

myth two

IF I STOP PAYMENT ON THE CHECK WITH THE BANK, I AM NO LONGER LIABLE TO THE PERSON WHO CASHED THE CHECK.

legal truth two

ALTHOUGH A CLIENT CAN STOP PAYMENT ON THE CHECK, HE REMAINS LIABLE TO THE PERSON WHO CASHED THE CHECK IF THAT PERSON IS A "HOLDER IN DUE COURSE" WHO DOES NOT KNOW ABOUT ANY PROBLEM WITH THE CHECK.




Clients often believe that when notified of a lost check, they can eliminate risk or obligation for that check by calling the bank to stop payment on it. Of course, they are wrong.

The problem is that the payday check-cashing center on the corner has no idea that your client stopped payment on the check when it cashes the check presented for payment. Even though your client can stop payment, he or she is still liable to the party who cashed the check without knowing about any problem with the check (holder in due course) because once a check has been properly endorsed, it can be enforced by whoever holds it. So a holder in due course can sue your client even after he or she properly stopped payment on the check with the bank. In fact, a person may be entitled to enforce a check even if that person is not the owner of the check or is in wrongful possession of the check. So, it is possible for someone to enforce a lost or stolen check against the drawer.

As you might recall, a holder in due course means the holder of an instrument, such as a check, under the following conditions:

There is no apparent evidence of forgery, alteration, irregularity, or incompleteness, which would call the authenticity of the check into question when it is issued or negotiated to the holder;

2. The holder must have taken the instrument for value and in good faith without any notice that the check was overdue or had been dishonored or that other checks in the same series had bounced;
3. The holder must not know the check contains an unauthorized signature or has been altered or is subject to a claim by someone else; and
4. The holder must not know about any defenses or claims in recoupment, such the person who wrote the check did not have legal capacity, the signature was fraudulently induced, or the obligation to pay the check was discharged in bankruptcy proceedings.

How can your clients protect themselves from a person who cashes their check, then tells them the check was lost, and then cashes the replacement check? As you can see, simply stopping payment of the check by calling the bank will not necessarily protect them. Prudence probably would dictate waiting at least until your client reviews next month's bank statement before issuing a replacement check. Even if a check truly is lost or stolen, someone who cashes it without knowing about the situation could still be in a position to make your client pay. Probably the best advice to give your clients is to never issue a replacement check unless he or she knows and trusts the person to whom the check is written, knows where to find the payor, and knows the payor will be solvent. 

endnote

1. Michael R. King is a co-founder of Gammage & Burnham, P.L.C., the Chairman of the Board of Directors of the Valley of the Sun YMCA, a Past President of Washington Elementary School District Governing Board, a past Chairman of the Maricopa County Bar Foundation, a Board Member of the University of Arizona Law College Association and the University of Arizona Engineering Council, and the author of chapters in the *Arizona Construction Law Practice Manual*.

save the date | thursday, june 20, 2013 (8:45am—5:15pm)

Seminars

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Thursday, June 20
8:45 a.m. – 5:15 p.m.

Prosecution and Defense of a Business Case in Arizona



Our panel of distinguished jurists, trial lawyers and forensic experts will explore how in-house and business counsel can better prepare their clients/companies for the challenges of dealing with major litigation without upsetting on going operations. We will provide guidance on procedures that can be implemented before litigation becomes an issue and offer insights on what to expect and how to prepare for litigation once it is imminent and as it progresses. We will also examine the challenges faced and strategies to be employed when trying to resolve a complex business dispute through ADR, litigation and trial.

Sponsored by: Business Law Section
Seminar Chairs: William D. Black, Law Offices of William D. Black
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6 CLE
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THE STATE BAR OF ARIZONA BUSINESS LAW SECTION is sponsoring a seminar at this year's State Bar of Arizona Annual Convention. The seminar is entitled, *Prosecution and Defense of a Business Case in Arizona*. The full day session will provide guidance and insight on the challenges major litigation can bring for ongoing business clients and companies. Please join our panel of trial lawyers, forensic experts and jurists for this informational seminar.

[click on the cover for more information](#)

2013

State Bar of Arizona
Annual Convention

Arizona Biltmore Resort & Spa - June 19-21, 2013

STATE BAR
OF ARIZONA

The cover features a photograph of an outdoor resort area with palm trees, a fire pit, and lounge chairs. The text is overlaid on a blue background with an orange border.

2012-2013

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