

LEGAL-EASE

“Payment in Full” Checks Be Careful Taking Them OR Giving Them!



Ever get one of those “payment in full” checks? It usually happens when you’re involved in a dispute with someone, and they cleverly decide (often after consultation with their lawyer) to send you a check for less than all you think you’re owed, with an endorsement on the back indicating that if you cash the check, you are accepting the amount as payment in full of the obligation and settlement of the dispute.

Or maybe you are the one who sent such a check to someone, with the same idea in mind. If they cash the check, are you still in jeopardy for the full amount of the creditor’s claim?

There are actually two different statutes in California that address this situation, and they appear to be in conflict with each other. Section 1526 of the California Civil Code (enacted in 1987) seems to say that, if you follow the right procedures in cashing such a check (for example, by crossing out the endorsement), you can prevent the debtor from claiming you have accepted their offer of settlement and still go after the remaining amount of the debt.

If you’re the one on the receiving end, it is tempting, of course, to cash the check, on the old “bird in the hand” theory. You can then worry later whether you can still collect the full amount you think is due. But if you cross out the endorsement, will that preserve your rights?

On the other hand, Section 3311 of the California Uniform Commercial Code (enacted in 1993) seems to say that, if you follow the right procedures in **sending** such a check, you can prevent the person cashing such a check from trying to dispute they have accepted the check as a full settlement.

In response to a request from the California legislature, the appropriate committee of the State Bar of California recently sent a letter analyzing the various authorities. Their conclusion, supporting the only two reported cases discussing the issues, was that the two statutory sections are in irreconcilable conflict.

Needless to say, if the esteemed lawyers of the State Bar can’t figure out the answer, far be it from me to give you advice! Just know that the law is not settled at this point.

For whatever it’s worth, both court decisions upheld the “majority view” of the later-enacted UCC section that if you cash the check, you have probably “settled” the debt, even if you cross out the “full payment” endorsement.

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