

# Client Alert: Township & Road District Payout Attestation Requirement

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Chicago, IL

*Barack Ferrazzano Client Alert*

## Action items

- **Educate your Illinois township and road district customers about the new law's impact on payments drawn on their accounts at your bank.**

## Senate Bill 2923

On August 19, 2018, Governor Rauner signed Senate Bill 2923 (the "Act") into law, amending the Illinois Township Code to enhance transparency and provide additional checks and balances on local government payments. **The new law is deceptively simple on its face** – on and after January 1, 2019, when a township supervisor or road district treasurer issues a payout from the treasury, the township clerk/ road district clerk must attest to the funds paid out. According to FAQs issued by the Township Officials of Illinois (TOI) trade group, "attest" in this context means that the clerk must formally witness or certify the content of the payout by signing his/her name.

## Bank Issues

The law has raised a number of concerns for our Illinois bank clients. We have the following observations in response to the issues raised:

- **Should the clerk be an "Authorized Signer" on the account?**  
Under most circumstances, it is not appropriate for the signature card to be changed as a result of the Act. Authorized signers have legally prescribed banking powers, and typically the clerk would not have those powers. For instance, the clerk is not authorized to draft checks. As a result, authorized signers should remain authorized signers, and the attestation process should be added by the township or road district to its internal processes.

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## PRACTICE AREAS

Financial Institutions

Regulatory Counseling

- **Do banks have an obligation to ensure that the attestation is in place on checks drawn on the township or road district account?**

An obvious result of the new law will be that checks drawn on a township or road district account may have both an authorized signer's signature and a written clerk attestation. But, even with paper checks, townships and road districts have flexibility in implementation. The attestation may take another form – for instance, the clerk may attest a check log or he or she may attest board meeting minutes where payouts are approved. In either of these events, there will not be a change on the face of the check. In whatever manner compliance with the Act is implemented, banks are intermediaries in this process, and it is not their obligation to ensure that the law is followed. A check remains “properly payable” under the UCC – with no obligation by the bank other than to pay it – even if a township's check does not include the clerk's attestation. In fact, were the bank to refuse payment of a check in such a case, it could be deemed a wrongful dishonor of the check, and the drawee bank could be held liable for damages.

- **What about debit authorizations?**

Townships and road districts may have existing debit authorizations in place for recurring payments or fees. Whether the payment is a push of funds out of the account or a pull by the payee, there must be a written authorization in place that complies with the NACHA Rules. Those payments are technically “payouts” and any new authorization after January 1, 2019 should be subjected to the attestation process put in place for checks.

- **Impact on Treasury Management Services that involve payouts from accounts?**

The Act does not address electronic transactions per se, but business bill pay transactions, ACH debit entries (most likely payroll entries), internal transfers from one EIN to another and outbound wire transfers constitute “payouts” from accounts affected by the new law. The TOI FAQs mentioned above briefly address e-checks and electronic payments and advise townships and road districts to have protocols in place and work with their vendors on solutions that are responsive to the new law. In this regard, banks already require established “protocols” for online transactions in the form of robust multi-factor security procedures. How do security procedures and the attestation requirement interface?

- First, banks need to ensure that their treasury management master agreement (if they use one) or the bill pay, ACH and wire terms and conditions (if they use stand-alone contracts) provide that **any multiple signature requirement on the signature card is superceded by use of the security procedures**. That is just good contract law and will erase any inconsistency between the two legal requirements.

- Second, most security procedures require dual control for debits from the account – one user initiates the entry and another user confirms it. **Banks may work with their township and road district customers to have their respective clerks established as the confirming user on transfers.** That authority may be established in the enrollment forms or, if your online banking service uses an administrator, the administrator would need to make the assignment. The electronic confirmation should work as an attestation because the clerk would have their own credentials as an electronic “signature.”
- Third, the Illinois Bankers Association has suggested that a **contemporaneous log kept by the clerk for each electronic transaction** may be considered to comply with the law.

The bottom line is that it is not up to the bank to ensure that the township or road district is complying with its statutory duties, but **banks should work with their customers so that they understand the new law's impact on payments drawn on their accounts at the bank and modify their agreements, as necessary.**

## We Can Help You

We have extensive experience in helping banks with their treasury management agreements and other compliance and regulatory needs. Please contact us if you are contemplating any changes in these areas considering this new law. If so, we can assist you with these issues.