF AN INSTRUMENT OR TO THE
13 MAKING OF A FORGED SIGNATURE ON AN INSTRUMENT IS PRECLUDED FROM
14 ASSERTING THE ALTERATION OR THE FORGERY AGAINST A PERSON WHO, IN GOOD
15 FAITH, PAYS THE INSTRUMENT OR TAKES IT FOR VALUE OR FOR COLLECTION.

16 (B) UNDER SUBSECTION (A), IF THE PERSON ASSERTING THE PRECLUSION
17 FAILS TO EXERCISE ORDINARY CARE IN PAYING OR TAKING THE INSTRUMENT AND
18 THAT FAILURE SUBSTANTIALLY CONTRIBUTES TO LOSS, THE LOSS IS ALLOCATED
19 BETWEEN THE PERSON PRECLUDED AND THE PERSON ASSERTING THE PRECLUSION
20 ACCORDING TO THE EXTENT TO WHICH THE FAILURE OF EACH TO EXERCISE
21 ORDINARY CARE CONTRIBUTED TO THE LOSS.

22 (C) UNDER SUBSECTION (A), THE BURDEN OF PROVING FAILURE TO
23 EXERCISE ORDINARY CARE IS ON THE PERSON ASSERTING THE PRECLUSION.
24 UNDER SUBSECTION (B), THE BURDEN OF PROVING FAILURE TO EXERCISE
25 ORDINARY CARE IS ON THE PERSON PRECLUDED.

26 3-407.

27 (A) "ALTERATION" MEANS (I) AN UNAUTHORIZED CHANGE IN AN
28 INSTRUMENT THAT PURPORTS TO MODIFY IN ANY RESPECT THE OBLIGATION OF A
29 PARTY, OR (II) AN UNAUTHORIZED ADDITION OF WORDS OR NUMBERS OR OTHER
30 CHANGE TO AN INCOMPLETE INSTRUMENT RELATING TO THE OBLIGATION OF A
31 PARTY.

32 (B) EXCEPT AS PROVIDED IN SUBSECTION (C), AN ALTERATION
33 FRAUDULENTLY MADE DISCHARGES A PARTY WHOSE OBLIGATION IS AFFECTED BY
34 THE ALTERATION UNLESS THAT PARTY ASSENTS OR IS PRECLUDED FROM
35 ASSERTING THE ALTERATION. NO OTHER ALTERATION DISCHARGES A PARTY, AND
36 THE INSTRUMENT MAY BE ENFORCED ACCORDING TO ITS ORIGINAL TERMS.

37 (C) A PAYOR BANK OR DRAWEE PAYING A FRAUDULENTLY ALTERED
38 INSTRUMENT OR A PERSON TAKING IT FOR VALUE, IN GOOD FAITH AND WITHOUT
39 NOTICE OF THE ALTERATION, MAY ENFORCE RIGHTS WITH RESPECT TO THE
40 INSTRUMENT (I) ACCORDING TO ITS ORIGINAL TERMS, OR (II) IN THE CASE OF AN
41 INCOMPLETE INSTRUMENT ALTERED BY UNAUTHORIZED COMPLETION,
42 ACCORDING TO ITS TERMS AS COMPLETED.

29

1 3-408.

2 A CHECK OR OTHER DRAFT DOES NOT OF ITSELF OPERATE AS AN ASSIGNMENT
3 OF FUNDS IN THE HANDS OF THE DRAWEE AVAILABLE FOR ITS PAYMENT, AND THE
4 DRAWEE IS NOT LIABLE ON THE INSTRUMENT UNTIL THE DRAWEE ACCEPTS IT.

5 3-409.

6 (A) "ACCEPTANCE" MEANS THE DRAWEE'S SIGNED AGREEMENT TO PAY A
7 DRAFT AS PRESENTED. IT MUST BE WRITTEN ON THE DRAFT AND MAY CONSIST OF
8 THE DRAWEE'S SIGNATURE ALONE. ACCEPTANCE MAY BE MADE AT ANY TIME AND
9 BECOMES EFFECTIVE WHEN NOTIFICATION PURSUANT TO INSTRUCTIONS IS GIVEN
10 OR THE ACCEPTED DRAFT IS DELIVERED FOR THE PURPOSE OF GIVING RIGHTS ON
11 THE ACCEPTANCE TO ANY PERSON.

12 (B) A DRAFT MAY BE ACCEPTED ALTHOUGH IT HAS NOT BEEN SIGNED BY
13 THE DRAWER, IS OTHERWISE INCOMPLETE, IS OVERDUE, OR HAS BEEN
14 DISHONORED.

15 (C) IF A DRAFT IS PAYABLE AT A FIXED PERIOD AFTER SIGHT AND THE
16 ACCEPTOR FAILS TO DATE THE ACCEPTANCE, THE HOLDER MAY COMPLETE THE
17 ACCEPTANCE BY SUPPLYING A DATE IN GOOD FAITH.

18 (D) "CERTIFIED CHECK" MEANS A CHECK ACCEPTED BY THE BANK ON WHICH
19 IT IS DRAWN. ACCEPTANCE MAY BE MADE AS STATED IN SUBSECTION (A) OR BY A
20 WRITING ON THE CHECK WHICH INDICATES THAT THE CHECK IS CERTIFIED. THE
21 DRAWEE OF A CHECK HAS NO OBLIGATION TO CERTIFY THE CHECK, AND REFUSAL
22 TO CERTIFY IS NOT DISHONOR OF THE CHECK.

23 3-410.

24 (A) IF THE TERMS OF A DRAWEE'S ACCEPTANCE VARY FROM THE TERMS OF
25 THE DRAFT AS PRESENTED, THE HOLDER MAY REFUSE THE ACCEPTANCE AND
26 TREAT THE DRAFT AS DISHONORED. IN THAT CASE, THE DRAWEE MAY CANCEL THE
27 ACCEPTANCE.

28 (B) THE TERMS OF A DRAFT ARE NOT VARIED BY AN ACCEPTANCE TO PAY
29 AT A PARTICULAR BANK OR PLACE IN THE UNITED STATES, UNLESS THE
30 ACCEPTANCE STATES THAT THE DRAFT IS TO BE PAID ONLY AT THAT BANK OR
31 PLACE.

32 (C) IF THE HOLDER ASSENTS TO AN ACCEPTANCE VARYING THE TERMS OF A
33 DRAFT, THE OBLIGATION OF EACH DRAWER AND INDORSER THAT DOES NOT
34 EXPRESSLY ASSENT TO THE ACCEPTANCE IS DISCHARGED.

35 3-411.

36 (A) IN THIS SECTION, "OBLIGATED BANK" MEANS THE ACCEPTOR OF A
37 CERTIFIED CHECK OR THE ISSUER OF A CASHIER'S CHECK OR TELLER'S CHECK
38 BOUGHT FROM THE ISSUER.

39 (B) IF THE OBLIGATED BANK WRONGFULLY (I) REFUSES TO PAY A CASHIER'S
40 CHECK OR CERTIFIED CHECK, (II) STOPS PAYMENT OF A TELLER'S CHECK, OR (III)

30

1 REFUSES TO PAY A DISHONORED TELLER'S CHECK, THE PERSON ASSERTING THE
2 RIGHT TO ENFORCE THE CHECK IS ENTITLED TO COMPENSATION FOR EXPENSES
3 AND LOSS OF INTEREST RESULTING FROM THE NONPAYMENT AND MAY RECOVER
4 CONSEQUENTIAL DAMAGES IF THE OBLIGATED BANK REFUSES TO PAY AFTER
5 RECEIVING NOTICE OF PARTICULAR CIRCUMSTANCES GIVING RISE TO THE
6 DAMAGES.

7 (C) EXPENSES OR CONSEQUENTIAL DAMAGES UNDER SUBSECTION (B) ARE
8 NOT RECOVERABLE IF THE REFUSAL OF THE OBLIGATED BANK TO PAY OCCURS
9 BECAUSE (I) THE BANK SUSPENDS PAYMENTS, (II) THE OBLIGATED BANK ASSERTS A
10 CLAIM OR DEFENSE OF THE BANK THAT IT HAS REASONABLE GROUNDS TO BELIEVE
11 IS AVAILABLE AGAINST THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT, (III)
12 THE OBLIGATED BANK HAS A REASONABLE DOUBT WHETHER THE PERSON
13 DEMANDING PAYMENT IS THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT,
14 OR (IV) PAYMENT IS PROHIBITED BY LAW.

15 3-412.

16 THE ISSUER OF A NOTE OR CASHIER'S CHECK OR OTHER DRAFT DRAWN ON
17 THE DRAWER IS OBLIGED TO PAY THE INSTRUMENT (I) ACCORDING TO ITS TERMS
18 AT THE TIME IT WAS ISSUED OR, IF NOT ISSUED, AT THE TIME IT FIRST CAME INTO
19 POSSESSION OF A HOLDER, OR (II) IF THE ISSUER SIGNED AN INCOMPLETE
20 INSTRUMENT, ACCORDING TO ITS TERMS WHEN COMPLETED, TO THE EXTENT
21 STATED IN §§ 3-115 AND 3-407. THE OBLIGATION IS OWED TO A PERSON ENTITLED TO
22 ENFORCE THE INSTRUMENT OR TO AN INDORSER WHO PAID THE INSTRUMENT
23 UNDER § 3-415.

24 3-413.

25 (A) THE ACCEPTOR OF A DRAFT IS OBLIGED TO PAY THE DRAFT (I)
26 ACCORDING TO ITS TERMS AT THE TIME IT WAS ACCEPTED, EVEN THOUGH THE
27 ACCEPTANCE STATES THAT THE DRAFT IS PAYABLE "AS ORIGINALLY DRAWN" OR
28 EQUIVALENT TERMS, (II) IF THE ACCEPTANCE VARIES THE TERMS OF THE DRAFT,
29 ACCORDING TO THE TERMS OF THE DRAFT AS VARIED, OR (III) IF THE ACCEPTANCE
30 IS OF A DRAFT THAT IS AN INCOMPLETE INSTRUMENT, ACCORDING TO ITS TERMS
31 WHEN COMPLETED, TO THE EXTENT STATED IN §§ 3-115 AND 3-407. THE OBLIGATION
32 IS OWED TO A PERSON ENTITLED TO ENFORCE THE DRAFT OR TO THE DRAWER OR
33 AN INDORSER WHO PAID THE DRAFT UNDER § 3-414 OR § 3-415.

34 (B) IF THE CERTIFICATION OF A CHECK OR OTHER ACCEPTANCE OF A DRAFT
35 STATES THE AMOUNT CERTIFIED OR ACCEPTED, THE OBLIGATION OF THE
36 ACCEPTOR IS THAT AMOUNT. IF (I) THE CERTIFICATION OR ACCEPTANCE DOES NOT
37 STATE AN AMOUNT, (II) THE AMOUNT OF THE INSTRUMENT IS SUBSEQUENTLY
38 RAISED, AND (III) THE INSTRUMENT IS THEN NEGOTIATED TO A HOLDER IN DUE
39 COURSE, THE OBLIGATION OF THE ACCEPTOR IS THE AMOUNT OF THE INSTRUMENT
40 AT THE TIME IT WAS TAKEN BY THE HOLDER IN DUE COURSE.

41 3-414.

42 (A) THIS SECTION DOES NOT APPLY TO CASHIER'S CHECKS OR OTHER
43 DRAFTS DRAWN ON THE DRAWER.

1 (B) IF AN UNACCEPTED DRAFT IS DISHONORED, THE DRAWER IS OBLIGED TO
 2 PAY THE DRAFT (I) ACCORDING TO ITS TERMS AT THE TIME IT WAS ISSUED OR, IF
 3 NOT ISSUED, AT THE TIME IT FIRST CAME INTO POSSESSION OF A HOLDER, OR (II) IF
 4 THE DRAWER SIGNED AN INCOMPLETE INSTRUMENT, ACCORDING TO ITS TERMS
 5 WHEN COMPLETED, TO THE EXTENT STATED IN §§ 3-115 AND 3-407. THE OBLIGATION
 6 IS OWED TO A PERSON ENTITLED TO ENFORCE THE DRAFT OR TO AN INDORSER
 7 WHO PAID THE DRAFT UNDER § 3-415.

8 (C) IF A DRAFT IS ACCEPTED BY A BANK, THE DRAWER IS DISCHARGED,
 9 REGARDLESS OF WHEN OR BY WHOM ACCEPTANCE WAS OBTAINED.

10 (D) IF A DRAFT IS ACCEPTED AND THE ACCEPTOR IS NOT A BANK, THE
 11 OBLIGATION OF THE DRAWER TO PAY THE DRAFT IF THE DRAFT IS DISHONORED
 12 BY THE ACCEPTOR IS THE SAME AS THE OBLIGATION OF AN INDORSER UNDER §
 13 3-415(A) AND (C).

14 (E) IF A DRAFT STATES THAT IT IS DRAWN "WITHOUT RECOURSE" OR
 15 OTHERWISE DISCLAIMS LIABILITY OF THE DRAWER TO PAY THE DRAFT, THE
 16 DRAWER IS NOT LIABLE UNDER SUBSECTION (B) TO PAY THE DRAFT IF THE DRAFT
 17 IS NOT A CHECK. A DISCLAIMER OF THE LIABILITY STATED IN SUBSECTION (B) IS
 18 NOT EFFECTIVE IF THE DRAFT IS A CHECK.

19 (F) IF (I) A CHECK IS NOT PRESENTED FOR PAYMENT OR GIVEN TO A
 20 DEPOSITARY BANK FOR COLLECTION WITHIN 30 DAYS AFTER ITS DATE, (II) THE
 21 DRAWEE SUSPENDS PAYMENTS AFTER EXPIRATION OF THE 30-DAY PERIOD
 22 WITHOUT PAYING THE CHECK, AND (III) BECAUSE OF THE SUSPENSION OF
 23 PAYMENTS, THE DRAWER IS DEPRIVED OF FUNDS MAINTAINED WITH THE DRAWEE
 24 TO COVER PAYMENT OF THE CHECK, THE DRAWER TO THE EXTENT DEPRIVED OF
 25 FUNDS MAY DISCHARGE ITS OBLIGATION TO PAY THE CHECK BY ASSIGNING TO THE
 26 PERSON ENTITLED TO ENFORCE THE CHECK THE RIGHTS OF THE DRAWER AGAINST
 27 THE DRAWEE WITH RESPECT TO THE FUNDS.

28 3-415.

29 (A) SUBJECT TO SUBSECTIONS (B), (C), (D), AND (E) AND TO § 3-419(D), IF AN
 30 INSTRUMENT IS DISHONORED, AN INDORSER IS OBLIGED TO PAY THE AMOUNT DUE
 31 ON THE INSTRUMENT (I) ACCORDING TO THE TERMS OF THE INSTRUMENT AT THE
 32 TIME IT WAS INDORSED, OR (II) IF THE INDORSER INDORSED AN INCOMPLETE
 33 INSTRUMENT, ACCORDING TO ITS TERMS WHEN COMPLETED, TO THE EXTENT
 34 STATED IN §§ 3-115 AND 3-407. THE OBLIGATION OF THE INDORSER IS OWED TO A
 35 PERSON ENTITLED TO ENFORCE THE INSTRUMENT OR TO A SUBSEQUENT
 36 INDORSER WHO PAID THE INSTRUMENT UNDER THIS SECTION.

37 (B) IF AN INDORSEMENT STATES THAT IT IS MADE "WITHOUT RECOURSE" OR
 38 OTHERWISE DISCLAIMS LIABILITY OF THE INDORSER, THE INDORSER IS NOT LIABLE
 39 UNDER SUBSECTION (A) TO PAY THE INSTRUMENT.

40 (C) IF NOTICE OF DISHONOR OF AN INSTRUMENT IS REQUIRED BY § 3-503
 41 AND NOTICE OF DISHONOR COMPLYING WITH THAT SECTION IS NOT GIVEN TO AN
 42 INDORSER, THE LIABILITY OF THE INDORSER UNDER SUBSECTION (A) IS
 43 DISCHARGED.

32

1 (D) IF A DRAFT IS ACCEPTED BY A BANK AFTER AN INDORSEMENT IS MADE,
2 THE LIABILITY OF THE INDORSER UNDER SUBSECTION (A) IS DISCHARGED.

3 (E) IF AN INDORSER OF A CHECK IS LIABLE UNDER SUBSECTION (A) AND THE
4 CHECK IS NOT PRESENTED FOR PAYMENT, OR GIVEN TO A DEPOSITARY BANK FOR
5 COLLECTION, WITHIN 30 DAYS AFTER THE DAY THE INDORSEMENT WAS MADE, THE
6 LIABILITY OF THE INDORSER UNDER SUBSECTION (A) IS DISCHARGED.

7 3-416.

8 (A) A PERSON WHO TRANSFERS AN INSTRUMENT FOR CONSIDERATION
9 WARRANTS TO THE TRANSFEREE AND, IF THE TRANSFER IS BY INDORSEMENT, TO
10 ANY SUBSEQUENT TRANSFEREE THAT:

11 (1) THE WARRANTOR IS A PERSON ENTITLED TO ENFORCE THE
12 INSTRUMENT;

13 (2) ALL SIGNATURES ON THE INSTRUMENT ARE AUTHENTIC AND
14 AUTHORIZED;

15 (3) THE INSTRUMENT HAS NOT BEEN ALTERED;

16 (4) THE INSTRUMENT IS NOT SUBJECT TO A DEFENSE OR CLAIM IN
17 RECOUPMENT OF ANY PARTY WHICH CAN BE ASSERTED AGAINST THE
18 WARRANTOR; AND

19 (5) THE WARRANTOR HAS NO KNOWLEDGE OF ANY INSOLVENCY
20 PROCEEDING COMMENCED WITH RESPECT TO THE MAKER OR ACCEPTOR OR, IN
21 THE CASE OF AN UNACCEPTED DRAFT, THE DRAWER.

22 (B) A PERSON TO WHOM THE WARRANTIES UNDER SUBSECTION (A) ARE
23 MADE AND WHO TOOK THE INSTRUMENT IN GOOD FAITH MAY RECOVER FROM THE
24 WARRANTOR AS DAMAGES FOR BREACH OF WARRANTY AN AMOUNT EQUAL TO
25 THE LOSS SUFFERED AS A RESULT OF THE BREACH, BUT NOT MORE THAN THE
26 AMOUNT OF THE INSTRUMENT PLUS EXPENSES AND LOSS OF INTEREST INCURRED
27 AS A RESULT OF THE BREACH.

28 (C) THE WARRANTIES STATED IN SUBSECTION (A) CANNOT BE DISCLAIMED
29 WITH RESPECT TO CHECKS. UNLESS NOTICE OF A CLAIM FOR BREACH OF
30 WARRANTY IS GIVEN TO THE WARRANTOR WITHIN 30 DAYS AFTER THE CLAIMANT
31 HAS REASON TO KNOW OF THE BREACH AND THE IDENTITY OF THE WARRANTOR,
32 THE LIABILITY OF THE WARRANTOR UNDER SUBSECTION (B) IS DISCHARGED TO
33 THE EXTENT OF ANY LOSS CAUSED BY THE DELAY IN GIVING NOTICE OF THE
34 CLAIM.

35 (D) A CAUSE OF ACTION FOR BREACH OF WARRANTY UNDER THIS SECTION
36 ACCRUES WHEN THE CLAIMANT HAS REASON TO KNOW OF THE BREACH.

37 3-417.

38 (A) IF AN UNACCEPTED DRAFT IS PRESENTED TO THE DRAWEE FOR
39 PAYMENT OR ACCEPTANCE AND THE DRAWEE PAYS OR ACCEPTS THE DRAFT, (I)
40 THE PERSON OBTAINING PAYMENT OR ACCEPTANCE, AT THE TIME OF

33

1 PRESENTMENT, AND (II) A PREVIOUS TRANSFEROR OF THE DRAFT, AT THE TIME OF
2 TRANSFER, WARRANT TO THE DRAWEE MAKING PAYMENT OR ACCEPTING THE
3 DRAFT IN GOOD FAITH THAT:

4 (1) THE WARRANTOR IS, OR WAS, AT THE TIME THE WARRANTOR
5 TRANSFERRED THE DRAFT, A PERSON ENTITLED TO ENFORCE THE DRAFT OR
6 AUTHORIZED TO OBTAIN PAYMENT OR ACCEPTANCE OF THE DRAFT ON BEHALF OF
7 A PERSON ENTITLED TO ENFORCE THE DRAFT;

8 (2) THE DRAFT HAS NOT BEEN ALTERED; AND

9 (3) THE WARRANTOR HAS NO KNOWLEDGE THAT THE SIGNATURE OF
10 THE DRAWER OF THE DRAFT IS UNAUTHORIZED.

11 (B) A DRAWEE MAKING PAYMENT MAY RECOVER FROM ANY WARRANTOR
12 DAMAGES FOR BREACH OF WARRANTY EQUAL TO THE AMOUNT PAID BY THE
13 DRAWEE LESS THE AMOUNT THE DRAWEE RECEIVED OR IS ENTITLED TO RECEIVE
14 FROM THE DRAWER BECAUSE OF THE PAYMENT. IN ADDITION, THE DRAWEE IS
15 ENTITLED TO COMPENSATION FOR EXPENSES AND LOSS OF INTEREST RESULTING
16 FROM THE BREACH. THE RIGHT OF THE DRAWEE TO RECOVER DAMAGES UNDER
17 THIS SUBSECTION IS NOT AFFECTED BY ANY FAILURE OF THE DRAWEE TO
18 EXERCISE ORDINARY CARE IN MAKING PAYMENT. IF THE DRAWEE ACCEPTS THE
19 DRAFT, BREACH OF WARRANTY IS A DEFENSE TO THE OBLIGATION OF THE
20 ACCEPTOR. IF THE ACCEPTOR MAKES PAYMENT WITH RESPECT TO THE DRAFT, THE
21 ACCEPTOR IS ENTITLED TO RECOVER FROM ANY WARRANTOR FOR BREACH OF
22 WARRANTY THE AMOUNTS STATED IN THIS SUBSECTION.

23 (C) IF A DRAWEE ASSERTS A CLAIM FOR BREACH OF WARRANTY UNDER
24 SUBSECTION (A) BASED ON AN UNAUTHORIZED INDORSEMENT OF THE DRAFT OR
25 AN ALTERATION OF THE DRAFT, THE WARRANTOR MAY DEFEND BY PROVING THAT
26 THE INDORSEMENT IS EFFECTIVE UNDER § 3-404 OR § 3-405 OR THE DRAWER IS
27 PRECLUDED UNDER § 3-406 OR § 4-406 FROM ASSERTING AGAINST THE DRAWEE THE
28 UNAUTHORIZED INDORSEMENT OR ALTERATION.

29 (D) IF (I) A DISHONORED DRAFT IS PRESENTED FOR PAYMENT TO THE
30 DRAWER OR AN INDORSER OR (II) ANY OTHER INSTRUMENT IS PRESENTED FOR
31 PAYMENT TO A PARTY OBLIGED TO PAY THE INSTRUMENT, AND (III) PAYMENT IS
32 RECEIVED, THE FOLLOWING RULES APPLY:

33 (1) THE PERSON OBTAINING PAYMENT AND A PRIOR TRANSFEROR OF
34 THE INSTRUMENT WARRANT TO THE PERSON MAKING PAYMENT IN GOOD FAITH
35 THAT THE WARRANTOR IS, OR WAS, AT THE TIME THE WARRANTOR TRANSFERRED
36 THE INSTRUMENT, A PERSON ENTITLED TO ENFORCE THE INSTRUMENT OR
37 AUTHORIZED TO OBTAIN PAYMENT ON BEHALF OF A PERSON ENTITLED TO
38 ENFORCE THE INSTRUMENT.

39 (2) THE PERSON MAKING PAYMENT MAY RECOVER FROM ANY
40 WARRANTOR FOR BREACH OF WARRANTY AN AMOUNT EQUAL TO THE AMOUNT
41 PAID PLUS EXPENSES AND LOSS OF INTEREST RESULTING FROM THE BREACH.

42 (E) THE WARRANTIES STATED IN SUBSECTIONS (A) AND (D) CANNOT BE
43 DISCLAIMED WITH RESPECT TO CHECKS. UNLESS NOTICE OF A CLAIM FOR BREACH

34

1 OF WARRANTY IS GIVEN TO THE WARRANTOR WITHIN 30 DAYS AFTER THE
2 CLAIMANT HAS REASON TO KNOW OF THE BREACH AND THE IDENTITY OF THE
3 WARRANTOR, THE LIABILITY OF THE WARRANTOR UNDER SUBSECTION (B) OR (D)
4 IS DISCHARGED TO THE EXTENT OF ANY LOSS CAUSED BY THE DELAY IN GIVING
5 NOTICE OF THE CLAIM.

6 (F) A CAUSE OF ACTION FOR BREACH OF WARRANTY UNDER THIS SECTION
7 ACCRUES WHEN THE CLAIMANT HAS REASON TO KNOW OF THE BREACH.

8 3-418.

9 (A) EXCEPT AS PROVIDED IN SUBSECTION (C), IF THE DRAWEE OF A DRAFT
10 PAYS OR ACCEPTS THE DRAFT AND THE DRAWEE ACTED ON THE MISTAKEN BELIEF
11 THAT (I) PAYMENT OF THE DRAFT HAD NOT BEEN STOPPED PURSUANT TO § 4-403 OR
12 (II) THE SIGNATURE OF THE DRAWER OF THE DRAFT WAS AUTHORIZED, THE
13 DRAWEE MAY RECOVER THE AMOUNT OF THE DRAFT FROM THE PERSON TO WHOM
14 OR FOR WHOSE BENEFIT PAYMENT WAS MADE OR, IN THE CASE OF ACCEPTANCE,
15 MAY REVOKE THE ACCEPTANCE. RIGHTS OF THE DRAWEE UNDER THIS SUBSECTION
16 ARE NOT AFFECTED BY FAILURE OF THE DRAWEE TO EXERCISE ORDINARY CARE
17 IN PAYING OR ACCEPTING THE DRAFT.

18 (B) EXCEPT AS PROVIDED IN SUBSECTION (C), IF AN INSTRUMENT HAS BEEN
19 PAID OR ACCEPTED BY MISTAKE AND THE CASE IS NOT COVERED BY SUBSECTION
20 (A), THE PERSON PAYING OR ACCEPTING MAY, TO THE EXTENT PERMITTED BY THE
21 LAW GOVERNING MISTAKE AND RESTITUTION, (I) RECOVER THE PAYMENT FROM
22 THE PERSON TO WHOM OR FOR WHOSE BENEFIT PAYMENT WAS MADE OR (II) IN
23 THE CASE OF ACCEPTANCE, MAY REVOKE THE ACCEPTANCE.

24 (C) THE REMEDIES PROVIDED BY SUBSECTION (A) OR (B) MAY NOT BE
25 ASSERTED AGAINST A PERSON WHO TOOK THE INSTRUMENT IN GOOD FAITH AND
26 FOR VALUE OR WHO IN GOOD FAITH CHANGED POSITION IN RELIANCE ON THE
27 PAYMENT OR ACCEPTANCE. THIS SUBSECTION DOES NOT LIMIT REMEDIES
28 PROVIDED BY § 3-417 OR § 4-407.

29 (D) NOTWITHSTANDING § 4-215, IF AN INSTRUMENT IS PAID OR ACCEPTED BY
30 MISTAKE AND THE PAYOR OR ACCEPTOR RECOVERS PAYMENT OR REVOKES
31 ACCEPTANCE UNDER SUBSECTION (A) OR (B), THE INSTRUMENT IS DEEMED NOT TO
32 HAVE BEEN PAID OR ACCEPTED AND IS TREATED AS DISHONORED, AND THE
33 PERSON FROM WHOM PAYMENT IS RECOVERED HAS RIGHTS AS A PERSON
34 ENTITLED TO ENFORCE THE DISHONORED INSTRUMENT.

35 3-419.

36 (A) IF AN INSTRUMENT IS ISSUED FOR VALUE GIVEN FOR THE BENEFIT OF A
37 PARTY TO THE INSTRUMENT ("ACCOMMODATED PARTY") AND ANOTHER PARTY TO
38 THE INSTRUMENT ("ACCOMMODATION PARTY") SIGNS THE INSTRUMENT FOR THE
39 PURPOSE OF INCURRING LIABILITY ON THE INSTRUMENT WITHOUT BEING A
40 DIRECT BENEFICIARY OF THE VALUE GIVEN FOR THE INSTRUMENT, THE
41 INSTRUMENT IS SIGNED BY THE ACCOMMODATION PARTY "FOR
42 ACCOMMODATION".

35

1 (B) AN ACCOMMODATION PARTY MAY SIGN THE INSTRUMENT AS MAKER,
2 DRAWER, ACCEPTOR, OR INDORSER AND, SUBJECT TO SUBSECTION (D), IS OBLIGED
3 TO PAY THE INSTRUMENT IN THE CAPACITY IN WHICH THE ACCOMMODATION
4 PARTY SIGNS. THE OBLIGATION OF AN ACCOMMODATION PARTY MAY BE
5 ENFORCED NOTWITHSTANDING ANY STATUTE OF FRAUDS AND WHETHER OR NOT
6 THE ACCOMMODATION PARTY RECEIVES CONSIDERATION FOR THE
7 ACCOMMODATION.

8 (C) A PERSON SIGNING AN INSTRUMENT IS PRESUMED TO BE AN
9 ACCOMMODATION PARTY AND THERE IS NOTICE THAT THE INSTRUMENT IS SIGNED
10 FOR ACCOMMODATION IF THE SIGNATURE IS AN ANOMALOUS INDORSEMENT OR IS
11 ACCOMPANIED BY WORDS INDICATING THAT THE SIGNER IS ACTING AS SURETY OR
12 GUARANTOR WITH RESPECT TO THE OBLIGATION OF ANOTHER PARTY TO THE
13 INSTRUMENT. EXCEPT AS PROVIDED IN § 3-605, THE OBLIGATION OF AN
14 ACCOMMODATION PARTY TO PAY THE INSTRUMENT IS NOT AFFECTED BY THE FACT
15 THAT THE PERSON ENFORCING THE OBLIGATION HAD NOTICE WHEN THE
16 INSTRUMENT WAS TAKEN BY THAT PERSON THAT THE ACCOMMODATION PARTY
17 SIGNED THE INSTRUMENT FOR ACCOMMODATION.

18 (D) IF THE SIGNATURE OF A PARTY TO AN INSTRUMENT IS ACCOMPANIED BY
19 WORDS INDICATING UNAMBIGUOUSLY THAT THE PARTY IS GUARANTEEING
20 COLLECTION RATHER THAN PAYMENT OF THE OBLIGATION OF ANOTHER PARTY TO
21 THE INSTRUMENT, THE SIGNER IS OBLIGED TO PAY THE AMOUNT DUE ON THE
22 INSTRUMENT TO A PERSON ENTITLED TO ENFORCE THE INSTRUMENT ONLY IF (I)
23 EXECUTION OF JUDGMENT AGAINST THE OTHER PARTY HAS BEEN RETURNED
24 UNSATISFIED, (II) THE OTHER PARTY IS INSOLVENT OR IN AN INSOLVENCY
25 PROCEEDING, (III) THE OTHER PARTY CANNOT BE SERVED WITH PROCESS, OR (IV)
26 IT IS OTHERWISE APPARENT THAT PAYMENT CANNOT BE OBTAINED FROM THE
27 OTHER PARTY.

28 (E) AN ACCOMMODATION PARTY WHO PAYS THE INSTRUMENT IS ENTITLED
29 TO REIMBURSEMENT FROM THE ACCOMMODATED PARTY AND IS ENTITLED TO
30 ENFORCE THE INSTRUMENT AGAINST THE ACCOMMODATED PARTY. AN
31 ACCOMMODATED PARTY WHO PAYS THE INSTRUMENT HAS NO RIGHT OF
32 RECOURSE AGAINST, AND IS NOT ENTITLED TO CONTRIBUTION FROM, AN
33 ACCOMMODATION PARTY.

34 3-420.

35 (A) THE LAW APPLICABLE TO CONVERSION OF PERSONAL PROPERTY APPLIES
36 TO INSTRUMENTS. AN INSTRUMENT IS ALSO CONVERTED IF IT IS TAKEN BY
37 TRANSFER, OTHER THAN A NEGOTIATION, FROM A PERSON NOT ENTITLED TO
38 ENFORCE THE INSTRUMENT OR A BANK MAKES OR OBTAINS PAYMENT WITH
39 RESPECT TO THE INSTRUMENT FOR A PERSON NOT ENTITLED TO ENFORCE THE
40 INSTRUMENT OR RECEIVE PAYMENT. AN ACTION FOR CONVERSION OF AN
41 INSTRUMENT MAY NOT BE BROUGHT BY (I) THE ISSUER OR ACCEPTOR OF THE
42 INSTRUMENT OR (II) A PAYEE OR INDORSEE WHO DID NOT RECEIVE DELIVERY OF
43 THE INSTRUMENT EITHER DIRECTLY OR THROUGH DELIVERY TO AN AGENT OR A
44 CO-PAYEE.

36

1 (B) IN AN ACTION UNDER SUBSECTION (A), THE MEASURE OF LIABILITY IS
2 PRESUMED TO BE THE AMOUNT PAYABLE ON THE INSTRUMENT, BUT RECOVERY
3 MAY NOT EXCEED THE AMOUNT OF THE PLAINTIFF'S INTEREST IN THE
4 INSTRUMENT.

5 (C) A REPRESENTATIVE, OTHER THAN A DEPOSITARY BANK, WHO HAS IN
6 GOOD FAITH DEALT WITH AN INSTRUMENT OR ITS PROCEEDS ON BEHALF OF ONE
7 WHO WAS NOT THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT IS NOT
8 LIABLE IN CONVERSION TO THAT PERSON BEYOND THE AMOUNT OF ANY PROCEEDS
9 THAT IT HAS NOT PAID OUT.

10 SUBTITLE 5. DISHONOR.

11 3-501.

12 (A) "PRESENTMENT" MEANS A DEMAND MADE BY OR ON BEHALF OF A
13 PERSON ENTITLED TO ENFORCE AN INSTRUMENT (I) TO PAY THE INSTRUMENT
14 MADE TO THE DRAWEE OR A PARTY OBLIGED TO PAY THE INSTRUMENT OR, IN THE
15 CASE OF A NOTE OR ACCEPTED DRAFT PAYABLE AT A BANK, TO THE BANK, OR (II)
16 TO ACCEPT A DRAFT MADE TO THE DRAWEE.

17 (B) THE FOLLOWING RULES ARE SUBJECT TO TITLE 4, AGREEMENT OF THE
18 PARTIES, AND CLEARING-HOUSE RULES AND THE LIKE:

19 (1) PRESENTMENT MAY BE MADE AT THE PLACE OF PAYMENT OF THE
20 INSTRUMENT AND MUST BE MADE AT THE PLACE OF PAYMENT IF THE INSTRUMENT
21 IS PAYABLE AT A BANK IN THE UNITED STATES; MAY BE MADE BY ANY
22 COMMERCIALY REASONABLE MEANS, INCLUDING AN ORAL, WRITTEN, OR
23 ELECTRONIC COMMUNICATION; IS EFFECTIVE WHEN THE DEMAND FOR PAYMENT
24 OR ACCEPTANCE IS RECEIVED BY THE PERSON TO WHOM PRESENTMENT IS MADE;
25 AND IS EFFECTIVE IF MADE TO ANY ONE OF TWO OR MORE MAKERS, ACCEPTORS,
26 DRAWEES, OR OTHER PAYORS.

27 (2) UPON DEMAND OF THE PERSON TO WHOM PRESENTMENT IS MADE,
28 THE PERSON MAKING PRESENTMENT MUST (I) EXHIBIT THE INSTRUMENT, (II) GIVE
29 REASONABLE IDENTIFICATION AND, IF PRESENTMENT IS MADE ON BEHALF OF
30 ANOTHER PERSON, REASONABLE EVIDENCE OF AUTHORITY TO DO SO, AND (III)
31 SIGN A RECEIPT ON THE INSTRUMENT FOR ANY PAYMENT MADE OR SURRENDER
32 THE INSTRUMENT IF FULL PAYMENT IS MADE.

33 (3) WITHOUT DISHONORING THE INSTRUMENT, THE PARTY TO WHOM
34 PRESENTMENT IS MADE MAY (I) RETURN THE INSTRUMENT FOR LACK OF A
35 NECESSARY INDORSEMENT, OR (II) REFUSE PAYMENT OR ACCEPTANCE FOR
36 FAILURE OF THE PRESENTMENT TO COMPLY WITH THE TERMS OF THE
37 INSTRUMENT, AN AGREEMENT OF THE PARTIES, OR OTHER APPLICABLE LAW OR
38 RULE.

39 (4) THE PARTY TO WHOM PRESENTMENT IS MADE MAY TREAT
40 PRESENTMENT AS OCCURRING ON THE NEXT BUSINESS DAY AFTER THE DAY OF
41 PRESENTMENT IF THE PARTY TO WHOM PRESENTMENT IS MADE HAS ESTABLISHED
42 A CUT-OFF HOUR NOT EARLIER THAN 2 P.M. FOR THE RECEIPT AND PROCESSING OF

37

1 INSTRUMENTS PRESENTED FOR PAYMENT OR ACCEPTANCE AND PRESENTMENT IS
2 MADE AFTER THE CUT-OFF HOUR.

3 3-502.

4 (A) DISHONOR OF A NOTE IS GOVERNED BY THE FOLLOWING RULES:

5 (1) IF THE NOTE IS PAYABLE ON DEMAND, THE NOTE IS DISHONORED IF
6 PRESENTMENT IS DULY MADE TO THE MAKER AND THE NOTE IS NOT PAID ON THE
7 DAY OF PRESENTMENT.

8 (2) IF THE NOTE IS NOT PAYABLE ON DEMAND AND IS PAYABLE AT OR
9 THROUGH A BANK OR THE TERMS OF THE NOTE REQUIRE PRESENTMENT, THE
10 NOTE IS DISHONORED IF PRESENTMENT IS DULY MADE AND THE NOTE IS NOT PAID
11 ON THE DAY IT BECOMES PAYABLE OR THE DAY OF PRESENTMENT, WHICHEVER IS
12 LATER.

13 (3) IF THE NOTE IS NOT PAYABLE ON DEMAND AND PARAGRAPH (2)
14 DOES NOT APPLY, THE NOTE IS DISHONORED IF IT IS NOT PAID ON THE DAY IT
15 BECOMES PAYABLE.

16 (B) DISHONOR OF AN UNACCEPTED DRAFT OTHER THAN A DOCUMENTARY
17 DRAFT IS GOVERNED BY THE FOLLOWING RULES:

18 (1) IF A CHECK IS DULY PRESENTED FOR PAYMENT TO THE PAYOR
19 BANK OTHERWISE THAN FOR IMMEDIATE PAYMENT OVER THE COUNTER, THE
20 CHECK IS DISHONORED IF THE PAYOR BANK MAKES TIMELY RETURN OF THE CHECK
21 OR SENDS TIMELY NOTICE OF DISHONOR OR NONPAYMENT UNDER § 4-301 OR §
22 4-302, OR BECOMES ACCOUNTABLE FOR THE AMOUNT OF THE CHECK UNDER § 4-302.

23 (2) IF A DRAFT IS PAYABLE ON DEMAND AND PARAGRAPH (1) DOES
24 NOT APPLY, THE DRAFT IS DISHONORED IF PRESENTMENT FOR PAYMENT IS DULY
25 MADE TO THE DRAWEE AND THE DRAFT IS NOT PAID ON THE DAY OF
26 PRESENTMENT.

27 (3) IF A DRAFT IS PAYABLE ON A DATE STATED IN THE DRAFT, THE
28 DRAFT IS DISHONORED IF (I) PRESENTMENT FOR PAYMENT IS DULY MADE TO THE
29 DRAWEE AND PAYMENT IS NOT MADE ON THE DAY THE DRAFT BECOMES PAYABLE
30 OR THE DAY OF PRESENTMENT, WHICHEVER IS LATER, OR (II) PRESENTMENT FOR
31 ACCEPTANCE IS DULY MADE BEFORE THE DAY THE DRAFT BECOMES PAYABLE AND
32 THE DRAFT IS NOT ACCEPTED ON THE DAY OF PRESENTMENT.

33 (4) IF A DRAFT IS PAYABLE ON ELAPSE OF A PERIOD OF TIME AFTER
34 SIGHT OR ACCEPTANCE, THE DRAFT IS DISHONORED IF PRESENTMENT FOR
35 ACCEPTANCE IS DULY MADE AND THE DRAFT IS NOT ACCEPTED ON THE DAY OF
36 PRESENTMENT.

37 (C) DISHONOR OF AN UNACCEPTED DOCUMENTARY DRAFT OCCURS
38 ACCORDING TO THE RULES STATED IN SUBSECTION (B)(2), (3), AND (4), EXCEPT THAT
39 PAYMENT OR ACCEPTANCE MAY BE DELAYED WITHOUT DISHONOR UNTIL NO
40 LATER THAN THE CLOSE OF THE THIRD BUSINESS DAY OF THE DRAWEE

38

1 FOLLOWING THE DAY ON WHICH PAYMENT OR ACCEPTANCE IS REQUIRED BY
2 THOSE PARAGRAPHS.

3 (D) DISHONOR OF AN ACCEPTED DRAFT IS GOVERNED BY THE FOLLOWING
4 RULES:

5 (1) IF THE DRAFT IS PAYABLE ON DEMAND, THE DRAFT IS
6 DISHONORED IF PRESENTMENT FOR PAYMENT IS DULY MADE TO THE ACCEPTOR
7 AND THE DRAFT IS NOT PAID ON THE DAY OF PRESENTMENT.

8 (2) IF THE DRAFT IS NOT PAYABLE ON DEMAND, THE DRAFT IS
9 DISHONORED IF PRESENTMENT FOR PAYMENT IS DULY MADE TO THE ACCEPTOR
10 AND PAYMENT IS NOT MADE ON THE DAY IT BECOMES PAYABLE OR THE DAY OF
11 PRESENTMENT, WHICHEVER IS LATER.

12 (E) IN ANY CASE IN WHICH PRESENTMENT IS OTHERWISE REQUIRED FOR
13 DISHONOR UNDER THIS SECTION AND PRESENTMENT IS EXCUSED UNDER § 3-504,
14 DISHONOR OCCURS WITHOUT PRESENTMENT IF THE INSTRUMENT IS NOT DULY
15 ACCEPTED OR PAID.

16 (F) IF A DRAFT IS DISHONORED BECAUSE TIMELY ACCEPTANCE OF THE
17 DRAFT WAS NOT MADE AND THE PERSON ENTITLED TO DEMAND ACCEPTANCE
18 CONSENTS TO A LATE ACCEPTANCE, FROM THE TIME OF ACCEPTANCE THE DRAFT IS
19 TREATED AS NEVER HAVING BEEN DISHONORED.

20 3-503.

21 (A) THE OBLIGATION OF AN INDORSER STATED IN § 3-415(A) AND THE
22 OBLIGATION OF A DRAWER STATED IN § 3-414(D) MAY NOT BE ENFORCED UNLESS (I)
23 THE INDORSER OR DRAWER IS GIVEN NOTICE OF DISHONOR OF THE INSTRUMENT
24 COMPLYING WITH THIS SECTION OR (II) NOTICE OF DISHONOR IS EXCUSED UNDER §
25 3-504(B).

26 (B) NOTICE OF DISHONOR MAY BE GIVEN BY ANY PERSON; MAY BE GIVEN BY
27 ANY COMMERCIALY REASONABLE MEANS, INCLUDING AN ORAL, WRITTEN, OR
28 ELECTRONIC COMMUNICATION; AND IS SUFFICIENT IF IT REASONABLY IDENTIFIES
29 THE INSTRUMENT AND INDICATES THAT THE INSTRUMENT HAS BEEN DISHONORED
30 OR HAS NOT BEEN PAID OR ACCEPTED. RETURN OF AN INSTRUMENT GIVEN TO A
31 BANK FOR COLLECTION IS SUFFICIENT NOTICE OF DISHONOR.

32 (C) SUBJECT TO § 3-504(C), WITH RESPECT TO AN INSTRUMENT TAKEN FOR
33 COLLECTION BY A COLLECTING BANK, NOTICE OF DISHONOR MUST BE GIVEN (I) BY
34 THE BANK BEFORE MIDNIGHT OF THE NEXT BANKING DAY FOLLOWING THE
35 BANKING DAY ON WHICH THE BANK RECEIVES NOTICE OF DISHONOR OF THE
36 INSTRUMENT, OR (II) BY ANY OTHER PERSON WITHIN 30 DAYS FOLLOWING THE DAY
37 ON WHICH THE PERSON RECEIVES NOTICE OF DISHONOR. WITH RESPECT TO ANY
38 OTHER INSTRUMENT, NOTICE OF DISHONOR MUST BE GIVEN WITHIN 30 DAYS
39 FOLLOWING THE DAY ON WHICH DISHONOR OCCURS.

40 3-504.

41 (A) PRESENTMENT FOR PAYMENT OR ACCEPTANCE OF AN INSTRUMENT IS
42 EXCUSED IF (I) THE PERSON ENTITLED TO PRESENT THE INSTRUMENT CANNOT

39

1 WITH REASONABLE DILIGENCE MAKE PRESENTMENT, (II) THE MAKER OR
2 ACCEPTOR HAS REPUDIATED AN OBLIGATION TO PAY THE INSTRUMENT OR IS
3 DEAD OR IN INSOLVENCY PROCEEDINGS, (III) BY THE TERMS OF THE INSTRUMENT
4 PRESENTMENT IS NOT NECESSARY TO ENFORCE THE OBLIGATION OF INDORSERS
5 OR THE DRAWER, (IV) THE DRAWER OR INDORSER WHOSE OBLIGATION IS BEING
6 ENFORCED HAS WAIVED PRESENTMENT OR OTHERWISE HAS NO REASON TO
7 EXPECT OR RIGHT TO REQUIRE THAT THE INSTRUMENT BE PAID OR ACCEPTED, OR
8 (V) THE DRAWER INSTRUCTED THE DRAWEE NOT TO PAY OR ACCEPT THE DRAFT
9 OR THE DRAWEE WAS NOT OBLIGATED TO THE DRAWER TO PAY THE DRAFT.

10 (B) NOTICE OF DISHONOR IS EXCUSED IF (I) BY THE TERMS OF THE
11 INSTRUMENT NOTICE OF DISHONOR IS NOT NECESSARY TO ENFORCE THE
12 OBLIGATION OF A PARTY TO PAY THE INSTRUMENT, OR (II) THE PARTY WHOSE
13 OBLIGATION IS BEING ENFORCED WAIVED NOTICE OF DISHONOR. A WAIVER OF
14 PRESENTMENT IS ALSO A WAIVER OF NOTICE OF DISHONOR.

15 (C) DELAY IN GIVING NOTICE OF DISHONOR IS EXCUSED IF THE DELAY WAS
16 CAUSED BY CIRCUMSTANCES BEYOND THE CONTROL OF THE PERSON GIVING THE
17 NOTICE AND THE PERSON GIVING THE NOTICE EXERCISED REASONABLE
18 DILIGENCE AFTER THE CAUSE OF THE DELAY CEASED TO OPERATE.

19 3-505.

20 (A) THE FOLLOWING ARE ADMISSIBLE AS EVIDENCE AND CREATE A
21 PRESUMPTION OF DISHONOR AND OF ANY NOTICE OF DISHONOR STATED:

22 (1) A DOCUMENT REGULAR IN FORM AS PROVIDED IN SUBSECTION (B)
23 WHICH PURPORTS TO BE A PROTEST;

24 (2) A PURPORTED STAMP OR WRITING OF THE DRAWEE, PAYOR BANK,
25 OR PRESENTING BANK ON OR ACCOMPANYING THE INSTRUMENT STATING THAT
26 ACCEPTANCE OR PAYMENT HAS BEEN REFUSED UNLESS REASONS FOR THE
27 REFUSAL ARE STATED AND THE REASONS ARE NOT CONSISTENT WITH DISHONOR;

28 (3) A BOOK OR RECORD OF THE DRAWEE, PAYOR BANK, OR
29 COLLECTING BANK, KEPT IN THE USUAL COURSE OF BUSINESS WHICH SHOWS
30 DISHONOR, EVEN IF THERE IS NO EVIDENCE OF WHO MADE THE ENTRY.

31 (B) A PROTEST IS A CERTIFICATE OF DISHONOR MADE BY A UNITED STATES
32 CONSUL OR VICE CONSUL, OR A NOTARY PUBLIC OR OTHER PERSON AUTHORIZED
33 TO ADMINISTER OATHS BY THE LAW OF THE PLACE WHERE DISHONOR OCCURS. IT
34 MAY BE MADE UPON INFORMATION SATISFACTORY TO THAT PERSON. THE PROTEST
35 MUST IDENTIFY THE INSTRUMENT AND CERTIFY EITHER THAT PRESENTMENT HAS
36 BEEN MADE OR, IF NOT MADE, THE REASON WHY IT WAS NOT MADE, AND THAT THE
37 INSTRUMENT HAS BEEN DISHONORED BY NONACCEPTANCE OR NONPAYMENT. THE
38 PROTEST MAY ALSO CERTIFY THAT NOTICE OF DISHONOR HAS BEEN GIVEN TO
39 SOME OR ALL PARTIES.

40

1 SUBTITLE 6. DISCHARGE AND PAYMENT.

2 3-601.

3 (A) THE OBLIGATION OF A PARTY TO PAY THE INSTRUMENT IS DISCHARGED
4 AS STATED IN THIS TITLE OR BY AN ACT OR AGREEMENT WITH THE PARTY WHICH
5 WOULD DISCHARGE AN OBLIGATION TO PAY MONEY UNDER A SIMPLE CONTRACT.

6 (B) DISCHARGE OF THE OBLIGATION OF A PARTY IS NOT EFFECTIVE
7 AGAINST A PERSON ACQUIRING RIGHTS OF A HOLDER IN DUE COURSE OF THE
8 INSTRUMENT WITHOUT NOTICE OF THE DISCHARGE.

9 3-602.

10 (A) SUBJECT TO SUBSECTION (B), AN INSTRUMENT IS PAID TO THE EXTENT
11 PAYMENT IS MADE (I) BY OR ON BEHALF OF A PARTY OBLIGED TO PAY THE
12 INSTRUMENT, AND (II) TO A PERSON ENTITLED TO ENFORCE THE INSTRUMENT. TO
13 THE EXTENT OF THE PAYMENT, THE OBLIGATION OF THE PARTY OBLIGED TO PAY
14 THE INSTRUMENT IS DISCHARGED EVEN THOUGH PAYMENT IS MADE WITH
15 KNOWLEDGE OF A CLAIM TO THE INSTRUMENT UNDER § 3-306 BY ANOTHER
16 PERSON.

17 (B) THE OBLIGATION OF A PARTY TO PAY THE INSTRUMENT IS NOT
18 DISCHARGED UNDER SUBSECTION (A) IF:

19 (1) A CLAIM TO THE INSTRUMENT UNDER § 3-306 IS ENFORCEABLE
20 AGAINST THE PARTY RECEIVING PAYMENT AND (I) PAYMENT IS MADE WITH
21 KNOWLEDGE BY THE PAYOR THAT PAYMENT IS PROHIBITED BY INJUNCTION OR
22 SIMILAR PROCESS OF A COURT OF COMPETENT JURISDICTION, OR (II) IN THE CASE
23 OF AN INSTRUMENT OTHER THAN A CASHIER'S CHECK, TELLER'S CHECK, OR
24 CERTIFIED CHECK, THE PARTY MAKING PAYMENT ACCEPTED, FROM THE PERSON
25 HAVING A CLAIM TO THE INSTRUMENT, INDEMNITY AGAINST LOSS RESULTING
26 FROM REFUSAL TO PAY THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT; OR

27 (2) THE PERSON MAKING PAYMENT KNOWS THAT THE INSTRUMENT IS
28 A STOLEN INSTRUMENT AND PAYS A PERSON IT KNOWS IS IN WRONGFUL
29 POSSESSION OF THE INSTRUMENT.

30 3-603.

31 (A) IF TENDER OF PAYMENT OF AN OBLIGATION TO PAY AN INSTRUMENT IS
32 MADE TO A PERSON ENTITLED TO ENFORCE THE INSTRUMENT, THE EFFECT OF
33 TENDER IS GOVERNED BY PRINCIPLES OF LAW APPLICABLE TO TENDER OF
34 PAYMENT UNDER A SIMPLE CONTRACT.

35 (B) IF TENDER OF PAYMENT OF AN OBLIGATION TO PAY AN INSTRUMENT IS
36 MADE TO A PERSON ENTITLED TO ENFORCE THE INSTRUMENT AND THE TENDER IS
37 REFUSED, THERE IS DISCHARGE, TO THE EXTENT OF THE AMOUNT OF THE TENDER,
38 OF THE OBLIGATION OF AN INDORSER OR ACCOMMODATION PARTY HAVING A
39 RIGHT OF RECOURSE WITH RESPECT TO THE OBLIGATION TO WHICH THE TENDER
40 RELATES.

41

1 (C) IF TENDER OF PAYMENT OF AN AMOUNT DUE ON AN INSTRUMENT IS
2 MADE TO A PERSON ENTITLED TO ENFORCE THE INSTRUMENT, THE OBLIGATION OF
3 THE OBLIGOR TO PAY INTEREST AFTER THE DUE DATE ON THE AMOUNT
4 TENDERED IS DISCHARGED. IF PRESENTMENT IS REQUIRED WITH RESPECT TO AN
5 INSTRUMENT AND THE OBLIGOR IS ABLE AND READY TO PAY ON THE DUE DATE AT
6 EVERY PLACE OF PAYMENT STATED IN THE INSTRUMENT, THE OBLIGOR IS DEEMED
7 TO HAVE MADE TENDER OF PAYMENT ON THE DUE DATE TO THE PERSON
8 ENTITLED TO ENFORCE THE INSTRUMENT.

9 3-604.

10 (A) A PERSON ENTITLED TO ENFORCE AN INSTRUMENT, WITH OR WITHOUT
11 CONSIDERATION, MAY DISCHARGE THE OBLIGATION OF A PARTY TO PAY THE
12 INSTRUMENT (I) BY AN INTENTIONAL VOLUNTARY ACT, SUCH AS SURRENDER OF
13 THE INSTRUMENT TO THE PARTY, DESTRUCTION, MUTILATION, OR CANCELLATION
14 OF THE INSTRUMENT, CANCELLATION OR STRIKING OUT OF THE PARTY'S
15 SIGNATURE, OR THE ADDITION OF WORDS TO THE INSTRUMENT INDICATING
16 DISCHARGE, OR (II) BY AGREEING NOT TO SUE OR OTHERWISE RENOUNCING
17 RIGHTS AGAINST THE PARTY BY A SIGNED WRITING.

18 (B) CANCELLATION OR STRIKING OUT OF AN INDORSEMENT PURSUANT TO
19 SUBSECTION (A) DOES NOT AFFECT THE STATUS AND RIGHTS OF A PARTY DERIVED
20 FROM THE INDORSEMENT.

21 3-605.

22 (A) IN THIS SECTION, THE TERM "INDORSER" INCLUDES A DRAWER HAVING
23 THE OBLIGATION DESCRIBED IN § 3-414(D).

24 (B) DISCHARGE, UNDER § 3-604, OF THE OBLIGATION OF A PARTY TO PAY AN
25 INSTRUMENT DOES NOT DISCHARGE THE OBLIGATION OF AN INDORSER OR
26 ACCOMMODATION PARTY HAVING A RIGHT OF RECOURSE AGAINST THE
27 DISCHARGED PARTY.

28 (C) IF A PERSON ENTITLED TO ENFORCE AN INSTRUMENT AGREES, WITH OR
29 WITHOUT CONSIDERATION, TO AN EXTENSION OF THE DUE DATE OF THE
30 OBLIGATION OF A PARTY TO PAY THE INSTRUMENT, THE EXTENSION DISCHARGES
31 AN INDORSER OR ACCOMMODATION PARTY HAVING A RIGHT OF RECOURSE
32 AGAINST THE PARTY WHOSE OBLIGATION IS EXTENDED TO THE EXTENT THE
33 INDORSER OR ACCOMMODATION PARTY PROVES THAT THE EXTENSION CAUSED
34 LOSS TO THE INDORSER OR ACCOMMODATION PARTY WITH RESPECT TO THE RIGHT
35 OF RECOURSE.

36 (D) IF A PERSON ENTITLED TO ENFORCE AN INSTRUMENT AGREES, WITH OR
37 WITHOUT CONSIDERATION, TO A MATERIAL MODIFICATION OF THE OBLIGATION
38 OF A PARTY OTHER THAN AN EXTENSION OF THE DUE DATE, THE MODIFICATION
39 DISCHARGES THE OBLIGATION OF AN INDORSER OR ACCOMMODATION PARTY
40 HAVING A RIGHT OF RECOURSE AGAINST THE PERSON WHOSE OBLIGATION IS
41 MODIFIED TO THE EXTENT THE MODIFICATION CAUSES LOSS TO THE INDORSER OR
42 ACCOMMODATION PARTY WITH RESPECT TO THE RIGHT OF RECOURSE. THE LOSS
43 SUFFERED BY THE INDORSER OR ACCOMMODATION PARTY AS A RESULT OF THE
44 MODIFICATION IS EQUAL TO THE AMOUNT OF THE RIGHT OF RECOURSE UNLESS

42

1 THE PERSON ENFORCING THE INSTRUMENT PROVES THAT NO LOSS WAS CAUSED BY
2 THE MODIFICATION OR THAT THE LOSS CAUSED BY THE MODIFICATION WAS AN
3 AMOUNT LESS THAN THE AMOUNT OF THE RIGHT OF RECOURSE.

4 (E) IF THE OBLIGATION OF A PARTY TO PAY AN INSTRUMENT IS SECURED BY
5 AN INTEREST IN COLLATERAL AND A PERSON ENTITLED TO ENFORCE THE
6 INSTRUMENT IMPAIRS THE VALUE OF THE INTEREST IN COLLATERAL, THE
7 OBLIGATION OF AN INDORSER OR ACCOMMODATION PARTY HAVING A RIGHT OF
8 RECOURSE AGAINST THE OBLIGOR IS DISCHARGED TO THE EXTENT OF THE
9 IMPAIRMENT. THE VALUE OF AN INTEREST IN COLLATERAL IS IMPAIRED TO THE
10 EXTENT (I) THE VALUE OF THE INTEREST IS REDUCED TO AN AMOUNT LESS THAN
11 THE AMOUNT OF THE RIGHT OF RECOURSE OF THE PARTY ASSERTING DISCHARGE,
12 OR (II) THE REDUCTION IN VALUE OF THE INTEREST CAUSES AN INCREASE IN THE
13 AMOUNT BY WHICH THE AMOUNT OF THE RIGHT OF RECOURSE EXCEEDS THE
14 VALUE OF THE INTEREST. THE BURDEN OF PROVING IMPAIRMENT IS ON THE PARTY
15 ASSERTING DISCHARGE.

16 (F) IF THE OBLIGATION OF A PARTY IS SECURED BY AN INTEREST IN
17 COLLATERAL NOT PROVIDED BY AN ACCOMMODATION PARTY AND A PERSON
18 ENTITLED TO ENFORCE THE INSTRUMENT IMPAIRS THE VALUE OF THE INTEREST IN
19 COLLATERAL, THE OBLIGATION OF ANY PARTY WHO IS JOINTLY AND SEVERALLY
20 LIABLE WITH RESPECT TO THE SECURED OBLIGATION IS DISCHARGED TO THE
21 EXTENT THE IMPAIRMENT CAUSES THE PARTY ASSERTING DISCHARGE TO PAY
22 MORE THAN THAT PARTY WOULD HAVE BEEN OBLIGED TO PAY, TAKING INTO
23 ACCOUNT RIGHTS OF CONTRIBUTION, IF IMPAIRMENT HAD NOT OCCURRED. IF THE
24 PARTY ASSERTING DISCHARGE IS AN ACCOMMODATION PARTY NOT ENTITLED TO
25 DISCHARGE UNDER SUBSECTION (E), THE PARTY IS DEEMED TO HAVE A RIGHT TO
26 CONTRIBUTION BASED ON JOINT AND SEVERAL LIABILITY RATHER THAN A RIGHT
27 TO REIMBURSEMENT. THE BURDEN OF PROVING IMPAIRMENT IS ON THE PARTY
28 ASSERTING DISCHARGE.

29 (G) UNDER SUBSECTION (E) OR (F), IMPAIRING VALUE OF AN INTEREST IN
30 COLLATERAL INCLUDES (I) FAILURE TO OBTAIN OR MAINTAIN PERFECTION OR
31 RECORDATION OF THE INTEREST IN COLLATERAL, (II) RELEASE OF COLLATERAL
32 WITHOUT SUBSTITUTION OF COLLATERAL OF EQUAL VALUE, (III) FAILURE TO
33 PERFORM A DUTY TO PRESERVE THE VALUE OF COLLATERAL OWED, UNDER
34 ARTICLE 9 OR OTHER LAW, TO A DEBTOR OR SURETY OR OTHER PERSON
35 SECONDARILY LIABLE, OR (IV) FAILURE TO COMPLY WITH APPLICABLE LAW IN
36 DISPOSING OF COLLATERAL.

37 (H) AN ACCOMMODATION PARTY IS NOT DISCHARGED UNDER SUBSECTION
38 (C), (D), OR (E) UNLESS THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT
39 KNOWS OF THE ACCOMMODATION OR HAS NOTICE UNDER § 3-419(C) THAT THE
40 INSTRUMENT WAS SIGNED FOR ACCOMMODATION.

41 (I) A PARTY IS NOT DISCHARGED UNDER THIS SECTION IF (I) THE PARTY
42 ASSERTING DISCHARGE CONSENTS TO THE EVENT OR CONDUCT THAT IS THE BASIS
43 OF THE DISCHARGE, OR (II) THE INSTRUMENT OR A SEPARATE AGREEMENT OF THE
44 PARTY PROVIDES FOR WAIVER OF DISCHARGE UNDER THIS SECTION EITHER

43

1 SPECIFICALLY OR BY GENERAL LANGUAGE INDICATING THAT PARTIES WAIVE
2 DEFENSES BASED ON SURETYSHIP OR IMPAIRMENT OF COLLATERAL.

3 4-101.

4 This title [shall be known and] may be cited as Uniform Commercial Code -- Bank
5 Deposits and Collections.

6 4-102.

7 [(1)] (A) To the extent that items within this title are also within[the scope of]
8 Titles 3 and 8, they are subject to [the provisions of] those titles. [In the event of] IF
9 THERE IS conflict [the provisions of], this title [govern those of] GOVERNS [Title 3]
10 TITLE 3, but [the provisions of] Title 8 [govern those of] GOVERNS thistitle.

11 [(2)] (B) The liability of a bank for action or nonaction with respect to [any] AN
12 item handled by it for purposes of presentment, [payment] PAYMENT, or collection is
13 governed by the law of the place where the bank is located. In the caseof action or
14 nonaction by or at a branch or separate office of a bank, its liabilityis governed by the law
15 of the place where the branch or separate office is located.

16 4-103.

17 [(1)] (A) The effect of the provisions of this title may be varied by agreement
18 [except that no agreement can], BUT THE PARTIES TO THE AGREEMENT CANNOT
19 disclaim a bank's responsibility for its [own] lack of good faith or failure to exercise
20 ordinary care or [can] limit the measure of damages for [such] THE lackor failure[;
21 but]. HOWEVER, the parties may DETERMINE by agreement [determine] the standards
22 by which [such] THE BANK'S responsibility is to be measured if [such] THOSE standards
23 are not manifestly unreasonable.

24 [(2)] (B) Federal reserve regulations and operating [letters] CIRCULARS,
25 [clearing house] CLEARING-HOUSE rules, and the like[,] have the effect of agreements
26 under subsection [(1)] (A), whether or not specifically assented to by all parties
27 interested in items handled.

28 [(3)] (C) Action or nonaction approved by this title or pursuant to federal reserve
29 regulations or operating [letters constitutes] CIRCULARS IS the exercise of ordinary care
30 and, in the absence of special instructions, action or nonaction consistent with [clearing
31 house] CLEARING-HOUSE rules and the like or with a general banking usage not
32 disapproved by this title, IS prima facie [constitutes] the exercise ofordinary care.

33 [(4)] (D) The specification or approval of certain procedures by this title [does
34 not constitute] IS NOT disapproval of other procedures [which] THAT maybe
35 reasonable under the circumstances.

36 [(5)] (E) The measure of damages for failure to exercise ordinary care in handling
37 an item is the amount of the item reduced by an amount [which] THAT could not have
38 been realized by the [use] EXERCISE of ordinary care[, and where]. IF there is ALSO
39 bad faith it includes ANY other damages[, if any, suffered by] the party SUFFERED as a
40 proximate consequence.

44

1 4-104.

2 [(1)] (A) In this [title] TITLE, unless the context otherwise [requires]
3 REQUIRES:

4 [(a)] (1) "Account" means any DEPOSIT OR CREDIT account with a bank
5 [and includes a checking, time, interest or savings account], INCLUDING A DEMAND,
6 TIME, SAVINGS, PASSBOOK, SHARE DRAFT, OR LIKE ACCOUNT, OTHER THAN AN
7 ACCOUNT EVIDENCED BY A CERTIFICATE OF DEPOSIT;

8 [(b)] (2) "Afternoon" means the period of a day between noon and
9 midnight;

10 [(c)] (3) "Banking day" means [that] THE part of [any] A day,
11 EXCLUDING SATURDAY, SUNDAY, OR A LEGAL HOLIDAY, on which a bank is open to
12 the public for carrying on substantially all of its banking functions;

13 [(d)] (4) ["Clearing house"] "CLEARING-HOUSE" means [any] AN
14 association of banks or other payors regularly clearing items;

15 [(e)] (5) "Customer" means [any] A person having an account with a bank
16 or for whom a bank has agreed to collect items [and includes], INCLUDING a bank
17 [carrying] THAT MAINTAINS an account [with] AT another bank;

18 [(f)] (6) "Documentary draft" means [any negotiable or nonnegotiable
19 draft with accompanying documents, securities or other papers to be delivered against
20 honor of the draft] A DRAFT TO BE PRESENTED FOR ACCEPTANCE OR PAYMENT IF
21 SPECIFIED DOCUMENTS, CERTIFICATED SECURITIES (§ 8-102) OR INSTRUCTIONS FOR
22 UNCERTIFICATED SECURITIES (§ 8-308), OR OTHER CERTIFICATES, STATEMENTS, OR
23 THE LIKE ARE TO BE RECEIVED BY THE DRAWEE OR OTHER PAYOR BEFORE
24 ACCEPTANCE OR PAYMENT OF THE DRAFT;

25 (7) "DRAFT" MEANS A DRAFT AS DEFINED IN § 3-104 OR AN ITEM,
26 OTHER THAN AN INSTRUMENT, THAT IS AN ORDER;

27 (8) "DRAWEE" MEANS A PERSON ORDERED IN A DRAFT TO MAKE
28 PAYMENT;

29 [(g)] (9) "Item" means [any instrument for the payment of money even
30 though it is not negotiable but does not include money] AN INSTRUMENT OR A
31 PROMISE OR ORDER TO PAY MONEY HANDLED BY A BANK FOR COLLECTION OR
32 PAYMENT. THE TERM DOES NOT INCLUDE A PAYMENT ORDER GOVERNED BY TITLE
33 4A OR A CREDIT OR DEBIT CARD SLIP;

34 [(h)] (10) "Midnight deadline" with respect to a bank is midnight on its next
35 banking day following the banking day on which it receives the relevant item or notice or
36 from which the time for taking action commences to run, whichever is later;

37 [(i)] "Property payable" includes the availability of funds for payment at the
38 time of decision to pay or dishonor;]

45

1 [(j)] (11) "Settle" means to pay in cash, by [clearing house]
2 CLEARING-HOUSE settlement, in a charge or credit or by remittance, or otherwise as
3 [instructed] AGREED. A settlement may be either provisional or final;

4 [(k)] (12) "Suspends payments" with respect to a bank means that it has
5 been closed by order of the supervisory authorities, that a public officer has been
6 appointed to take it [over] OVER; or that it ceases or refuses to make payments in the
7 ordinary course of business.

8 [(2)] (B) Other definitions applying to this title and the sections in which they
9 appear are:

10 "AGREEMENT FOR ELECTRONIC PRESENTMENT." § 4-110.

11 "BANK." § 4-105.

12 "Collecting bank." § 4-105.

13 "Depositary bank." § 4-105.

14 "Intermediary bank." § 4-105.

15 "Payor bank." § 4-105.

16 "Presenting bank." § 4-105.

17 ["Remitting bank." § 4-105.]

18 [(3)] (C) The following definitions in other titles apply to this title:

19 "Acceptance." § 3-410.

20 "ALTERATION." § 3-407.

21 "CASHIER'S CHECK." § 3-104.

22 "Certificate of deposit." § 3-104.

23 ["Certification." § 3-411.]

24 "CERTIFIED CHECK." § 3-409.

25 "Check." § 3-104.

26 "Draft." § 3-104.

27 "GOOD FAITH." § 3-103.

28 "Holder in due course." § 3-302.

29 "INSTRUMENT." § 3-104.

30 "Notice of dishonor." § 3-508.

31 "ORDER." § 3-103.

32 "ORDINARY CARE." § 3-103.

46

1 "PERSON ENTITLED TO ENFORCE." § 3-301.

2 "Presentment." § [3-504] 3-501.

3 "PROMISE." § 3-103.

4 ["Protest." § 3-509.]

5 "PROVE." § 3-103.

6 ["Secondary party." § 3-102.]

7 "TELLER'S CHECK." § 3-104.

8 "UNAUTHORIZED SIGNATURE." § 3-403.

9 [(4)] (D) In addition Title 1 contains general definitions and principles of
10 construction and interpretation applicable throughout this title.

11 4-105.

12 In this title [unless the context otherwise requires]:

13 (1) "BANK" MEANS A PERSON ENGAGED IN THE BUSINESS OF BANKING,
14 INCLUDING A SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR
15 TRUST COMPANY;

16 [(a)] (2) "Depository bank" means the first bank to [which] TAKE an item [is
17 transferred for collection] even though it is also the payor bank UNLESS THE ITEM IS
18 PRESENTED FOR IMMEDIATE PAYMENT OVER THE COUNTER;

19 [(b)] (3) "Payor bank" means a bank [by which an item is payable as drawn or
20 accepted] THAT IS THE DRAWEE OF A DRAFT;

21 [(c)] (4) "Intermediary bank" means [any] A bank to which an item is
22 transferred in course of collection except the depository or payor bank;

23 [(d)] (5) "Collecting bank" means [any] A bank handling [the] AN item for
24 collection except the payor bank;

25 [(e)] (6) "Presenting bank" means [any] A bank presenting an item except a
26 payor bank[;].

27 [(f) "Remitting bank" means any payor or intermediary bank remittingfor an
28 item.]

29 4-106.

30 (A) IF AN ITEM STATES THAT IT IS "PAYABLE THROUGH" A BANK IDENTIFIED
31 IN THE ITEM, (I) THE ITEM DESIGNATES THE BANK AS A COLLECTING BANK AND
32 DOES NOT BY ITSELF AUTHORIZE THE BANK TO PAY THE ITEM, AND (II) THE ITEM
33 MAY BE PRESENTED FOR PAYMENT ONLY BY OR THROUGH THE BANK.

34 (B) IF AN ITEM STATES THAT IT IS "PAYABLE AT" A BANK IDENTIFIED IN THE
35 ITEM:

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1 (1) THE ITEM DESIGNATES THE BANK AS A COLLECTING BANK AND
2 DOES NOT BY ITSELF AUTHORIZE THE BANK TO PAY THE ITEM; AND

3 (2) THE ITEM MAY BE PRESENTED FOR PAYMENT ONLY BY OR
4 THROUGH THE BANK.

5 (C) IF A DRAFT NAMES A NONBANK DRAWEE AND IT IS UNCLEAR WHETHER
6 A BANK NAMED IN THE DRAFT IS A CODRAWEE OR A COLLECTING BANK, THE BANK
7 IS A COLLECTING BANK.

8 [4-106.] 4-107.

9 A branch or separate office of a bank is a separate bank for the purpose of
10 computing the time within which and determining the place at or to which action may be
11 taken or notices or orders [shall] MUST be given under this title and under Title 3.

12 [4-107.] 4-108.

13 [(1)] (A) For the purpose of allowing time to process items, prove [balances]
14 BALANCES, and make the necessary entries on its books to determine its position for the
15 day, a bank may fix an afternoon hour of two p.m. or later as a cutoff hour for the
16 handling of money and items and the making of entries on its books.

17 [(2)] (B) [Any] AN item or deposit of money received on any day after a cutoff
18 hour so fixed or after the close of the banking day may be treated as being received at the
19 opening of the next banking day.

20 [4-108.] 4-109.

21 [(1)] (A) Unless otherwise instructed, a collecting bank in a good faith effort to
22 secure payment [may, in the case] of A specific [items] ITEM DRAWN ON APAYOR
23 OTHER THAN A BANK, and with or without the approval of any person involved, MAY
24 waive, [modify] MODIFY, or extend time limits imposed or permitted by Titles 1 through
25 10 of this article for a period not [in excess of an] EXCEEDING TWO additional banking
26 [day] DAYS without discharge of [secondary parties and without] DRAWERSOR
27 INDORSERS OR liability to its transferor or [any] A prior party.

28 [(2)] (B) Delay by a collecting bank or payor bank beyond time limits prescribed
29 or permitted by [Titles 1 through 10 of] this article, or by instructions is excused if (I)
30 THE DELAY IS caused by interruption of communication OR COMPUTER facilities,
31 suspension of payments by another bank, war, emergency conditions, FAILURE OF
32 EQUIPMENT, or other circumstances beyond the control of the bank [provided it], AND
33 (II) THE BANK exercises such diligence as the circumstances require.

34 [4-109.]

35 The "process of posting" means the usual procedure followed by a payor bank in
36 determining to pay an item and in recording the payment including one or more of the
37 following or other steps as determined by the bank:

38 (a) Verification of any signature;

39 (b) Ascertaining that sufficient funds are available;

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- 1 (c) Affixing a "paid" or other stamp;
- 2 (d) Entering a charge or entry to a customer's account;
- 3 (e) Correcting or reversing an entry or erroneous action with respect to the item.]

4 4-110.

5 (A) "AGREEMENT FOR ELECTRONIC PRESENTMENT" MEANS AN AGREEMENT,
6 CLEARING-HOUSE RULE, OR FEDERAL RESERVE REGULATION OR OPERATING
7 CIRCULAR, PROVIDING THAT PRESENTMENT OF AN ITEM MAY BE MADE BY
8 TRANSMISSION OF AN IMAGE OF AN ITEM OR INFORMATION DESCRIBING THE ITEM
9 ("PRESENTMENT NOTICE") RATHER THAN DELIVERY OF THE ITEM ITSELF. THE
10 AGREEMENT MAY PROVIDE FOR PROCEDURES GOVERNING RETENTION,
11 PRESENTMENT, PAYMENT, DISHONOR, AND OTHER MATTERS CONCERNING ITEMS
12 SUBJECT TO THE AGREEMENT.

13 (B) PRESENTMENT OF AN ITEM PURSUANT TO AN AGREEMENT FOR
14 PRESENTMENT IS MADE WHEN THE PRESENTMENT NOTICE IS RECEIVED.

15 (C) IF PRESENTMENT IS MADE BY PRESENTMENT NOTICE, A REFERENCE TO
16 "ITEM" OR "CHECK" IN THIS TITLE MEANS THE PRESENTMENT NOTICE UNLESS THE
17 CONTEXT OTHERWISE INDICATES.

18 4-111.

19 AN ACTION TO ENFORCE AN OBLIGATION, DUTY, OR RIGHT ARISING UNDER
20 THIS TITLE MUST BE COMMENCED WITHIN 3 YEARS AFTER THE CAUSE OF ACTION
21 ACCRUES.

22 4-201.

23 [(1)] (A) Unless a contrary intent clearly appears and [prior to] BEFORE the
24 time that a settlement given by a collecting bank for an item is or becomes final,
25 [(subsection (3) of § 4-211 and §§ 4-212 and 4-213)] the bank, WITH RESPECT TO THE
26 ITEM, is an agent or subagent of the owner of the item and any settlement given for the
27 item is provisional. This provision applies regardless of the form of indorsement or lack of
28 indorsement and even though credit given for the item is subject to immediate withdrawal
29 as of right or is in fact withdrawn; but the continuance of ownership of an item by its
30 owner and any rights of the owner to proceeds of the item are subject to rights of a
31 collecting bank, such as those resulting from outstanding advances on the item and
32 [valid] rights of RECOUPMENT OR setoff. [When] IF an item is handled by banks for
33 purposes of presentment, payment [and], collection, OR RETURN, the relevant
34 provisions of this title apply even though action of THE parties clearly establishes that a
35 particular bank has purchased the item and is the owner of it.

36 [(2)] (B) After an item has been indorsed with the words "pay any bank" or the
37 like, only a bank may acquire the rights of a holder UNTIL THE ITEM HAS BEEN:

38 [(a)] (1) [Until the item has been returned] RETURNED to the customer
39 initiating collection; or

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1 [(b)] (2) [Until the item has been specially] SPECIALLY indorsed by a bank
2 to a person who is not a bank.

3 4-202.

4 [(1)] (A) A collecting bank must [use] EXERCISE ordinary care in:

5 [(a)] (1) Presenting an item or sending it for presentment; [and]

6 [(b)] (2) Sending notice of dishonor or nonpayment or returning an item
7 other than a documentary draft to the bank's transferor [or directly to the
8 bank under subsection (2) of § 4-212] after learning that the item has not been paid or
9 accepted, as the case may be; [and]

10 [(c)] (3) Settling for an item when the bank receives final settlement; and

11 [(d)] Making or providing for any necessary protest; and]

12 [(e)] (4) Notifying its transferor of any loss or delay in transit within a
13 reasonable time after discovery thereof.

14 [(2)] A collecting bank taking proper action before its midnight deadline following
15 receipt of an item, notice or payment acts seasonably; taking proper action within a
16 reasonably longer time may be seasonable but the bank has the burden of so
17 establishing.]

18 (B) A COLLECTING BANK EXERCISES ORDINARY CARE UNDER SUBSECTION
19 (A) BY TAKING PROPER ACTION BEFORE ITS MIDNIGHT DEADLINE FOLLOWING
20 RECEIPT OF AN ITEM, NOTICE, OR SETTLEMENT. TAKING PROPER ACTION WITHIN A
21 REASONABLY LONGER TIME MAY CONSTITUTE THE EXERCISE OF ORDINARY CARE,
22 BUT THE BANK HAS THE BURDEN OF ESTABLISHING TIMELINESS.

23 [(3)] (C) Subject to subsection [(1) (a)] (A)(1), a bank is not liable for the
24 insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss
25 or destruction of an item [in transit or] in the possession of others OR IN TRANSIT.

26 4-203.

27 Subject to [the provisions of] Title 3 concerning conversion of instruments ([§
28 3-419] § 3-420) and [the provisions of both Title 3 and this title concerning] restrictive
29 indorsements (§ 3-206) only a collecting bank's transferor can give instructions [which]
30 THAT affect the bank or constitute notice to it, and a collecting bank is not liable to prior
31 parties for any action taken pursuant to [such] THE instructions or in accordance with
32 any agreement with its transferor.

33 4-204.

34 [(1)] (A) A collecting bank [must] SHALL send items by A reasonably prompt
35 method, taking into consideration [any] relevant instructions, the nature of the item, the
36 number of [such] THOSE items on hand, [and] the cost of collection [involved]
37 INVOLVED, and the method generally used by it or others to present [such] THOSE
38 items.

39 [(2)] (B) A collecting bank may send:

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1 [(a)] (1) [Any] AN item [direct] DIRECTLY to the payor bank;

2 [(b)] (2) [Any] AN item to [any] A nonbank payor if authorized by its
3 transferor; and

4 [(c)] (3) [Any] AN item other than documentary drafts to any nonbank
5 payor, if authorized by federal reserve regulation or operating [letter] CIRCULAR,
6 [clearing house] CLEARING-HOUSE rule, or the like.

7 [(3)] (C) Presentment may be made by a presenting bank at a place where the
8 payor bank OR OTHER PAYOR has requested that presentment be made.

9 [4-205.

10 (1) A depository bank which has taken an item for collection may supply any
11 indorsement of the customer which is necessary to title unless the item contains the words
12 "payee's indorsement required" or the like. In the absence of such a requirement a
13 statement placed on the item by the depository bank to the effect that the item was
14 deposited by a customer or credited to his account is effective as the customer's
15 indorsement.

16 (2) An intermediary bank, or payor bank which is not a depository bank, is neither
17 given notice nor otherwise affected by a restrictive indorsement of any person except the
18 bank's immediate transferor.]

19 4-205.

20 IF A CUSTOMER DELIVERS AN ITEM TO A DEPOSITARY BANK FOR COLLECTION:

21 (1) THE DEPOSITARY BANK BECOMES A HOLDER OF THE ITEM AT THE
22 TIME IT RECEIVES THE ITEM FOR COLLECTION IF THE CUSTOMER AT THE TIME OF
23 DELIVERY WAS A HOLDER OF THE ITEM, WHETHER OR NOT THE CUSTOMER
24 INDORSES THE ITEM, AND, IF THE BANK SATISFIES THE OTHER REQUIREMENTS OF §
25 3-302, IT IS A HOLDER IN DUE COURSE; AND

26 (2) THE DEPOSITARY BANK WARRANTS TO COLLECTING BANKS, THE
27 PAYOR BANK OR OTHER PAYOR, AND THE DRAWER THAT THE AMOUNT OF THE
28 ITEM WAS PAID TO THE CUSTOMER OR DEPOSITED TO THE CUSTOMER'S ACCOUNT.

29 4-206.

30 Any agreed method [which] THAT identifies the transferor bank is sufficient for
31 the item's further transfer to another bank.

32 [4-207.

33 (1) Each customer or collecting bank who obtains payment or acceptance of an
34 item and each prior customer and collecting bank warrants to the payor bank or other
35 payor who in good faith pays or accepts the item that

36 (a) He has a good title to the item or is authorized to obtain payment or
37 acceptance on behalf of one who has a good title; and

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1 (b) He has no knowledge that the signature of the maker or drawer is
2 unauthorized, except that this warranty is not given by any customer or collecting bank
3 that is a holder in due course and acts in good faith

4 (i) To a maker with respect to the maker's own signature; or

5 (ii) To a drawer with respect to the drawer's own signature, whether or
6 not the drawer is also the drawee; or

7 (iii) To an acceptor of an item if the holder in due course took the item
8 after the acceptance or obtained the acceptance without knowledge that the drawer's
9 signature was unauthorized; and

10 (c) The item has not been materially altered, except that this warranty is not
11 given by any customer or collecting bank that is a holder in due course and acts in good
12 faith

13 (i) To the maker of a note; or

14 (ii) To the drawer of a draft whether or not the drawer is also the
15 drawee; or

16 (iii) To the acceptor of an item with respect to an alteration made prior
17 to the acceptance if the holder in due course took the item after the acceptance, even
18 though the acceptance provided "payable as originally drawn" or equivalent terms; or

19 (iv) To the acceptor of an item with respect to an alteration made after
20 the acceptance.

21 (2) Each customer and collecting bank who transfers an item and receives a
22 settlement or other consideration for it warrants to his transferee and to any subsequent
23 collecting bank who takes the item in good faith that

24 (a) He has a good title to the item or is authorized to obtain payment or
25 acceptance on behalf of one who has a good title and the transfer is otherwise rightful;
26 and

27 (b) All signatures are genuine or authorized; and

28 (c) The item has not been materially altered; and

29 (d) No defense of any party is good against him; and

30 (e) He has no knowledge of any insolvency proceeding instituted with
31 respect to the maker or acceptor or the drawer of an unaccepted item.

32 In addition each customer and collecting bank so transferring an item and receiving
33 a settlement or other consideration engages that upon dishonor and any necessary notice
34 of dishonor and protest he will take up the item.

35 (3) The warranties and the engagement to honor set forth in the two preceding
36 subsections arise notwithstanding the absence of indorsement or words of guaranty or
37 warranty in the transfer or presentment and a collecting bank remains liable for their
38 breach despite remittance to its transferor. Damages for breach of such warranties or

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1 engagement to honor shall not exceed the consideration received by the customer or
2 collecting bank responsible plus finance charges and expenses related to the item, if any.

3 (4) Unless a claim for breach of warranty under this section is made within a
4 reasonable time after the person claiming learns of the breach, the person liable is
5 discharged to the extent of any loss caused by the delay in making claim.]

6 4-207.

7 (A) A CUSTOMER OR COLLECTING BANK THAT TRANSFERS AN ITEM AND
8 RECEIVES A SETTLEMENT OR OTHER CONSIDERATION WARRANTS TO THE
9 TRANSFEREE AND TO ANY SUBSEQUENT COLLECTING BANK THAT:

10 (1) THE WARRANTOR IS A PERSON ENTITLED TO ENFORCE THE ITEM;

11 (2) ALL SIGNATURES ON THE ITEM ARE AUTHENTIC AND AUTHORIZED;

12 (3) THE ITEM HAS NOT BEEN ALTERED;

13 (4) THE ITEM IS NOT SUBJECT TO A DEFENSE OR CLAIM IN
14 RECOUPMENT (§ 3-305(A)) OF ANY PARTY THAT CAN BE ASSERTED AGAINST THE
15 WARRANTOR; AND

16 (5) THE WARRANTOR HAS NO KNOWLEDGE OF ANY INSOLVENCY
17 PROCEEDING COMMENCED WITH RESPECT TO THE MAKER OR ACCEPTOR OR, IN
18 THE CASE OF AN UNACCEPTED DRAFT, THE DRAWER.

19 (B) IF AN ITEM IS DISHONORED, A CUSTOMER OR COLLECTING BANK
20 TRANSFERRING THE ITEM AND RECEIVING SETTLEMENT OR OTHER
21 CONSIDERATION IS OBLIGED TO PAY THE AMOUNT DUE ON THE ITEM (I)
22 ACCORDING TO THE TERMS OF THE ITEM AT THE TIME IT WAS TRANSFERRED, OR
23 (II) IF THE TRANSFER WAS OF AN INCOMPLETE ITEM, ACCORDING TO ITS TERMS
24 WHEN COMPLETED AS STATED IN §§ 3-115 AND 3-407. THE OBLIGATION OF A
25 TRANSFEROR IS OWED TO THE TRANSFEREE AND TO ANY SUBSEQUENT
26 COLLECTING BANK THAT TAKES THE ITEM IN GOOD FAITH. A TRANSFEROR CANNOT
27 DISCLAIM ITS OBLIGATION UNDER THIS SUBSECTION BY AN INDORSEMENT STATING
28 THAT IT IS MADE "WITHOUT RECOURSE" OR OTHERWISE DISCLAIMING LIABILITY.

29 (C) A PERSON TO WHOM THE WARRANTIES UNDER SUBSECTION (A) ARE
30 MADE AND WHO TOOK THE ITEM IN GOOD FAITH MAY RECOVER FROM THE
31 WARRANTOR AS DAMAGES FOR BREACH OF WARRANTY AN AMOUNT EQUAL TO
32 THE LOSS SUFFERED AS A RESULT OF THE BREACH, BUT NOT MORE THAN THE
33 AMOUNT OF THE ITEM PLUS EXPENSES AND LOSS OF INTEREST INCURRED AS A
34 RESULT OF THE BREACH.

35 (D) THE WARRANTIES STATED IN SUBSECTION (A) CANNOT BE DISCLAIMED
36 WITH RESPECT TO CHECKS. UNLESS NOTICE OF A CLAIM FOR BREACH OF
37 WARRANTY IS GIVEN TO THE WARRANTOR WITHIN 30 DAYS AFTER THE CLAIMANT
38 HAS REASON TO KNOW OF THE BREACH AND THE IDENTITY OF THE WARRANTOR,
39 THE WARRANTOR IS DISCHARGED TO THE EXTENT OF ANY LOSS CAUSED BY THE
40 DELAY IN GIVING NOTICE OF THE CLAIM.

1 (E) A CAUSE OF ACTION FOR BREACH OF WARRANTY UNDER THIS SECTION
2 ACCRUES WHEN THE CLAIMANT HAS REASON TO KNOW OF THE BREACH.

3 4-208.

4 (A) IF AN UNACCEPTED DRAFT IS PRESENTED TO THE DRAWEE FOR
5 PAYMENT OR ACCEPTANCE AND THE DRAWEE PAYS OR ACCEPTS THE DRAFT, (I)
6 THE PERSON OBTAINING PAYMENT OR ACCEPTANCE, AT THE TIME OF
7 PRESENTMENT, AND (II) A PREVIOUS TRANSFEROR OF THE DRAFT, AT THE TIME OF
8 TRANSFER, WARRANT TO THE DRAWEE THAT PAYS OR ACCEPTS THE DRAFT IN
9 GOOD FAITH THAT:

10 (1) THE WARRANTOR IS, OR WAS, AT THE TIME THE WARRANTOR
11 TRANSFERRED THE DRAFT, A PERSON ENTITLED TO ENFORCE THE DRAFT OR
12 AUTHORIZED TO OBTAIN PAYMENT OR ACCEPTANCE OF THE DRAFT ON BEHALF OF
13 A PERSON ENTITLED TO ENFORCE THE DRAFT;

14 (2) THE DRAFT HAS NOT BEEN ALTERED; AND

15 (3) THE WARRANTOR HAS NO KNOWLEDGE THAT THE SIGNATURE OF
16 THE PURPORTED DRAWER OF THE DRAFT IS UNAUTHORIZED.

17 (B) A DRAWEE MAKING PAYMENT MAY RECOVER FROM A WARRANTOR
18 DAMAGES FOR BREACH OF WARRANTY EQUAL TO THE AMOUNT PAID BY THE
19 DRAWEE LESS THE AMOUNT THE DRAWEE RECEIVED OR IS ENTITLED TO RECEIVE
20 FROM THE DRAWER BECAUSE OF THE PAYMENT. IN ADDITION, THE DRAWEE IS
21 ENTITLED TO COMPENSATION FOR EXPENSES AND LOSS OF INTEREST RESULTING
22 FROM THE BREACH. THE RIGHT OF THE DRAWEE TO RECOVER DAMAGES UNDER
23 THIS SUBSECTION IS NOT AFFECTED BY ANY FAILURE OF THE DRAWEE TO
24 EXERCISE ORDINARY CARE IN MAKING PAYMENT. IF THE DRAWEE ACCEPTS THE
25 DRAFT (I) BREACH OF WARRANTY IS A DEFENSE TO THE OBLIGATION OF THE
26 ACCEPTOR, AND (II) IF THE ACCEPTOR MAKES PAYMENT WITH RESPECT TO THE
27 DRAFT, THE ACCEPTOR IS ENTITLED TO RECOVER FROM A WARRANTOR FOR
28 BREACH OF WARRANTY THE AMOUNTS STATED IN THIS SUBSECTION.

29 (C) IF A DRAWEE ASSERTS A CLAIM FOR BREACH OF WARRANTY UNDER
30 SUBSECTION (A) BASED ON AN UNAUTHORIZED INDORSEMENT OF THE DRAFT OR
31 AN ALTERATION OF THE DRAFT, THE WARRANTOR MAY DEFEND BY PROVING THAT
32 THE INDORSEMENT IS EFFECTIVE UNDER § 3-404 OR § 3-405 OR THE DRAWER IS
33 PRECLUDED UNDER § 3-406 OR § 4-406 FROM ASSERTING AGAINST THE DRAWEE THE
34 UNAUTHORIZED INDORSEMENT OR ALTERATION.

35 (D) IF (I) A DISHONORED DRAFT IS PRESENTED FOR PAYMENT TO THE
36 DRAWER OR AN INDORSER OR (II) ANY OTHER ITEM IS PRESENTED FOR PAYMENT
37 TO A PARTY OBLIGED TO PAY THE ITEM, AND THE ITEM IS PAID, THE PERSON
38 OBTAINING PAYMENT AND A PRIOR TRANSFEROR OF THE ITEM WARRANT TO THE
39 PERSON MAKING PAYMENT IN GOOD FAITH THAT THE WARRANTOR IS, OR WAS, AT
40 THE TIME THE WARRANTOR TRANSFERRED THE ITEM, A PERSON ENTITLED TO
41 ENFORCE THE ITEM OR AUTHORIZED TO OBTAIN PAYMENT ON BEHALF OF A
42 PERSON ENTITLED TO ENFORCE THE ITEM. THE PERSON MAKING PAYMENT MAY
43 RECOVER FROM ANY WARRANTOR FOR BREACH OF WARRANTY AN AMOUNT

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1 EQUAL TO THE AMOUNT PAID PLUS EXPENSES AND LOSS OF INTEREST RESULTING
2 FROM THE BREACH.

3 (E) THE WARRANTIES STATED IN SUBSECTIONS (A) AND (D) CANNOT BE
4 DISCLAIMED WITH RESPECT TO CHECKS. UNLESS NOTICE OF A CLAIM FOR BREACH
5 OF WARRANTY IS GIVEN TO THE WARRANTOR WITHIN 30 DAYS AFTER THE
6 CLAIMANT HAS REASON TO KNOW OF THE BREACH AND THE IDENTITY OF THE
7 WARRANTOR, THE WARRANTOR IS DISCHARGED TO THE EXTENT OF ANY LOSS
8 CAUSED BY THE DELAY IN GIVING NOTICE OF THE CLAIM.

9 (F) A CAUSE OF ACTION FOR BREACH OF WARRANTY UNDER THIS SECTION
10 ACCRUES WHEN THE CLAIMANT HAS REASON TO KNOW OF THE BREACH.

11 4-209.

12 (A) A PERSON WHO ENCODES INFORMATION ON OR WITH RESPECT TO AN
13 ITEM AFTER ISSUE WARRANTS TO ANY SUBSEQUENT COLLECTING BANK AND TO
14 THE PAYOR BANK OR OTHER PAYOR THAT THE INFORMATION IS CORRECTLY
15 ENCODED. IF THE CUSTOMER OF A DEPOSITARY BANK ENCODES, THAT BANK ALSO
16 MAKES THE WARRANTY.

17 (B) A PERSON WHO UNDERTAKES TO RETAIN AN ITEM PURSUANT TO AN
18 AGREEMENT FOR ELECTRONIC PRESENTMENT WARRANTS TO ANY SUBSEQUENT
19 COLLECTING BANK AND TO THE PAYOR BANK OR OTHER PAYOR THAT RETENTION
20 AND PRESENTMENT OF THE ITEM COMPLY WITH THE AGREEMENT. IF A CUSTOMER
21 OF A DEPOSITARY BANK UNDERTAKES TO RETAIN AN ITEM, THAT BANK ALSO
22 MAKES THIS WARRANTY.

23 (C) A PERSON TO WHOM WARRANTIES ARE MADE UNDER THIS SECTION AND
24 WHO TOOK THE ITEM IN GOOD FAITH MAY RECOVER FROM THE WARRANTOR AS
25 DAMAGES FOR BREACH OF WARRANTY AN AMOUNT EQUAL TO THE LOSS
26 SUFFERED AS A RESULT OF THE BREACH, PLUS EXPENSES AND LOSS OF INTEREST
27 INCURRED AS A RESULT OF THE BREACH.

28 [4-208.] 4-210.

29 [(1)] (A) A COLLECTING bank has a security interest in an item and any
30 accompanying documents or the proceeds of either:

31 [(a)] (1) In case of an item deposited in an account, to the extent to which
32 credit given for the item has been withdrawn or applied;

33 [(b)] (2) In case of an item for which it has given credit available for
34 withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn
35 upon [and whether] or [not] there is a right of charge-back; or

36 [(c)] (3) If it makes an advance on or against the item.

37 [(2)] (B) [When] IF credit [which has been] given for several items received at
38 one time or pursuant to a single agreement is withdrawn or applied in part, the security
39 interest remains upon all the items, any accompanying documents or the proceeds of
40 either. For the purpose of this section, credits first given are first withdrawn.

55

1 [(3)] (C) Receipt by a collecting bank of a final settlement for an item is a
 2 realization on its security interest in the item, accompanying documents and proceeds.
 3 [To the extent and so] SO long as the bank does not receive final settlement for the item
 4 or give up possession of the item or accompanying documents for purposes other than
 5 collection, the security interest continues TO THAT EXTENT and is subject to [the
 6 provisions of] Title 9, [except that] BUT:

7 [(a)] (1) No security agreement is necessary to make the security interest
 8 enforceable ([subsection (1) (a) of § 9-203] § 9-203(1)(A)); [and]

9 [(b)] (2) No filing is required to perfect the security interest; and

10 [(c)] (3) The security interest has priority over conflicting perfected security
 11 interests in the item, accompanying [documents] DOCUMENTS, or proceeds.

12 [4-209.] 4-211.

13 For purposes of determining its status as a holder in due course, [the] A bank has
 14 given value to the extent that it has a security interest in an item, [provided that] IF the
 15 bank otherwise complies with the requirements of § 3-302 on what constitutes a holder in
 16 due course.

17 [4-210.] 4-212.

18 [(1)] (A) Unless otherwise instructed, a collecting bank may present an item not
 19 payable by, through, or at a bank by sending to the party to accept or pay a written notice
 20 that the bank holds the item for acceptance or payment. The notice must be sent in time
 21 to be received on or before the day when presentment is due and the bank must meet any
 22 requirement of the party to accept or pay under [§ 3-505] § 3-501 by the close of the
 23 bank's next banking day after it knows of the requirement.

24 [(2)] (B) [Where] IF presentment is made by notice and [neither honor nor]
 25 PAYMENT, ACCEPTANCE, OR request for compliance with a requirement under [§
 26 3-505] § 3-501 is NOT received by the close of business on the day after maturity or, in the
 27 case of demand items, by the close of business on the third banking day after notice was
 28 sent, the presenting bank may treat the item as dishonored and charge any [secondary
 29 party] DRAWER OR INDORSER by sending [him] IT notice of the facts.

30 [4-211.]

31 (1) A collecting bank may take in settlement of an item

32 (a) A check of the remitting bank or of another bank on any bank except the
 33 remitting bank; or

34 (b) A cashier's check or similar primary obligation of a remitting bank which
 35 is a member of or clears through a member of the same clearing house or group as the
 36 collecting bank; or

37 (c) Appropriate authority to charge an account of the remitting bank or of
 38 another bank with the collecting bank; or

39 (d) If the item is drawn upon or payable by a person other than a bank, a
 40 cashier's check, certified check or other bank check or obligation.

1 (2) If before its midnight deadline the collecting bank properly dishonors a
2 remittance check or authorization to charge on itself or presents or forwards for
3 collection a remittance instrument of or on another bank which is of a kind approved by
4 subsection (1) or has not been authorized by it, the collecting bank is not liable to prior
5 parties in the event of the dishonor of such check, instrument or authorization.

6 (3) A settlement for an item by means of a remittance instrument or authorization
7 to charge is or becomes a final settlement as to both the person making and the person
8 receiving the settlement

9 (a) If the remittance instrument or authorization to charge is of a kind
10 approved by subsection (1) or has not been authorized by the person receiving the
11 settlement and in either case the person receiving the settlement acts seasonably before
12 its midnight deadline in presenting, forwarding for collection or paying the instrument or
13 authorization, -- at the time the remittance instrument or authorization is finally paid by
14 the payor by which it is payable;

15 (b) If the person receiving the settlement has authorized remittance by a
16 nonbank check or obligation or by a cashier's check or similar primary obligation of or a
17 check upon the payor or other remitting bank which is not of a kind approved by
18 subsection (1) (b), -- at the time of the receipt of such remittance check or obligation; or

19 (c) If in a case not covered by subparagraphs (a) or (b) the person receiving
20 the settlement fails to seasonably present, forward for collection, payor return a
21 remittance instrument or authorization to it to charge before its midnight deadline, -- at
22 such midnight deadline.]

23 4-213.

24 (A) WITH RESPECT TO SETTLEMENT BY A BANK, THE MEDIUM AND TIME OF
25 SETTLEMENT MAY BE PRESCRIBED BY FEDERAL RESERVE REGULATIONS OR
26 CIRCULARS, CLEARING-HOUSE RULES, AND THE LIKE, OR AGREEMENT. IN THE
27 ABSENCE OF SUCH PRESCRIPTION:

28 (1) THE MEDIUM OF SETTLEMENT IS CASH OR CREDIT TO AN ACCOUNT
29 IN A FEDERAL RESERVE BANK OF OR SPECIFIED BY THE PERSON TO RECEIVE
30 SETTLEMENT; AND

31 (2) THE TIME OF SETTLEMENT, IS:

32 (I) WITH RESPECT TO TENDER OF SETTLEMENT BY CASH, A
33 CASHIER'S CHECK, OR TELLER'S CHECK, WHEN THE CASH OR CHECK IS SENT OR
34 DELIVERED;

35 (II) WITH RESPECT TO TENDER OF SETTLEMENT BY CREDIT IN AN
36 ACCOUNT IN A FEDERAL RESERVE BANK, WHEN THE CREDIT IS MADE;

37 (III) WITH RESPECT TO TENDER OF SETTLEMENT BY A CREDIT OR
38 DEBIT TO AN ACCOUNT IN A BANK, WHEN THE CREDIT OR DEBIT IS MADE OR, IN
39 THE CASE OF TENDER OF SETTLEMENT BY AUTHORITY TO CHARGE AN ACCOUNT,
40 WHEN THE AUTHORITY IS SENT OR DELIVERED; OR

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1 (IV) WITH RESPECT TO TENDER OF SETTLEMENT BY A FUNDS
2 TRANSFER, WHEN PAYMENT IS MADE PURSUANT TO § 4A-406(A) TO THE PERSON
3 RECEIVING SETTLEMENT.

4 (B) IF THE TENDER OF SETTLEMENT IS NOT BY A MEDIUM AUTHORIZED BY
5 SUBSECTION (A) OR THE TIME OF SETTLEMENT IS NOT FIXED BY SUBSECTION (A),
6 NO SETTLEMENT OCCURS UNTIL THE TENDER OF SETTLEMENT IS ACCEPTED BY THE
7 PERSON RECEIVING SETTLEMENT.

8 (C) IF SETTLEMENT FOR AN ITEM IS MADE BY CASHIER'S CHECK OR TELLER'S
9 CHECK AND THE PERSON RECEIVING SETTLEMENT, BEFORE ITS MIDNIGHT
10 DEADLINE:

11 (1) PRESENTS OR FORWARDS THE CHECK FOR COLLECTION,
12 SETTLEMENT IS FINAL WHEN THE CHECK IS FINALLY PAID; OR

13 (2) FAILS TO PRESENT OR FORWARD THE CHECK FOR COLLECTION,
14 SETTLEMENT IS FINAL AT THE MIDNIGHT DEADLINE OF THE PERSON RECEIVING
15 SETTLEMENT.

16 (D) IF SETTLEMENT FOR AN ITEM IS MADE BY GIVING AUTHORITY TO
17 CHARGE THE ACCOUNT OF THE BANK GIVING SETTLEMENT IN THE BANK
18 RECEIVING SETTLEMENT, SETTLEMENT IS FINAL WHEN THE CHARGE IS MADE BY
19 THE BANK RECEIVING SETTLEMENT IF THERE ARE FUNDS AVAILABLE IN THE
20 ACCOUNT FOR THE AMOUNT OF THE ITEM.

21 [4-212.] 4-214.

22 [(1)] (A) If a collecting bank has made provisional settlement with its customer
23 for an item and [itself] fails by reason of dishonor, suspension of payments by a bank, or
24 otherwise to receive [a] settlement for the item which is or becomes final, the bank may
25 revoke the settlement given by it, charge-back the amount of any credit given for the item
26 to its customer's account, or obtain refund from its customer, whether or not it is able to
27 return the item, if by its midnight deadline or within a longer reasonable time after it
28 learns the facts it returns the item or sends notification of the facts. IF THE RETURN OR
29 NOTICE IS DELAYED BEYOND THE BANK'S MIDNIGHT DEADLINE OR A LONGER
30 REASONABLE TIME AFTER IT LEARNS THE FACTS, THE BANK MAY REVOKE THE
31 SETTLEMENT, CHARGE-BACK THE CREDIT, OR OBTAIN REFUND FROM ITS
32 CUSTOMER, BUT IT IS LIABLE FOR ANY LOSS RESULTING FROM THE DELAY. These
33 rights to revoke, charge-back, and obtain refund terminate if and when a settlement for
34 the item received by the bank is or becomes final [(subsection (3) of §4-211 and
35 subsections (2) and (3) of § 4-213)].

36 [(2) Within the time and manner prescribed by this section and § 4-301, an
37 intermediary or payor bank, as the case may be, may return an unpaid item directly to the
38 depository bank and may send for collection a draft on the depository bank and obtain
39 reimbursement. In such case, if the depository bank has received provisional settlement
40 for the item, it must reimburse the bank drawing the draft and any provisional credits for
41 the item between banks shall become and remain final.]

42 (B) A COLLECTING BANK RETURNS AN ITEM WHEN IT IS SENT OR DELIVERED
43 TO THE BANK'S CUSTOMER OR TRANSFEROR OR PURSUANT TO ITS INSTRUCTIONS.

58

1 [(3)] (C) A depository bank [which] THAT is also the payor may charge-back the
 2 amount of an item to its customer's account or obtain refund in accordance with the
 3 section governing return of an item received by a payor bank for credit on its books (§
 4 4-301).

5 [(4)] (D) The right to charge-back is not affected by:

6 [(a)] (1) Prior use of the credit given for the item; or

7 [(b)] (2) Failure by any bank to exercise ordinary care with respect to the
 8 item, but [any] A bank so failing remains liable.

9 [(5)] (E) A failure to charge-back or claim refund does not affect other rights of
 10 the bank against the customer or any other party.

11 [(6)] (F) If credit is given in dollars as the equivalent of the value of an item
 12 payable in [a] foreign [currency] MONEY, the dollar amount of any charge-back or
 13 refund [shall] MUST be calculated on the basis of the [buying sight] BANK-OFFERED
 14 SPOT rate for the foreign [currency] MONEY prevailing on the day when the person
 15 entitled to the charge-back or refund learns that it will not receive payment in ordinary
 16 course.

17 [4-213.] 4-215.

18 [(1)] (A) An item is finally paid by a payor bank when the bank has done any of
 19 the following[, whichever happens first]:

20 [(a)] (1) Paid the item in cash; [or]

21 [(b)] (2) Settled for the item without [reserving] HAVING a right to revoke
 22 the settlement [and without having such right] under statute, [clearinghouse]
 23 CLEARING-HOUSE rule, or agreement; or

24 [(c)] Completed the process of posting the item to the indicated account of
 25 the drawer, maker or other person to be charged therewith; or]

26 [(d)] (3) Made a provisional settlement for the item and failed to revoke the
 27 settlement in the time and manner permitted by statute, [clearing house]
 28 CLEARING-HOUSE rule, or agreement. [Upon a final payment under subparagraphs (b),
 29 (c) or (d) the payor bank shall be accountable for the amount of the item.]

30 (B) IF PROVISIONAL SETTLEMENT FOR AN ITEM DOES NOT BECOME FINAL,
 31 THE ITEM IS NOT FINALLY PAID.

32 [(2)] (C) If provisional settlement for an item between the presenting and payor
 33 banks is made through a clearing house or by debits or credits in an account between
 34 them, then to the extent that provisional debits or credits for the item are entered in
 35 accounts between the presenting and payor banks or between the presenting and
 36 successive prior collecting banks seriatim, they become final upon final payment of the
 37 item by the payor bank.

38 [(3)] (D) If a collecting bank receives a settlement for an item which is or becomes
 39 final, [(subsection (3) of § 4-211, subsection (2) of § 4-213)] the bank is accountable to

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1 its customer for the amount of the item and any provisional credit given for the item in an
 2 account with its customer becomes final.

3 [(4)] (E) Subject to (I) APPLICABLE LAW STATING A TIME FOR AVAILABILITY
 4 OF FUNDS AND (II) any right of the bank to apply the credit to an obligation of the
 5 customer, credit given by a bank for an item in [an account with its customer] A
 6 CUSTOMER'S ACCOUNT becomes available for withdrawal as of right:

7 [(a)] (1) [In any case where] IF the bank has received a provisional
 8 settlement for the item, - when [such] THE settlement becomes final and the bank has
 9 had a reasonable time to [learn that the settlement is final] RECEIVE RETURN OF THE
 10 ITEM AND THE ITEM HAS NOT BEEN RECEIVED WITHIN THAT TIME;

11 [(b)] (2) [In any case where] IF the bank is both [a] THE depository bank
 12 and [a] THE payor bank, and the item is finally paid, - at the opening of the bank's
 13 second banking day following receipt of the item.

14 [(5)] (F) [A deposit of money in a bank is final when made but, subject]
 15 SUBJECT to APPLICABLE LAW STATING A TIME FOR AVAILABILITY OF FUNDS AND
 16 any right of [the] A bank to apply [the] A deposit to an obligation of the [customer]
 17 DEPOSITOR, [the] A deposit OF MONEY becomes available for withdrawal as of right at
 18 the opening of the bank's next banking day [following] AFTER receipt of the deposit.

19 [4-214.] 4-216.

20 [(1)] (A) [Any] IF AN item IS in or [coming] COMES into the possession of a
 21 payor or collecting bank [which] THAT suspends payment and [which] THE item [is]
 22 HAS not BEEN finally paid, [shall] THE ITEM MUST be returned by the receiver, trustee,
 23 or agent in charge of the closed bank to the presenting bank or the closed bank's
 24 customer.

25 [(2)] (B) If a payor bank finally pays an item and suspends payments without
 26 making a settlement for the item with its customer or the presenting bank which
 27 settlement is or becomes final, the owner of the item has a preferred claim against the
 28 payor bank.

29 [(3)] (C) If a payor bank gives or a collecting bank gives or receives a provisional
 30 settlement for an item and thereafter suspends payments, the suspension does not
 31 prevent or interfere with the [settlement] SETTLEMENT'S becoming final if [such] THE
 32 finality occurs automatically upon the lapse of certain time or the happening of certain
 33 events [(subsection (3) of § 4-211, subsection (1) (d), (2) and (3) of § 4-213)].

34 [(4)] (D) If a collecting bank receives from subsequent parties settlement for an
 35 item, which settlement is or becomes final and THE BANK suspends payments without
 36 making a settlement for the item with its customer which SETTLEMENT is or becomes
 37 final, the owner of the item has a preferred claim against [such] THE collecting bank.

38 4-301.

39 [(1)] (A) [Where an authorized settlement] IF A PAYOR BANK SETTLES for a
 40 demand item [(other than a documentary draft)] received by a payor bank
 41 PRESENTED otherwise than for immediate payment over the counter [has been made]
 42 before midnight of the banking day of receipt, the payor bank may revoke the settlement

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1 and recover [any payment] THE ITEM if, before it has made final payment[(subsection
2 (1) of § 4-213)] and before its midnight deadline, it

3 [(a)] (1) Returns the item; or

4 [(b)] (2) Sends written notice of dishonor or nonpayment if the item is
5 [held for protest or is otherwise] unavailable for return.

6 [(2)] (B) If a demand item is received by a payor bank for credit on its books it
7 may return [such] THE item or send notice of dishonor and may revoke any credit given
8 or recover the amount thereof withdrawn by its customer, if it acts within the time limit
9 and in the manner specified in [the preceding] subsection (A).

10 [(3)] (C) Unless previous notice of dishonor has been sent, an item is dishonored
11 at the time when for purposes of dishonor it is returned or notice sent in accordance with
12 this section.

13 [(4)] (D) An item is returned:

14 [(a)] (1) As to an item [received] PRESENTED through a clearinghouse,
15 when it is delivered to the presenting or last collecting bank or to the clearing house or is
16 sent or delivered in accordance with CLEARING-HOUSE [its] rules; or

17 [(b)] (2) In all other cases, when it is sent or delivered to the bank's
18 customer or transferor or pursuant to [his] instructions.

19 4-302.

20 (A) [In the absence of a valid defense such as breach of a presentment warranty
21 (subsection (1) of § 4-207), settlement effected or the like, if] IF an item is presented
22 [on] TO and received by a payor bank, the bank is accountable for the amount of:

23 [(a)] (1) A demand item, other than a documentary draft, whether properly
24 payable or not, if the bank, in any case [where] IN WHICH it is not also the depository
25 bank, retains the item beyond midnight of the banking day of receipt without settling for
26 it or, [regardless or] whether OR NOT it is also the depository bank, does not pay or
27 return the item or send notice of dishonor until after its midnight deadline; or

28 [(b)] (2) Any other properly payable item unless, within the time allowed
29 for acceptance or payment of that item, the bank either accepts or pays the item or
30 returns it and accompanying documents.

31 (B) THE LIABILITY OF A PAYOR BANK TO PAY AN ITEM PURSUANT TO
32 SUBSECTION (A) IS SUBJECT TO DEFENSES BASED ON BREACH OF PRESENTMENT
33 WARRANTY (§ 4-208) OR PROOF THAT THE PERSON SEEKING ENFORCEMENT OF THE
34 LIABILITY PRESENTED OR TRANSFERRED THE ITEM FOR THE PURPOSE OF
35 DEFRAUDING THE PAYOR BANK.

36 4-303.

37 [(1)] (A) IF [Any] ANY knowledge, notice, or [stop-order] STOP-PAYMENT
38 ORDER received by, legal process served upon, or setoff exercised by a payor bank,
39 [whether or not effective under other rules of law] COMES TOO LATE to terminate,
40 suspend, or modify the bank's right or duty to pay an item or to charge its customer's

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1 account for the item, [comes too late to so terminate, suspend or modify such right or
2 duty] if the knowledge, notice, [stop-order] STOP-PAYMENT ORDER, or legal process is
3 received or served and a reasonable time for the bank to act thereon expires or the setoff
4 is exercised after the [bank has done any] EARLIEST of the following:

5 [(a)] (1) [Accepted or certified the] THE BANK ACCEPTS OR CERTIFIES THE
6 item;

7 [(b)] (2) [Paid] THE BANK PAYS the item in cash;

8 [(c)] (3) [Settled] THE BANK SETTLES for the item without [reserving]
9 HAVING a right to revoke the settlement [and without having such right]under statute,
10 [clearing house] CLEARING-HOUSE rule, or agreement;

11 [(d)] Completed the process of posting the item to the indicated account of the
12 drawer, maker or other person to be charged therewith or otherwise has evidenced by
13 examination of such indicated account and by action its decision to paythe item; or

14 (e)] (4) [Become] THE BANK BECOMES accountable for the amount of the
15 item under [subsection (1) (d) of § 4-213 and] § 4-302 dealing with thepayor bank's
16 responsibility for late return of items[.]; OR

17 (5) WITH RESPECT TO CHECKS, A CUTOFF HOUR NO EARLIER THAN ONE
18 HOUR AFTER THE OPENING OF THE NEXT BANKING DAY AFTER THE BANKING DAY
19 ON WHICH THE BANK RECEIVED THE CHECK AND NO LATER THAN THE CLOSE OF
20 THAT NEXT BANKING DAY OR, IF NO CUTOFF HOUR IS FIXED, THE CLOSE OF THE
21 NEXT BANKING DAY AFTER THE BANKING DAY ON WHICH THE BANK RECEIVED THE
22 CHECK.

23 [(2)] (B) Subject to [the provisions of] subsection [(1)] (A), itemsmay be
24 accepted, paid, certified, or charged to the indicated account of its customer in any order
25 [convenient to the bank].

26 4-401.

27 [(1)] (A) [As against its customer, a] A bank may charge against [his] THE
28 account [any] OF A CUSTOMER AN item [which] THAT is [otherwise] properly payable
29 from that account even though the charge creates an overdraft. ANY ITEMIS PROPERLY
30 PAYABLE IF IT IS AUTHORIZED BY THE CUSTOMER AND IS IN ACCORDANCE WITH
31 ANY AGREEMENT BETWEEN THE CUSTOMER AND BANK.

32 (B) A CUSTOMER IS NOT LIABLE FOR THE AMOUNT OF AN OVERDRAFT IF
33 THE CUSTOMER NEITHER SIGNED THE ITEM NOR BENEFITED FROM THE PROCEEDS
34 OF THE ITEM.

35 (C) A BANK MAY CHARGE AGAINST THE ACCOUNT OF A CUSTOMER A CHECK
36 THAT IS OTHERWISE PROPERLY PAYABLE FROM THE ACCOUNT, EVEN THOUGH
37 PAYMENT WAS MADE BEFORE THE DATE OF THE CHECK, UNLESS THE CUSTOMER
38 HAS GIVEN NOTICE TO THE BANK OF THE POSTDATING DESCRIBING THE CHECK
39 WITH REASONABLE CERTAINTY. THE NOTICE IS EFFECTIVE FOR THE PERIOD
40 STATED IN § 4-403(B) FOR STOP-PAYMENT ORDERS, AND MUST BE RECEIVED AT
41 SUCH TIME AND IN SUCH MANNER AS TO AFFORD THE BANK A REASONABLE

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1 OPPORTUNITY TO ACT ON IT BEFORE THE BANK TAKES ANY ACTION WITH RESPECT
2 TO THE CHECK DESCRIBED IN § 4-303. IF A BANK CHARGES AGAINST THE ACCOUNT
3 OF A CUSTOMER A CHECK BEFORE THE DATE STATED IN THE NOTICE OF
4 POSTDATING, THE BANK IS LIABLE FOR DAMAGES FOR THE LOSS RESULTING FROM
5 ITS ACT. THE LOSS MAY INCLUDE DAMAGES FOR DISHONOR OF SUBSEQUENT ITEMS
6 UNDER § 4-402.

7 [(2)] (D) A bank [which] THAT in good faith makes payment to a holder may
8 charge the indicated account of its customer according to:

9 [(a)] (1) The original [tenor] TERMS of [his] THE altered item; or

10 [(b)] (2) The [tenor] TERMS of [his] THE completed item, even though the
11 bank knows the item has been completed unless the bank has notice that the completion
12 was improper.

13 4-402.

14 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PAYOR BANK
15 WRONGFULLY DISHONORS AN ITEM IF IT DISHONORS AN ITEM THAT IS PROPERLY
16 PAYABLE, BUT A BANK MAY DISHONOR AN ITEM THAT WOULD CREATE AN
17 OVERDRAFT UNLESS IT HAS AGREED TO PAY THE OVERDRAFT.

18 (B) A payor bank is liable to its customer for damages proximately caused by the
19 wrongful dishonor of an item. [When the dishonor occurs through mistakeliability]
20 LIABILITY is limited to actual damages proved[. If so proximately caused and proved
21 damages] AND may include damages for an arrest or prosecution of the customer or
22 other consequential damages. Whether any consequential damages are proximately
23 caused by the wrongful dishonor is a question of fact to be determined in each case.

24 (C) A PAYOR BANK'S DETERMINATION OF THE CUSTOMER'S ACCOUNT
25 BALANCE ON WHICH A DECISION TO DISHONOR FOR INSUFFICIENCY OF AVAILABLE
26 FUNDS IS BASED MAY BE MADE AT ANY TIME BETWEEN THE TIME THE ITEM IS
27 RECEIVED BY THE PAYOR BANK AND THE TIME THAT THE PAYOR BANK RETURNS
28 THE ITEM OR GIVES NOTICE IN LIEU OF RETURN, AND NO MORE THAN ONE
29 DETERMINATION NEED BE MADE. IF, AT THE ELECTION OF THE PAYOR BANK, A
30 SUBSEQUENT BALANCE DETERMINATION IS MADE FOR THE PURPOSE OF
31 REEVALUATING THE BANK'S DECISION TO DISHONOR THE ITEM, THE ACCOUNT
32 BALANCE AT THAT TIME IS DETERMINATIVE OF WHETHER A DISHONOR FOR
33 INSUFFICIENCY OF AVAILABLE FUNDS IS WRONGFUL.

34 4-403.

35 [(1)] (A) [A customer may by order to his bank stop payment of any item payable
36 for his account but the order must be] ANY PERSON AUTHORIZED TO DRAW ON THE
37 ACCOUNT, IF THERE IS MORE THAN ONE PERSON, MAY STOP PAYMENT OF ANY ITEM
38 DRAWN ON THE CUSTOMER'S ACCOUNT OR CLOSE THE ACCOUNT BY AN ORDER TO
39 THE BANK DESCRIBING THE ITEM OR ACCOUNT WITH REASONABLE CERTAINTY
40 received at [such] A time and in [such] A manner [as to afford] THAT AFFORDS the
41 bank a reasonable opportunity to act on it [prior to] BEFORE any action by the bank
42 with respect to the item described in § 4-303. IF THE SIGNATURE OF MORE THAN ONE

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1 PERSON IS REQUIRED TO DRAW ON AN ACCOUNT, ANY OF THESE PERSONS MAY
2 STOP PAYMENT OR CLOSE THE ACCOUNT.

3 [(2) An oral order is binding upon the bank only for fourteen calendar days unless
4 confirmed in writing within that period. A written order is effective for only six months
5 unless renewed in writing.]

6 (B) A STOP-PAYMENT ORDER IS EFFECTIVE FOR 6 MONTHS, BUT IT LAPSES
7 AFTER 14 CALENDAR DAYS IF THE ORIGINAL ORDER WAS ORAL AND WAS NOT
8 CONFIRMED IN WRITING WITHIN THAT PERIOD. A STOP-PAYMENT ORDER MAY BE
9 RENEWED FOR ADDITIONAL 6-MONTH PERIODS BY A WRITING GIVEN TO THE BANK
10 WITHIN A PERIOD DURING WHICH THE STOP-PAYMENT ORDER IS EFFECTIVE.

11 [(3)] (C) The burden of establishing the fact and amount of loss resulting from
12 the payment of an item contrary to a [binding] stop-payment order OR ORDER TO
13 CLOSE AN ACCOUNT is on the customer. THE LOSS FROM PAYMENT OF AN ITEM
14 CONTRARY TO A STOP-PAYMENT ORDER MAY INCLUDE DAMAGES FOR DISHONOR
15 OF SUBSEQUENT ITEMS UNDER § 4-402.

16 4-404.

17 A bank is under no obligation to a customer having a checking account to pay a
18 check, other than a certified check, which is presented more than six months after its
19 date, but it may charge its customer's account for a payment made thereafter in good
20 faith.

21 4-405.

22 [(1)] (A) A payor or collecting bank's authority to accept, pay, or collect an item
23 or to account for proceeds of its collection, if otherwise effective, is not rendered
24 ineffective by incompetence of a customer of either bank existing at the time the item is
25 issued or its collection is undertaken if the bank does not know of an adjudication of
26 incompetence. Neither death nor incompetence of a customer revokes [such] THE
27 authority to accept, pay, collect, or account until the bank knows of the fact of death or of
28 an adjudication of incompetence and has reasonable opportunity to act on it.

29 [(2)] (B) Even with knowledge, a bank may for ten days after the date of death
30 pay or certify checks drawn on or [prior to] BEFORE that date unless ordered to stop
31 payment by a person claiming an interest in the account.

32 4-406.

33 [(1) If a bank sends to its customer a statement of account accompanied by items
34 or facsimiles of items paid in good faith in support of the debit entries or holds the
35 statement and items pursuant to a request or instructions of its customer or otherwise in
36 a reasonable manner makes the statement and items or facsimiles of items available to
37 the customer, the customer must exercise reasonable care and promptly to examine the
38 statement and the items or facsimiles to discover an unauthorized signature or any
39 alteration on an item and must notify the bank promptly after discovery thereof.]

40 (A) A BANK THAT SENDS OR MAKES AVAILABLE TO A CUSTOMER A
41 STATEMENT OF ACCOUNT SHOWING PAYMENT OF ITEMS FOR THE ACCOUNT SHALL
42 EITHER RETURN OR MAKE AVAILABLE TO THE CUSTOMER THE ITEMS PAID OR

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1 PROVIDE INFORMATION IN THE STATEMENT OF ACCOUNT SUFFICIENT TO ALLOW
2 THE CUSTOMER REASONABLY TO IDENTIFY THE ITEMS PAID. THE STATEMENT OF
3 ACCOUNT PROVIDES SUFFICIENT INFORMATION IF THE ITEM IS DESCRIBED BY ITEM
4 NUMBER, AMOUNT, AND DATE OF PAYMENT.

5 (B) IF THE ITEMS ARE NOT RETURNED TO THE CUSTOMER, THE PERSON
6 RETAINING THE ITEMS SHALL EITHER RETAIN THE ITEMS OR, IF THE ITEMS ARE
7 DESTROYED, MAINTAIN THE CAPACITY TO FURNISH LEGIBLE COPIES OF THE ITEMS
8 UNTIL THE EXPIRATION OF 7 YEARS AFTER RECEIPT OF THE ITEMS. A CUSTOMER
9 MAY REQUEST AN ITEM FROM THE BANK THAT PAID THE ITEM, AND THAT BANK
10 MUST PROVIDE IN A REASONABLE TIME EITHER THE ITEM OR, IF THE ITEM HAS
11 BEEN DESTROYED OR IS NOT OTHERWISE OBTAINABLE, A LEGIBLE COPY OF THE
12 ITEM.

13 (C) IF A BANK SENDS OR MAKES AVAILABLE A STATEMENT OF ACCOUNT OR
14 ITEMS PURSUANT TO SUBSECTION (A), THE CUSTOMER MUST EXERCISE
15 REASONABLE PROMPTNESS IN EXAMINING THE STATEMENT OR THE ITEMS TO
16 DETERMINE WHETHER ANY PAYMENT WAS NOT AUTHORIZED BECAUSE OF AN
17 ALTERATION OF AN ITEM OR BECAUSE A PURPORTED SIGNATURE BY OR ON
18 BEHALF OF THE CUSTOMER WAS NOT AUTHORIZED. IF, BASED ON THE STATEMENT
19 OR ITEMS PROVIDED, THE CUSTOMER SHOULD REASONABLY HAVE DISCOVERED
20 THE UNAUTHORIZED PAYMENT, THE CUSTOMER MUST PROMPTLY NOTIFY THE
21 BANK OF THE RELEVANT FACTS.

22 [(2)] (D) If the bank [establishes] PROVES that the customer failed, with respect
23 to an item, to comply with the duties imposed on the customer by subsection [(1)] (C) the
24 customer is precluded from asserting against the bank:

25 [(a)] (1) The CUSTOMER'S unauthorized signature of the customer or any
26 alteration on the item, if the bank also [establishes] PROVES that it suffered a loss by
27 reason of [such] THE failure; and

28 [(b)] (2) [An] THE CUSTOMER'S unauthorized signature or alteration by
29 the same wrongdoer on any other item paid in good faith by the bank [after the first item
30 and statement was available to the customer for a reasonable period not exceeding 14
31 business days and before the bank receives notification from the customer of any such
32 unauthorized signature or alteration.] IF THE PAYMENT WAS MADE BEFORE THE BANK
33 RECEIVED NOTICE FROM THE CUSTOMER OF THE UNAUTHORIZED SIGNATURE OR
34 ALTERATION AND AFTER THE CUSTOMER HAD BEEN AFFORDED A REASONABLE
35 PERIOD OF TIME, NOT EXCEEDING 30 DAYS, IN WHICH TO EXAMINE THE ITEM OR
36 STATEMENT OF ACCOUNT AND NOTIFY THE BANK.

37 (E) IF SUBSECTION (D) APPLIES AND THE CUSTOMER PROVES THAT THE
38 BANK FAILED TO EXERCISE ORDINARY CARE IN PAYING THE ITEM AND THAT THE
39 FAILURE SUBSTANTIALLY CONTRIBUTED TO LOSS, THE LOSS IS ALLOCATED
40 BETWEEN THE CUSTOMER PRECLUDED AND THE BANK ASSERTING THE
41 PRECLUSION ACCORDING TO THE EXTENT TO WHICH THE FAILURE OF THE
42 CUSTOMER TO COMPLY WITH SUBSECTION (C) AND THE FAILURE OF THE BANK TO
43 EXERCISE ORDINARY CARE CONTRIBUTED TO THE LOSS. IF THE CUSTOMER PROVES
44 THAT THE BANK DID NOT PAY THE ITEM IN GOOD FAITH, THE PRECLUSION UNDER
45 SUBSECTION (D) DOES NOT APPLY.

65

1 [(3) The preclusion under subsection (2) does not apply if the customer establishes
2 lack of ordinary care on the part of the bank in paying the item.]

3 [(4)] (F) Without regard to care or lack of care of either the customer or the
4 bank, a customer who does not within 12 months [from the time] AFTER the statement
5 [and] OR items are made available to the customer (subsection [(1)] (A)) discover and
6 report [an] THE CUSTOMER'S unauthorized signature ON or any alteration [on the face
7 or back of the item or does not within 36 months from that time discover and report any
8 unauthorized indorsement] ON THE ITEM is precluded from asserting against the bank
9 [such] THE unauthorized signature [or indorsement] or [such] alteration. IF THERE IS
10 A PRECLUSION UNDER THIS SUBSECTION, THE PAYOR BANK MAY NOT RECOVER
11 FOR BREACH OF WARRANTY UNDER § 4-208 WITH RESPECT TO THE UNAUTHORIZED
12 SIGNATURE OR ALTERATION TO WHICH THE PRECLUSION APPLIES.

13 [(5) If under this section a payor bank has a valid defense against a claim of a
14 customer upon or resulting from payment of an item and waives or fails upon request to
15 assert the defense the bank may not assert against any collecting bank or other prior party
16 presenting or transferring the item a claim based upon the unauthorized signature or
17 alteration giving rise to the customer's claim.]

18 4-407.

19 If a payor bank has paid an item over the [stop-payment] order of the drawer or
20 maker TO STOP PAYMENT, OR AFTER AN ACCOUNT HAS BEEN CLOSED, or otherwise
21 under circumstances giving a basis for objection by the drawer or maker, to prevent unjust
22 enrichment and only to the extent necessary to prevent loss to the bank by reason of its
23 payment of the item, the payor bank shall be subrogated to the rights:

24 [(a)] (1) Of any holder in due course on the item against the drawer or maker;
25 [and]

26 [(b)] (2) Of the payee or any other holder of the item against the drawer or
27 maker either on the item or under the transaction out of which the item arose; and

28 [(c)] (3) Of the drawer or maker against the payee or any other holder of the
29 item with respect to the transaction out of which the item arose.

30 4-501.

31 A bank [which] THAT takes a documentary draft for collection [must] SHALL
32 present or send the draft and accompanying documents for presentment and, upon
33 learning that the draft has not been paid or accepted in due course, [must] SHALL
34 seasonably notify its customer of [such] THE fact even though it may have discounted or
35 bought the draft or extended credit available for withdrawal as of right.

36 4-502.

37 [When] IF a draft or the relevant instructions require presentment "on arrival",
38 "when goods arrive", or the like, the collecting bank need not present until in its
39 judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept
40 because the goods have not arrived is not dishonor; the bank must notify its transferor of
41 [such] THE refusal but need not present the draft again until it is instructed to do so or
42 learns of the arrival of the goods.

66

1 4-503.

2 Unless otherwise instructed and except as provided in Title 5, a bank presenting a
3 documentary draft:

4 [(a)] (1) Must deliver the documents to the drawee on acceptance of the draft if
5 it is payable more than three days after presentment; otherwise, only on payment; and

6 [(b)] (2) Upon dishonor, either in the case of presentment for acceptance or
7 presentment for payment, may seek and follow instructions from any referee in case of
8 need designated in the draft or if the presenting bank does not choose to utilize [his]
9 THE REFEREE'S services, it must use diligence and good faith to ascertain the reasons for
10 dishonor, must notify its transferor of the dishonor and of the resultsof its effort to
11 ascertain the reasons therefor, and must request instructions.

12 [But] HOWEVER the presenting bank is under no obligation with respect to goods
13 represented by the documents except to follow any reasonable instructions seasonably
14 received; it has a right to reimbursement for any expense incurred in following
15 instructions and to prepayment of or indemnity for [such] THOSE expenses.

16 4-504.

17 [(1)] (A) A presenting bank [which] THAT, following the dishonor of a
18 documentary draft, has seasonably requested instructions but does not receive them
19 within a reasonable time may store, sell, or otherwise deal with the goods in any
20 reasonable manner.

21 [(2)] (B) For its reasonable expenses incurred by action under subsection [(1)]
22 (A) the presenting bank has a lien upon the goods or their proceeds, which may be
23 foreclosed in the same manner as an unpaid seller's lien.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 January 1, 1997.