

From: "Lisa Delaney" <ldelaney@carvindelaney.com> on 09/27/2004 10:21:12 AM

Subject: Electronic Fund Transfers

September 27, 2004

Jennifer J. Johnson, Secretary Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Regulation E, Docket No. R-1210

Dear Ms. Johnson,

Consumers are at risk under the present rules and laws regarding E-checks. The consumer writes a paper check; sends it to the payee; the payee converts it to an E-check; the payee receives full and complete payment; the payee still holds the paper check, and nothing in our laws prevents the payee from presenting the paper check for another payment, nor altering the payment amount in the E-check conversion.

Worse, the present laws allows the payee access into the private and personal bank accounts, without signed authorization.

I discussed this at length with my private banker, who simply repeated the federal laws without providing customer service. The payees use the argument it's a federal offense to write a bad check, and as payee they are entitled to know if there are immediate available funds to cover the check amount. All true statements, but obtaining the knowledge whether there are immediate and available funds, and entering a private bank account and taking those funds are two different things.

The procedure on a paper check is long established. The payee takes it to the bank; deposits it into their account; the check clears the Federal Reserve System; and based on geography between the maker's and depositor's bank, the check clears within 7 days.

When consumers write checks they are authorizing this established check procedure. They are not authorizing access into their account by a payee. Vendors have every right to accept cash or wire transfer only. But the E-check allows vendors a foot in two different disciplines.

I asked the banker what if the payee double-dipped by converting both to an E-check and cashed the paper check. I also asked what if the payee in converting to E-check entered an invalid amount. For both questions the banker advised the bank "would assist" in recouping those amounts, but in no way would accept responsibility or liability. What of it. Right now there is no consumer protection if either of those two events happen, other than calling David Horowitz or Oprah Winfrey.

I personally have two experiences with E-check, one benign and one with consequences. The benign experience occurred in my personal life, and my paying a charge card bill with the store Filenes. Filenes always converts to E-check. I solved that problem by voting with my feet. I seldom shop at Filenes, since Macy's has almost the same inventory, and when I do shop at Filenes I never use the store card. Problem solved.

The second experience occurred in my business. I am a real estate attorney. A portion of our business is closing refinance transactions, which also includes disbursements to the borrower's creditors. A few years ago we had a check to a creditor in a specific amount. Unbeknownst to us and outside of our office, the borrower, while holding our paper check payable to his creditor, called his creditor, verbally authorized converting our check into an E-check, and verbally authorized payment in a higher amount. Yes, that's right, a person not of my firm, without signature nor other authority in my bank accounts both authorized the conversion of our check and authorized a higher amount. The difference was a small amount, which we decided to absorb, as our banker would only assist, but would not replenish.

Now all my business accounts have electronic protection. But I can only protect my business accounts. For a myriad of reasons, my business accounts are with Citizens Bank, but my personal accounts are with Fleet National Bank. Fleet advises there is no electronic transaction protection available on any of their personal accounts. Now that Fleet merged with Bank of America, it's on my "To Do" list to call Bank of America customer service and see if they do better for their customers.

How can anyone access another's account without authority. How can there be absolutely no recourse for the consumer who has had an invalid amount taken out of their account. How can the vendors' lobbyists ever get this passed in the first place. A paper check is a paper check. An authorized wire transfer is an authorized wire transfer. But an E-check is neither one nor the other, but it takes like a wire initiated by the payee and not the maker.

This is ridiculous. I am glad my government is looking into this. I will be happier when my government fixes this, and realizes the "little guy" is getting scammed, and it's only a matter of time until some poor person gets their full life savings stolen just for having written a long established paper check in a modest amount.

Lisa J. Delaney
Carvin & Delaney LLP
ldelaney@carvindelaney.com

Mail Address:
P.O. Box 850991
Braintree, MA 02185
Tel: 781-848-4140 x 205
781-843-4397

Delivery Address:
44 Adams Street
Braintree, MA 02184