

Part 5 Dishonor

70A-3-501 Presentment.

- (1) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or to accept a draft made to the drawee.
- (2) The following rules are subject to Title 70A, Chapter 4, Uniform Commercial Code - Bank Deposits and Collections agreement of the parties, clearinghouse rules, and the like:
 - (a) Presentment:
 - (i) may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States;
 - (ii) may be made by any commercially reasonable means, including an oral, written, or electronic communication;
 - (iii) is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and
 - (iv) is effective if made to any one of two or more makers, acceptors, drawees, or other payors.
 - (b) Upon demand of the person to whom presentment is made, the person making presentment must:
 - (i) exhibit the instrument;
 - (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so; and
 - (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.
 - (c) Without dishonoring the instrument, the party to whom presentment is made may:
 - (i) return the instrument for lack of a necessary indorsement; or
 - (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.
 - (d) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-502 Dishonor.

- (1) Dishonor of a note is governed by the following rules:
 - (a) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.
 - (b) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.
 - (c) If the note is not payable on demand and Subsection (1)(b) does not apply, the note is dishonored if it is not paid on the day it becomes payable.
- (2) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

- (a) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under Section 70A-4-301 or 70A-4-302, or becomes accountable for the amount of the check under Section 70A-4-302.
 - (b) If a draft is payable on demand and Subsection (2)(a) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.
 - (c) If a draft is payable on a date stated in the draft, the draft is dishonored if presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.
 - (d) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.
- (3) Dishonor of an unaccepted documentary draft occurs according to the rules stated in Subsections (2)(b), (c), and (d), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those subsections.
- (4) Dishonor of an accepted draft is governed by the following rules:
- (a) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.
 - (b) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.
- (5) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under Section 70A-3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.
- (6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

Amended by Chapter 324, 2010 General Session

70A-3-503 Notice of dishonor.

- (1) The obligation of an indorser stated in Subsection 70A-3-415(1) and the obligation of a drawer stated in Subsection 70A-3-414(4) may not be enforced unless the indorser or drawer is given notice of dishonor of the instrument complying with this section or notice of dishonor is excused under Subsection 70A-3-504(2).
- (2) Notice of dishonor may be given by any person, may be given by any commercially reasonable means, including an oral, written, or electronic communication, and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.
- (3) Subject to Subsection 70A-3-504(3), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or by any other person within 30 days following the day on which the person

receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-504 Excused presentment and notice of dishonor.

- (1) Presentment for payment or acceptance of an instrument is excused if:
 - (a) the person entitled to present the instrument cannot with reasonable diligence make presentment;
 - (b) the maker or acceptor has repudiated an obligation to pay the instrument, is dead, or is in insolvency proceedings;
 - (c) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer;
 - (d) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted; or
 - (e) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.
- (2) Notice of dishonor is excused if by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.
- (3) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

Repealed and Re-enacted by Chapter 237, 1993 General Session

70A-3-505 Evidence of dishonor.

- (1) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:
 - (a) a document regular in form as provided in Subsection (2) which purports to be a protest;
 - (b) a purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused, unless reasons for the refusal are stated and the reasons are not consistent with dishonor; or
 - (c) a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.
- (2) A protest is a certificate of dishonor made by a United States consul or vice consul, a notary public, or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

Repealed and Re-enacted by Chapter 237, 1993 General Session