



# State of North Carolina

OFFICE OF THE COMMISSIONER OF BANKS

ROY COOPER  
GOVERNOR

RAY GRACE  
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July 10, 2017

Shardo Caro, Esq.  
General Counsel  
Airbnb Payments, Inc.  
888 Brannan Street, Fourth Floor  
San Francisco, California 94103

RE: **Declaratory Ruling 2017-01**, concerning the agent-of-payee exemption in the N.C. Money Transmitters Act, N.C. Gen. Stat. § 53-208.44(a)(8)

Dear Ms. Caro:

This declaratory ruling is issued in response to Airbnb Payments, Inc.'s ("Airbnb Payments") request for a ruling on the scope and interpretation of N.C. Gen. Stat. § 53-208.44(a)(8), which was enacted into law in June 2016, with an effective date of October 1, 2016.

## **I. Introduction.**

This ruling is issued pursuant to N.C. Gen. Stat. § 150B-4 (2017) and 04 NCAC 03B.0105 (2017), and is an interpretation of the North Carolina Money Transmitters Act, Chapter 53, Article 16B, which is implemented, administered, and enforced by the North Carolina Commissioner of Banks ("Commissioner"). For the benefit of the public, we will publish this declaratory ruling on our website.

## **II. Statutory and Regulatory References.**

Colloquially known as the agent-of-payee exemption, N.C. Gen. Stat. § 53-208.44(a)(8) states, in pertinent part:

This Article shall not apply to any of the following: ...

(8) A person appointed by a payee to collect and process payments as the bona fide agent of the payee, provided the person can demonstrate to the Commissioner that:

- a. There exists a written agreement between the payee and agent directing the agent to collect and process payments on the payee's behalf;
- b. The payee holds the agent out to the public as accepting payments on the payee's behalf; and
- c. Payment is treated as received by the payee upon receipt by the agent.

This exemption would extend to those otherwise engaged in money transmission as set forth in G.S. 53-208.42(13)b., including those transactions conducted in whole or in part in virtual currency.

N.C. Gen. Stat. § 53-208.44(a)(8) (2017).

Given the relatively recent effective date of Article 16B, the Commissioner has not promulgated new rules to interpret specific provisions of the revised Money Transmitters Act. Accordingly, the pertinent issue for this ruling is purely one of statutory construction and application of the statute to a particular set of facts, as contemplated by 04 NCAC 03B .0105(a)(2).

### **III. Particular Factual Situation.**

#### **a. The Parties.**

On or about August 22, 2016, Airbnb Payments requested confirmation that the agent-of-payee exemption applied to the processing of payments on the Airbnb, Inc. ("Airbnb Parent") platform. It is the Commissioner's understanding that Airbnb Payments, Inc. and Airbnb, Inc. are legally distinct entities. It is the Commissioner's further understanding that Airbnb Payments is a wholly-owned subsidiary of Airbnb Parent, and that, while Airbnb Parent provides the rental platform described below, Airbnb Payments is solely responsible for processing payments to and from users of the platform.

#### **b. Services Provided by Airbnb Parent.**

From Airbnb Parent's Terms of Service applicable on or after October 29, 2016, available on <http://www.airbnb.com/terms> (last viewed April 11, 2017) ("General Terms of Service"), the Commissioner understands that Airbnb Parent provides a website, which is available to the general public, on which sellers of short-term real property rentals ("Hosts") may advertise properties ("Accommodations") for limited-time use by willing renters ("Guests"). The General Terms of Service indicate that "The Hosts, not Airbnb, are solely responsible for honoring any confirmed Bookings and making available any Accommodations reserved...." General Terms of Service at ¶ 9.C. Each Host sets the payment amounts for the short-term rental

and authorizes Airbnb Payments (not Airbnb Parent) to act as the Host's "limited payment collection agent."

**c. Services Provided by Airbnb Payments.**

Airbnb Payments also posts particularized Terms of Service on its website at [https://www.airbnb.com/terms/payments\\_terms](https://www.airbnb.com/terms/payments_terms) (last viewed April 11, 2017) ("Payments Terms of Service"). In connection with Airbnb Payments' request for declaratory ruling, the Commissioner's staff reviewed the Payments Terms of Service as revised on October 27, 2016.

Once a Guest selects a specific Accommodation, Airbnb Payments "will collect the Total Fees from each Guest either at the time of the Booking request or upon the Host's confirmation of the Booking." Payments Terms of Service at ¶ 6.B. Airbnb Payments retains those funds until 24 hours after the Guest's scheduled check-in time, at which point Airbnb Payments remits the funds, less applicable service fees, to the Host. Payments Terms of Service at ¶ 6.B.

Airbnb Payments indicates that "Upon [Guest's] payment of the Total Fees to Airbnb Payments, [Guest's] payment obligation to the host for the Accommodation Fees is extinguished, and Airbnb Payments is responsible for remitting the Accommodation Fees..., in the manner described in these Payment Terms. In the event that Airbnb Payments does not remit any such amounts as described in these Payments Terms, such Host will have recourse only against such Airbnb Payments entity." Payments Terms of Service at ¶6.D.

Finally, Airbnb Payments accommodates voluntary and involuntary cancellations, and makes arrangements for returning funds collected from a Guest to that Guest. *See* Payments Terms of Service at ¶ 6.F.

**IV. Application of Statutory Exemption to Airbnb Payments' Facts.**

The agent-of-payee exemption is a new portion of the North Carolina Money Transmitters Act and has not been interpreted either via rule-making or judicial exposition in North Carolina. Accordingly, the Commissioner must apply the statute to the facts identified above according to the plain language used by the North Carolina General Assembly, giving equal weight to all words of the statute and ensuring a consistent, rational meaning of the Act. *See Parkdale Am., LLC v. Hinton*, 200 N.C. App. 275, 278-79 (2009).

In reading the terms of N.C. Gen. Stat. § 53-208.44(a)(8), it is significant that "payment" in the first sentence has a legal definition. Black's Law Dictionary defines "payment" as "A discharge in money or its equivalent of an obligation or debt owing by one person to another, and is made by debtor's delivery to creditor of money or some other valuable thing, and creditor's receipt thereof, for purpose of extinguishing debt." Black's Law Dictionary 1016 (5<sup>th</sup> ed. 1979). This definition suggests that, for a "payment" to exist, there must be an obligation already outstanding. Thus, use of the word payment implies that the agent-of-payee exemption assumes a pre-existing debt to be extinguished, rather than a future debt that has not yet occurred.

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This interpretation is also supported by a holistic view of the Act. If the agent-of-payee exemption were permitted to encompass any situation in which a preexisting obligation was not present between the obligor and the obligee, all money transmitters could avoid licensure and supervision under the Act by asserting that money was received and delivered in satisfaction of some future obligation. In other words, the exception contained in N.C. Gen. Stat. § 53-208.44(a)(8) could swallow the remaining provisions of the Act for most money transmitters.

Finally, this interpretation is supported by the language in N.C. Gen. Stat. § 53-208.44(a)(8)(c), which states: "Payment is treated as received by the payee upon receipt by the agent." At the point in time when no outstanding obligation is currently owed to a payee, it is logically inconsistent for the payee to recognize receipt of payment. This is true notwithstanding language in the Payments Terms of Service that purport to satisfy this prong of the agent-of-payee test.

**V. Conclusion.**

In summary, it is my view that, under the facts recited above, Airbnb Payments does not qualify for exemption from the North Carolina Money Transmitters Act pursuant to the agent-of-payee exemption, because Airbnb Payments accepts funds for transmission prior to the existence of a Guest's obligation to a Host. Since no payment obligation is outstanding at the time Airbnb Payments obtains a Guest's funds, Airbnb Payments' activity does not qualify for the agent-of-payee exemption.

Sincerely,



Ray Grace  
Commissioner of Banks

cc: Stephanie Ryals, Deputy Commissioner for Non-Depository Entities  
Katherine M.R. Bosken, Deputy Commissioner for Legal Affairs