

## Requirements of Negotiability

### 1. Signed Written Promise or Order

- a. § 3-104(a) => “negotiable instrument’ means an unconditional **promise or order** to pay a fixed amount of money, with or without interest or other charges.”
- b. Definitions of promise or order require a signed writing
  - i. §3-103(a)(8) => “Order’ means a **written** instruction to pay money **signed** by the person giving the instruction.”
    1. An order to pay money is a three-party instrument referred to as a draft. § 3-104(e).
    2. The drawer (or issuer) is the person ordering payment, the drawee is the person being order to pay, and the payee is the person receiving payment. §§ 3-103(a)(4) and (5); 3-105(a) and (c).
    3. The major types of drafts are checks, cashier’s checks, teller’s checks, and traveller’s checks. § 3-104(f)-(i).
  - ii. §3-103(a)(12) => “Promise’ means a **written** undertaking to pay money **signed** by the person undertaking to pay.”
    1. A promise to pay money is typically a two-party instrument referred to as a note. § 3-104(e).
    2. The maker (or issuer) is the person who is promising to pay, and the payee is the person to whom the promise is made. §§ 3-103(a)(7); 3-105(a) and (c).
- c. Writing is broad, but still requires some tangible form that will exclude purely electronic payment obligations from the definition of negotiable instruments. *See* § 1-201(b)(43).
- d. Signature is defined broadly to include signatures by agents or representatives, signatures made “manually or by a device or machine,” and signatures in addition to the traditional signing of one’s name as long as it is “executed and adopted by a person with present intention to authenticate a writing.” § 3-401.

### 2. Unconditional

- a. § 3-104(a) => “negotiable instrument’ means an **unconditional** promise or order to pay a fixed amount of money, with or without interest or other charges”
- b. § 3-106(a) lists items that render a promise or order conditional, and §3-106(b) and (c) provide items that will not render a promise or order conditional. § 3-106(d) deals with a special situation where a requirement of a conditional statement of some kind is imposed by other law.

### 3. Payable in Money

- a. § 3-104(a) => “negotiable instrument’ means an unconditional promise or order to pay a fixed amount of **money**, with or without interest or other charges”
- b. §3-107 => Foreign money is fine. If in foreign money may be paid in either that money or US Dollars.
- c. § 1-201(b)(24) => “Money’ means a medium of exchange currently authorized or adopted by a domestic or foreign government.”

### 4. Fixed Amount

- a. § 3-104(a) => “negotiable instrument’ means an unconditional promise or order to pay a **fixed amount** of money, with or without interest or other charges”
- b. § 3-104(a) and § 3-112 both provide for the payment of interest at either a fixed or variable rate. Other charges such as late fees, etc. are also clearly fine.

### 5. Payable to Bearer or Order

- a. § 3-104(a) => “negotiable instrument’ means an unconditional promise or order . . . if it: (1) is **payable to bearer or order** at the time it is issued or first comes into possession of a holder”
- b. Magic words of negotiability => very formalistic and absolutely required for negotiability.
- c. §3-109 provides additional definitions and rules. § 3-109(a) defines bearer paper, § 3-109 (b) defines order paper, and § 3-109(c) describes how an instrument can move back and forth between being payable to bearer and payable to order.
- d. Examples:
  - i. Bearer Paper:
    - 1. “Payable to bearer”
    - 2. “Payable to the order of bearer”
    - 3. “Payable to \_\_\_\_\_”
    - 4. “Payable to order” and that is it
    - 5. “Payable to cash”
    - 6. “Payable to the order of cash”
    - 7. Payable to some identified person but then indorsed in blank
  - ii. Order Paper:
    - 1. “Payable to the order of Rodney Chrisman”
    - 2. “Payable to Rodney Chrisman or order”
    - 3. NOT => “Payable to Rodney Chrisman”
  - iii. The word payable can be replaced with pay and there is no change to the above.
- e. Checks are an exception to this rule. § 3-104(c) and Comment 2. Further, the negotiability of checks is not defeated by conspicuously writing “non-negotiable” or similar language on them. § 3-104(d).

## 6. Payable on Demand or at a Definite Time

- a. § 3-104(a) => “negotiable instrument’ means an unconditional promise or order . . . if it: (2) is **payable on demand or at a definite time**”
- b. §3-108 provides a set of rules regarding the payable on demand or at a definite time requirement, which include the following:
  - i. Prepayment, acceleration, and certain extensions are OK.
  - ii. Payment plans and schedules are OK.
  - iii. Items payable on demand, at sight, or at will, are all demand items.
  - iv. Items that do not state a time of payment are demand items.
  - v. Items that state both a fixed date and also state that they are payable on demand are payable on demand until the date and are then payable at a definite time.

## 7. No Extraneous Undertakings

- a. § 3-104(a) => “negotiable instrument’ means an unconditional promise or order . . . if it: (3) **does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to payment of money**”
- b. These are additional undertakings *by the maker or drawer*. Additional undertakings by other parties should be fine as long as they do not violate one of the other requirements.
- c. Further, these are additional undertakings *that do not involve the payment of money*. The payment of money is OK.

- d. Exceptions to this contained in § 3-104(a)(3)(i)-(iii). Seems to be things that would generally make the note more valuable and things that are or were commonly used in notes.