

## COMMON QUESTIONS ON BAD CHECKS (12/95)

### 1. Is it against the law to write a bad check in the State of Missouri?

It is a crime to fail to satisfy a check that has been returned because of insufficient funds or no account at the bank **after the writer of the check has received ten (10) days actual notice** of the denial of payment by the bank. This means that before it is a crime in the State of Missouri, the writer must have received actual notice, ten (10) days must have passed from the day the notice was received, and the check must remain be unpaid.

### 2. What type of notice is required?

Under current Missouri law, it is necessary that the individual receive **actual notice**. This means that the individual must personally receive notice of the insufficiency from the merchant. The law provides that this may be by certified mail, which is signed for by the person who writes the check, or by a notice served upon them by a person who files an affidavit stating that the notice was served on the person. Notice by oral conversation, telephone call or notice served on another member of the writer's household is not sufficient.

### 3. How can I obtain actual notice?

The easiest way to obtain actual notice is to send the notice by **certified mail, return receipt requested, restricted delivery**. This means that a green card will be mailed with the notice by the merchant, and the Post Office will be told that it must be signed for by the person whose name in on the envelope. The name on the envelope will correspond with the person who signed the check.

In the event you are unable to obtain that notice (either because the person refuses the notice or does not claim the notice), then you may have **the notice personally served** on the individual. You may use a law enforcement agency (such as the Sheriff's Department) who will do this for a fee, or you may have a private individual do it so long as this individual will sign a certificate under oath that they did in fact serve the person at a specific time, date and location.

### 4. Is serving by a law enforcement official more expensive?

Law enforcement agencies charge a fee for serving a notice, just as they would for a service of any court papers. This is more expensive than using certified mail. However, if the check is large enough, it may be worth that expense to obtain a prosecution. You may include this cost in your service charge.

### 5. Am I entitled to charge a service charge for the bad checks?

The law provides that you may charge a **reasonable service charge** for the bad checks. This would include your actual expenses so that if you are forced to have the notice served by a law enforcement agency, that amount would simply be added to your service charge.

### 6. Must the individual pay the service charge?

If it is a case that is ultimately prosecuted because a person does not pick up the check within ten (10) days, then the order of the court will include that the person make restitution for all checks including service charges. However, if the person pays the check prior to prosecution and refuses to pay the service charge, then the service charge can only be collected through a civil action such as small claims court. It is not a crime in Missouri to refuse to pay the service charge, but it is a crime to fail to pay the check upon proper notice.

### 7. Are there checks that cannot be prosecuted by the Nodaway County Prosecutor's Office.

The Nodaway County Prosecutor's Office will accept most checks for prosecution. **We cannot accept non-personalized checks (counter checks) nor two-party checks (checks which are payable from one entity to another entity and then endorsed by a third person)**. Additionally, we have a minimum face value

of the check which is required before we will commence a prosecution. Unlike counties which surround us, many of which have gone to a fifty dollar (\$50.00) minimum, our minimum remains five dollars (\$5.00) per check. This means that if the face value of the check is less than five dollars (\$5.00), we cannot accept the check for prosecution. It does not, however, prevent you from sending the notice in hopes that the notice will cause the individual to pay restitution.

#### **8. What items must be turned in to commence prosecution?**

After a minimum of ten (10) days have passed, you may turn the check over to the Nodaway County Prosecutor's Office for prosecution. We must receive **the actual check, the actual green card showing that service was obtained (or the actual affidavit if the service was obtained by personal service) and a copy of the notice that you sent.** Under normal circumstances the charges are filed immediately upon receipt of all of these items by our office. **Once charges are filed, they will not be dismissed,** even upon payment of the check.

#### **9. What do I do when someone contacts me to pay for the check after I have turned the check into your office?**

Even though the check has been turned in to the Prosecutor's Office for prosecution, normally all restitution will be paid directly to the merchant. This means that even if we have filed the prosecution, the payments will still be made direct to you. Immediately upon receipt you need to notify us that they have paid you so we can note that on our file. **However, you need to be very clear that the payment of the check does not keep the individual from being required to appear in Court.** Once the charges have been filed, they must appear in Court and a failure to do so will result in a warrant being issued for their arrest, even if the check has been paid.

#### **10. What if another merchant has already obtained notice on their check, must I still obtain service on my check?**

Each check is treated as an independent criminal action and, therefore, the fact that someone else has obtained notice does not eliminate the requirement that the writer receive actual notice on your check. As previously discussed, it is not a crime in the State of Missouri to write a bad check unless and until ten (10) days have passed from the date of actual notice. Therefore, if you do not obtain notice, technically no crime has occurred. As a courtesy, our office will normally note the amount of your check on any pending file.

#### **11. Why is it sometimes the Prosecutor's Office calls me about bad checks that have been turned in and wants a note from me if it is still unpaid?**

Most merchants are very prompt about **calling us upon receiving restitution.** However, everyone who goes to Court and who is placed on probation, has a specific date by which they are to make restitution. On misdemeanor cases, our office monitors that restitution by calling each merchant who has a check in the file shortly after the due date to verify that restitution has been paid. In the event restitution has not been paid, we will request a letter on your letterhead simply stating that fact. Through the use of this letter, we can save you the necessity of appearing in Court and can simply notify the Court of the failure of the defendant to comply with the terms of probation by the use of that letter. At that point, the Court will immediately summons the defendant to appear and to show cause why they should not be sent to jail for failure to comply with the Court's rules.

## **12. Can the Nodaway County Prosecutor's Office file on any check I receive?**

In addition to the limitations described in number 7 above, there is also a limitation in criminal law known as venue. This, in its simplest form, means that the charge is filed in the county in which the check is written. In normal circumstances, the individual will come into your place of business and write a check for the merchandise. Assuming your business is located in Nodaway County, that will give us authority to file on that check after notice is given. If, however, you pick up the check in another county, then **jurisdiction is going to be in the county where the check was written and delivered to you**. Thus, you would need to contact the Prosecuting Attorney's Office in that county and follow their procedures. In the event you have checks that come through the mail, please contact our office and we will attempt to resolve that on a case by case basis, although normally prosecution must occur in the county from where the check was mailed and not where it was received.

## **13. What information am I required to have on the check about the defendant?**

In order to prosecute the cases, **it must be a personalized check** and we must have the **following additional information about the defendant:**

**full name;**  
**date of birth;**  
**address;**  
**social security number.**

We cannot commence prosecution without that information because should a warrant be issued, we cannot enter it into the computer nor obtain an arrest without date of birth and social security information. In today's world of computerized law enforcement, everything is done by social security/driver's license numbers and date of birth. Law enforcement agencies will not arrest without that information out of a fear that they will be arresting another person with the same name.

## **14. What if the individual comes in and pays the check or wants to work out a payment plan, can I drop charges?**

The short answer is no. **Once a case is commenced by the Prosecutor's Office, the charges are not dropped.** This does not prevent you from receiving the restitution but simply means the individual will still be required to appear in Court. You should be very clear not to leave an impression that by paying the check the individual does not have to appear in Court, because if they fail to appear, a warrant will be issued for their arrest by the Court.

## **15. What if the individual resides out of state or moves out of state?**

The Nodaway County Prosecutor's Office takes a very aggressive stance toward check prosecutions, and the mere fact that the individual resides out of state does not limit prosecutions. We have done extraditions from Alaska and Washington State on misdemeanor bad checks and will continue to do so. So long as we have a current address, the information described in paragraph 13, and have the ability to get the person arrested if they fail to appear, once they are arrested, we will do an extradition from that state and have them return to Nodaway County.

## **16. Do I have any expense in connection with bad check prosecutions?**

Criminal prosecutions are an action by the State of Missouri against the defendant and therefore, the merchant does not have any Court expense. There are, obviously, the expenses of the insufficient funds check, sending the notices, etc. However, our office does not charge a fee and you are not responsible for any of the costs of the prosecution. The only way you would ever be responsible for Court costs is if you would submit a check for prosecution which should not have been prosecuted. For example, if you turn in a check to us for prosecution and the individual had already paid restitution on the check to you, then you would be responsible

for the Court costs (now set at \$44.00). This happens very rarely because most merchants are methodical in maintaining payment records.

**17. What if my notice is returned marked "moved, left no forwarding address" and I do not know where the defendant resides?**

Unless you know where the defendant's location, there is not a crime of passing bad checks. This is because the law provides that there is no crime until the person has been given actual notice and failed to make the restitution within ten (10) days of receipt of that notice. If you are in the position where you do not know the location of the defendant, there are several things you can do to try to locate the bad check writer. First, you can contact our office to see if we have a criminal prosecution pending against that individual based upon notice by some other merchant. You can also contact local law enforcement agencies and other merchants to see if they have any information regarding the defendant's whereabouts. Lastly, you can hire a company which does skip-tracing and they will attempt, for a fee, to locate the defendant. However, **until actual notice has been served upon the defendant and the check is not paid within ten (10) days thereafter, there is not a crime** under the laws of the State of Missouri and we cannot commence a prosecution.

**18. Are there requirements as to the type of notice that I must send?**

There are specific requirements in the statute related to the notice. The best way to ensure you are complying with the notice is to obtain a form from our office and simply photocopy those forms for your use. That is a service provided free of charge and allows you to have a notice which complies with Missouri law. If you use a notice which does not comply with Missouri law, then your notice is not effective to allow the commencement of a criminal prosecution.

**19. Must I contact a local law enforcement agency prior to turning the check into the Prosecutor's Office?**

Prosecution of bad checks is the only crime which is handled directly by the Prosecutor's Office without the requirement of a law enforcement agency report. Therefore, while you may want to contact law enforcement agencies for assistance in terms of location of the defendant or if there are other crimes involved, as far as prosecution for bad checks are concerned, you may file those directly with our office. If, however, you have is a forgery (where the check was signed by someone other than a person authorized to do so) or a theft, then you must go through a law enforcement agency and the notice requirements described above are not required.

**20. How long do I have to bring the check to the Prosecutor's Office?**

Although the statute of limitations is technically longer, for our office to have a good chance of locating the defendant and obtaining restitution for you, we recommend bad checks be turned in **within ninety (90) days of the date the check was written.**

**21. What if I have other questions?**

If you have questions about a specific check or any procedure, our office remains willing to assist you at any time. Prosecution of bad checks is a cooperative effort and if we can do anything to assist you, please call our office (582-8285) at any time or bring the check to us to review. Our office is located on the second floor of the Courthouse in the southwest corner.