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CLIENT MEMORANDUM

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PROTECT YOURSELF IN YOUR BANKING RELATIONSHIP

By Darryl J. Horowitz

Virtually everyone and every business has a relationship with a financial institution, whether it be a bank, savings bank, or credit union. When the account is opened, there is the hope that nothing will go wrong in the account and that your funds will be preserved. Unfortunately, however, that does not always occur. It is therefore important to understand the nature of your relationship with your financial institution so that you can better protect yourself from losses that may occur in your account. This article will discuss some practical approaches you should take.

1. **Understand the nature of your banking relationship.** Generally, the relationship between you and your financial institution is based on contract principles. When you open your account, you sign a signature card and most financial institutions will give you a customer disclosure statement outlining their rules for the operation of your account. These documents generally form the nature of your contractual relationship with the bank. In most instances, the signature card incorporates the terms of the customer disclosure statement. It is therefore important that you carefully review the customer disclosure statement before you sign the signature card so that you may know what limitations, if any, will be placed on you in your access to funds that may be deposited into your account.

2. **Carefully review all materials provided to you by the bank.** Most customer disclosure statements will contain language to the effect that you are bound not only by the customer disclosure statement in effect at the time you open your account, but any revisions to the customer disclosure statement, *even if you are not physically provided with the updated disclosure statement at a later point in time.* When an updated disclosure statement is received, review it carefully to know what additional limitations, if any, are being placed on you and your access to funds deposited into your account.

It is also important to review your bank statements and, if your bank returns checks to you, the checks that are returned. This is because the Uniform Commercial Code and most disclosure statements impose a duty on you to carefully review your checks and your bank statements and notify the bank of any irregularities as promptly as possible, normally no less than 30 days after the documents are received. If you fail to do so and there is an irregularity in your account, the failure to provide such prompt notification may constitute a waiver of any claim you may have against your bank or may otherwise reduce your recovery from the bank.

3. **Keep all records provided to you by the bank.** In most instances, you will receive a monthly bank statement from your bank as well as updated disclosure statements

from time to time. These are not, however, the only documents you receive from your bank. When you make a deposit or make a cash transaction, you are generally given a receipt by the teller. You similarly receive receipts after you complete an ATM transaction. Keep them so that if an item is not properly credited to your account, you will have a record that the transaction occurred should the bank need the information.

4. Watch who deposits funds into your account. In most instances, you or one of your employees will be making all deposits into your account. Unfortunately, however, it cannot be guaranteed that once a deposit is given, the bank will properly credit it to your account. One of our clients found out the hard way. Deposits were made into their account as payments for goods purchased. A transaction record was given showing the deposit was made and credited to our client's account. Unbeknownst to our client, the depositor then went back one or two minutes later and asked the teller to reverse the transaction and the teller did so, but did not take back the transaction record.

Our client, believing that the funds had been received (because the transaction record had been faxed to them), credited the account. Our client thereafter found that the funds had not been credited to his account, all because the bank had reversed the transaction without his consent. When faced with this situation, the bank refused to acknowledge liability and instead took the position that the transaction record could not be relied upon by anyone and that a deposit was only deemed a "deposit" if the bank credited the account. Our client was

thereafter to arbitrate the dispute with the bank at significant expense to the client.

This was a situation our client could not have foreseen, yet our client was required to litigate with their bank even though the bank perhaps should have owned up to its responsibility and credited our client's account. The lesson taught to our client is that banks are loath to admit responsibility for any mistakes they make although they may be quick to blame you for the mistakes; when a problem arises, they will require you to spend your money in order to recover your money.

The above is not meant to be an exhaustive list of steps you should take to protect yourself, but is meant to serve as a start. If a problem arises in your account, we recommend that you promptly notify the bank of the problem and, if the problem is not resolved within 30 days, to retain legal counsel. After all, if you fail to timely prosecute a claim against the bank, you may be forever barred from doing so.

This article was prepared by Darryl J. Horowitz, a litigation partner at Coleman & Horowitz, emphasizing business, construction, real estate, environmental and personal injury litigation, commercial collections, casualty insurance defense, insurance coverage, and alternative dispute resolution. He is a member of the Fresno County Bar Association, the American Bar Association, the Consumer Attorneys of California, and the Fresno Trial Lawyers Association. If you have any questions regarding the subject of this article, please contact Mr. Horowitz at (559) 248-4820, or by e-mail at ["dhorowitz@ch-law.com."](mailto:dhorowitz@ch-law.com)

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