



Office of the State Bank Commissioner Guidance Document MT 2016-01

Date: 11/30/2016

Regulatory Treatment of an Agent-of-the-Payee

Purpose

The purpose of this guidance document is to clarify the Office of the State Bank Commissioner's (OSBC) policy regarding the Kansas Money Transmitter Act (KMTA)¹ licensure requirements of persons who enter into an agency relationship to accept and process payments on behalf of a principal acting as a payee in a money transmission transaction.

The KMTA also discusses agents of exempt entities and agents of licensees. This guidance document does not alter the licensing requirement for agents of exempt entities² or a licensee's requirement to gain prior approval from the commissioner prior to agent designation.³

An agent-of-the-payee relationship typically arises in situations where the payee provides goods or services to a consumer, and it is not cost effective or feasible for the payee to handle immediate credit payments directly. For instance, a consumer may wish to make a payment on a utility bill but does not find it convenient to drive to the utility bill's headquarters. The hypothetical payee utility company wishes to allow consumers to make payments at convenient locations and receive immediate credit, but it is not cost effective for the utility company to hire employees to be located throughout the city. The utility company finds it cost effective to pay a commission to a local grocery store to accept payment on the utility company's behalf and permit the agent to provide immediate credit on the consumer's account.

Interpretation

An agent-of-the-payee relationship is money transmission as defined by the KMTA. Money transmission is defined under the KMTA as "to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United State by wire, facsimile, electronic means or any other means..."⁴ An agent-of-the-payee is considered to be engaged in money transmission because in exchange for money, an agent-of-the-payee is either appointed or agrees to collect and process payments from the consumer and forward payment to the payee.

¹ Kansas Statutes Annotated § 9-508 *et seq.*

² Kansas Statutes Annotated § 9-510(d)

³ Kansas Statutes Annotated § 9-510(b)

⁴ Kansas Statutes Annotated § 9-508(h).

Application under Kansas Common Law

While under the KMTA an agent-of-the-payee engages in money transmission, Kansas agency common law recognizes the customer's transaction is completed once the agent-of-the-payee receives payment in certain situations. Because the customer's transaction is completed upon the agent-of-the payee receiving payment, there is no money transmission.

Under Kansas agency common law, an agent's actions will impute⁵ to a principal if the principal intends the agent to act on the principal's behalf and the agent acts within the authority granted.⁶ In an agent-of-the-payee relationship, a payee would be the principal and the agent-of-the-payee is the agent. Kansas agency common law recognizes express and apparent agency authority⁷. A person is considered an agent if the person has express or apparent authority from a principal to do an act. Express authority is created if the principal has specifically delegated authority to the agent to do an act. Apparent authority is created based on the conduct of the principal and a consumer's reasonable reliance that an agent has authority to bind the principal. Apparent authority is a highly subjective test that often must be determined by a trier of fact. For this reason, the OSBC will only consider agent-of-the-payee relationships with written express authority when determining if licensure is required.

An agent-of-the-payee would not be subject to KMTA licensure based on common law express agency principles if the agent-of-the-payee can prove that:

1. There is a preexisting written agreement between the payee and the agent;
2. The payee expressly grants authority to the agent to accept payments on the payee's behalf in the preexisting written agreement;
3. Payment is treated as received by the payee upon receipt by the agent; and
4. Payment is for goods or services other than money transmission that has been provided or to be provided by the payee.

If an agent acts within its express authority to accept the funds on behalf of a payee, the law of Kansas deems the payee to have accepted and received the payment. The payee is considered liable to the consumer whether or not the agent actually transmits the funds to the payee. The legal responsibility of the payee to the consumer remains the same if the funds are in the hands of the agent or the payee. Thus, the agent receiving the money subject to the four steps above renders the transaction a two-party transaction between the customer and the payee.⁸ The agent-of-the-payee doesn't accept money from the customer with the promise to make it available at a different location, so there is no money transmission.⁹ The customer leaves the transaction with the benefit of the bargain and the payee has no recourse with the customer if the payee never receives the payment.

⁵Imputation is to ascribe or attribute; to regard as being done, caused, or possessed by. Black's Law Dictionary 14c (10th ed. 2014).

⁶ *Golden Rule Ins. Co. v. Tomlinson*; 300 Kan. 944, 958-59; 335 P.3d 1178, 1190 (2014).

⁷ *Id.*

⁸ Texas Department of Banking Opinion Number 14-01 issued May 9, 2014.

⁹ *Id.*

Predetermination Requirement

Current licensees may request a review by the OSBC to confirm that the services they currently offer qualify for the agent-of-the-payee exemption. Licensees must continue to report eligible activity until the OSBC determines their qualification. Once confirmed, the company may choose not to report the eligible activity during the annual assessment period. All other activity that requires licensure must be reported.

Unlicensed persons that believe they may have a business model eligible for exemption must request a review before conducting activity in the state. A person must request the confirmation from the OSBC by June 30, 2017 to avoid a potential enforcement action.

This guidance document is issued pursuant to K.S.A. 9-513 and K.S.A 77-438. This document is only intended as general guidance and any licensing determination made by the OSBC is based upon the specific facts presented for each unique case. The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify or retract its interpretation at any time. Issued 11/30/2016.