



# Accord and Satisfaction

## To Cash or Not to Cash That Check

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**Question:** If somebody owes you money and that person sends you a partial payment of the full amount owed, and writes something to the effect of “payment in full,” should you cash the check or return it to the debtor?

**Short answer:** if the amount is *not in dispute*, cross out the “payment in full” initial the crossing-out and cash the check. Then communicate to the debtor that you received the partial payment and that you expect the rest. However, if the amount is in dispute (meaning, there is a disagreement as to what is actually owed) then you should probably hold off on cashing that check.

The contract doctrine called “accord and satisfaction” comes into play when the debtor issues a check for a lesser amount than what is owed and annotates the check with “payment in full” or something similar. “Accord” simply refers to a (new) agreement than the original and “satisfaction” refers to a settlement of the original agreement. (*See* CCP §§ 1521, 1523).

**So why is the answer not so clear?** I wish it was, but California has two conflicting statutes that muddy the waters in accord and satisfaction issues: California Code of Civil Procedure §1526 (1987) and California Commercial Code §3311 (1992).

**Dispute Required.** But first and foremost it’s really important that the debt in question be in DISPUTE, meaning there is an actual *bona fide* conflict, dispute, or disagreement as to what amount is actually owed. If there

is no dispute, the doctrine does not apply.<sup>1</sup> For example, if you enter into a purchase agreement in which the buyer agrees to pay you \$10,000 for a thing and promises to make \$2,500 monthly installments, but after the first installment the buyer only remits a \$1,000 check without saying more, this amount is not in dispute. The contract controls here, and the contract states that \$10,000 remains the purchase price and \$6,500 is still owed to you. Yes, the buyer is in breach of the contract, but even if the buyer writes “full payment” you may simply deposit the amount without the risk of waiving your rights to receive the remaining \$6,500.<sup>2</sup>

**CCP § 1526.** Now, if the amount was in fact in dispute, CCP § 1526 states that by striking out the “payment in full” annotation, you will render it ineffective and not waive your right to collect the rest.

**CCC § 3311.** On the other hand, California Commercial Code § 3311 states that even if you cross the language out, the payment in full condition is binding. And if you cash the check by mistake you have 90 days to withdraw the waiver and return the money to preserve your right.



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<sup>1</sup> *See* Potter v. Pacific Coast Lumber Co. , 37 Cal.2d 592.

<sup>2</sup> It’s still good practice to cross out the “payment in full” language and communicate to the debtor that you received their “partial payment.”