

Depositing bad check can leave you liable

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The Record

Q. I am a business owner who deposited a check that turned out to be bad. My bank has now recalled the funds. Do I have any legal recourse?

To effectuate efficient commercial transactions, New Jersey law requires banks to release deposited funds before a check actually "clears" the bank from which the check was drawn. Thus, while the bank may disburse funds shortly after a check has been deposited upon the demand of an account holder, those funds may not have been received from the bank of the person or entity who issued the check.

When the bank makes such a disbursement, that bank acquires an immediate lien against the depositor's account in the amount of the check until that amount is received from the check-writer's bank.

This process can take over 30 days.

Funds paid on the assumption that a check will clear are owed by the depositor to its bank until the funds are actually received from the check-writer's bank.

The fact that your bank pays on the check within one to three days does not guarantee that a check is actually good. If the check-writer's bank refuses to pay based on a forgery or fraud, or if there are insufficient funds to cover the check amount, the recipient of the check may be liable to his own bank for any

removed sums. It must be noted, however, that differing factual circumstances can lead to differing allocations of liability.

To determine your rights as against a bank or check issuer, you should contact an attorney to evaluate the specific facts of your case.

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