

III.C.2. ATM and Debit Cards

In some cases, identity thieves use an identity theft victim's lost or stolen ATM or debit card to make unauthorized purchases or withdrawals from the victim's account. Identity thieves also steal ATM or debit card account and PIN numbers by a practice known as "skimming," where the information is captured from the card's magnetic stripe, without the victim's knowledge, when it is swiped through a small electronic device called a "skimmer." The data is later downloaded and used to create counterfeit cards or for online transactions.

A victim should notify her bank immediately if her ATM or debit card is lost or stolen, or as soon as she discovers that it has been used for unauthorized purchases or withdrawals. The extent of a victim's liability for unauthorized purchases or withdrawals on an ATM or debit card will depend on how quickly she notifies her bank of the unauthorized use or that the card was lost or stolen.

The Electronic Fund Transfer Act (EFTA), and Regulation E, issued by the Board of Governors of the Federal Reserve, provide consumer protections for transactions involving ATM or debit cards and limit liability for unauthorized purchases or withdrawals using ATM or debit cards. 15 U.S.C. § 1693 et seq., 12 C.F.R. § 205. The EFTA sets forth three tiers of liability for unauthorized ATM or debit card uses, as follows:

- If the victim reports an ATM or debit card as lost or stolen within two business days after she realizes the card is missing, she will not be responsible for more than \$50 total for unauthorized use. 12 C.F.R. § 205.6(b)(1).
- If the victim fails to report the lost or stolen card within two business days after realizing the card is missing or stolen, but does report its loss within 60 days after her statement is mailed to her, she could lose as much as \$500 based on unauthorized transfers. 12 C.F.R. § 205.6(b)(2).
- If the victim fails to report an unauthorized transfer within 60 days after her statement is mailed, she risks unlimited loss and could lose all the money in her account and the unused portion of her maximum line of credit established for overdrafts. 12 C.F.R. § 205.6(b)(3).

If extenuating circumstances, such as lengthy travel or illness, prevents the victim from notifying the financial institution within the time periods described above, the card-issuing financial institution must reasonably extend the notification period. 12 C.F.R. § 205.6(b)(4).

Note: Many companies have adopted policies where they generally will not hold the victim responsible for the minimal liability amounts.

State laws, business practices, and contract provisions may impose lower liability limits than those contained in the EFTA. You should also review such laws and contract provisions to determine the full extent of your client's liability. In addition, the UCC, which does not generally apply to electronic transfers, may provide for consequential damages should the bank cause an unauthorized electronic withdrawal from a victim's account that results in insufficient funds. U.C.C. § 4-402.

In the event of an error in the victim's account because of a fraudulent transaction or the unauthorized use of an ATM or debit card, she should promptly call the financial institution and point out the error, no later than 60 days after the statement containing the error was sent. Victims also should follow-up in writing, by certified letter, return receipt requested, to prove the institution received notice of the error. After receiving notification of the problem, the financial institution has ten days to investigate, must inform the victim of the results within three business days after completing the investigation, and must correct inaccurate information. 12 C.F.R. § 205.11(c).

The ten-day investigatory period may be extended to 45 days if the institution is unable to complete the investigation within ten days; however, the institution must provisionally credit the victim's account in the amount of the alleged error within ten days of receipt of notice of the error from the victim. 12 C.F.R. § 205.11(c)(2). In addition, a financial institution may extend the period from ten to 20 days if the notice of error concerns certain new accounts, or from 45 to 90 days if the notice of error concerns a foreign electronic fund transfer or a point-of-sale debit card transaction. 12 C.F.R. § 205.11(c)(3). An institution must correct any errors within one business day after determining that an error occurred. 12 C.F.R. § 205.11(c).

Victims are only required to take "steps reasonably necessary to provide the institution with the pertinent information" regarding the unauthorized use of ATM or debit cards. 12 C.F.R. § 205.6(b)(5)(i). [Appendix C.4](#) provides a sample victim's letter notifying a financial institution of a lost or stolen card, or one which was used for an unauthorized transaction. Note, however, that consumers should contact their bank by phone as soon as they become aware of a missing ATM card. [Appendix C.4](#) also provides a sample attorney follow-up letter, requesting the restoration of funds after an unauthorized transaction and an investigation period of ten days, as well as a sample attorney follow-up letter requesting the restoration of funds after an unauthorized transaction and an investigation period of 45 days.

Note on Private Rights of Action: Section 915 of the EFTA provides a federal private right of action for violations of the provisions discussed above. EFTA § 915, 15 U.S.C. § 1693m.