

BAD CHECK PROSECUTION

**Nobles County Attorney's Office
1530 Airport Rd, Suite 400
Worthington MN 56187
(507) 295-5298**

**Worthington Police Department
Prairie Justice Center
1530 Airport Road, Ste 300
Worthington MN 56187
(507) 295-5400**

PROCEDURE FOR BAD CHECK PROSECUTION

- Review the packet of information on bad check prosecution. These are available from the Police Department or County Attorney's Office. It contains all of the necessary forms.
- Instruct your clerks on the procedure for accepting checks. They should ask to see a driver's license or other picture identification, which gives the full name and date of birth of the signor. They should note the information on the check and sign their initials.
- As soon as you get the check returned from the bank you should begin the notice process. You may attempt to deposit the check twice, but you are not required to do so.
- Send the Notice and Demand for Payment to the signor at the address printed on the check or a more current address if one was provided to the clerk. You may send a second Notice, but are not required to do so. Complete the Affidavit of Mailing *after* you mail the Notice. The Affidavit must be signed in the presence of a Notary Public. You are welcome to bring those to the County Attorney's Office to be notarized.
- You may include the Notice of Bad Check Charge with the Notice and Demand. The City is not allowed to collect that charge as part of restitution upon conviction, but if you want to collect it on your own, you must provide the Notice.
- *After 10 days* have passed since you mailed the Notice and if signor has not made the check good, you should bring the original check, a copy of the Notice, the original Affidavit, and the Bad Check Prosecution information sheet to the Worthington Law Enforcement Center. A police officer will go through the information with you and may later interview your clerk.
- The police will review the documents and if everything is complete, they will bring them to the County Attorney's Office for a complaint. The police will sign the formal complaint for you.

What if the signor wants to pay the check?

If they come in before you have turned the matter over to the police, you should accept their money and no charges will be filed. If you accept partial payment or a substitute check, which also bounces, the City cannot prosecute the matter later if you don't get all your money.

If they come in after the matter has been turned over to the police, you may not accept their money. You should tell them that it has already been turned over and there is nothing you can do about it. It is the decision of the police and prosecutor whether or not to drop charges. They should contact the County Attorney's Office.

What checks will not be prosecuted?

The police department will not accept checks for prosecution, which a business has been holding. Checks should be turned in within 60 days of when they are written or within 20 days of when the NSF notice comes from the bank. After a check is three months old the chances of apprehending the signor are decreased.

Checks that do not have the driver's license number or full name and date of birth noted by the clerk cannot be prosecuted. Without positive identification a signor cannot be arrested.

Checks that come in from the same business written by the same signor on a regular basis will not be accepted. If a person is writing bad checks to a business on a regular basis, the checks should not be accepted. The City will not file charges against the same person month after month if the business is still willing to take their check.

When does the business get its money back?

Each business will be notified when a person is convicted or pleads guilty to writing a bad check. Upon conviction the signor will be required to reimburse the amount of the bad check. They pay the money to the Court and the Court will mail it to the business. This may take some time. Many defendants must make the payments in installments and may be paying off more than one bad check. If six months pass after the conviction and you have not received your money, call the Court Administrator to find out if the payments are being made.

If the business has not been notified within four months after the check was turned over to the police, it is most likely that the defendant did not appear in Court and an arrest warrant has been issued. After the four months have passed, you may call the County Attorney's Office and request a status report. If the warrant is dismissed because there is not positive identification, the business will be notified.

INSTRUCTIONS FOR HANDLING BAD CHECKS

Minnesota Statute requires that the holder of the check returned NSF inform the writer of a bad check that the check has been returned NSF. There are specific forms that need to be sent to the author of the check to place him/her on notice of the bad check. Attached to these instructions, please find copies of the forms that you will have to send to the writer of the check, along with a copy of their check. One form is the Notice and Demand; this gives the writer five days in order to correct the problem. The second is an Affidavit of Mailing; this is to prove that you have, in fact, notified the author of the check of the problem. The forms are constructed so that you can merely photocopy them and fill in the appropriate blanks. After you have filled out the forms, you need to keep a copy of what you have sent, so you can prove notice has been sent. The Bad Check Prosecution form should be filled out for our office's use. Attached also is a form for Notice of Demand for collection of a returned check charge. Criminal laws do not provide for the collection of these funds, but if you wish to pursue that collection civilly you must provide the Notice.

If the check has not been made good within five days, it is appropriate to prosecute the writer. It is at this point that you should bring the check and forms to the Worthington Police Department. An officer will be assigned to take the information. You must have: the original check, Notice and Demand, the Affidavit of Mailing, the name of the clerk who accepted the check, the driver's license number or the date of birth of the person writing the check.

The easiest way for you to comply with these requirements is to instruct your clerks to ask to see a driver's license. The clerk should look to see if the picture on the license is that of the person writing the check. (Your clerk may have to identify that person in Court at some time.) The driver's license number should be written on the check, along with the clerk's initials. If the person does not have a driver's license, the clerk should get the writer's date of birth and ask to see some type of picture identification.

If you have any questions, feel free to call our office.

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Worthington MN 56187
(507)295-5298

ICR # _____
WORTHINGTON POLICE DEPARTMENT
FRAUDULENT CHECK REPORT

Only the person who accepted this check should complete this form and anyone else completing this form will result in the check being returned and prosecution declined.

PERSON PASSING CHECK					
Name			Address		
Employment					
Age	Sex	Race	Hair	Eyes	Height
Weight	Glasses <input type="checkbox"/> Yes <input type="checkbox"/> No		Other Features		
CHECK INFORMATION					
Check Number		Amount of Check		Date of Check	
Bank Drawn On				State	
Identification Taken				State	
What did the person buy/receive for the check?					
BUSINESS WHERE CHECK WAS PASSED					
Name		Address		Phone	
PERSON WHO ACCEPTED THE CHECK					
Name (First, Middle, Last)				DOB	
Home Address				Home Phone	
Can you identify the person passing the check from a photo line-up?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Would you be willing to testify in court without a subpoena?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
PLEASE CHECK THE FOLLOWING AS APPLICABLE:					
Was the check accepted on date indicated on the check?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Was the check postdated?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Was there an agreement to hold the check?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Was the check turned over to a collection agency?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
If YES, what collection agency?					
Did the check writer pay any money toward the bad check?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, how much?				\$	

THIS IS A TRUE STATEMENT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I AGREE NOT TO ACCEPT PAYMENT ON THIS CHECK WITHOUT CONSULTING THE CITY OR COUNTY PROSECUTOR'S OFFICE.

Date: _____ Signature by Person accepting check: _____
 Subscribed and Sworn to me this _____ day of _____
 Notary Public: _____

BAD CHECK PROSECUTIONS

Name of store making the complaint: _____

Name & Position: _____

Address: _____

Telephone _____

Name of person who wrote the bad check: _____

Name of person who accepted bad check: _____

Date check was accepted: _____

Method of positive identification of author of check, i.e., driver's license, etc.:

Date Notice of NSF was sent to author of check: _____

Was there any response to this notice? If so, what: _____

Attach the copy of the notice that you sent, along with the Affidavit of Mailing.

Attach the check

Signature of person providing this information: _____

Please note that a citation will be issued on misdemeanors and a formal complaint filled out on gross misdemeanors and felonies using this information.

NOTICE AND DEMAND FOR PAYMENT OF DISHONORED

Date: _____

Name on Check: _____

Address on Check: _____

You are hereby notified that a check written to _____
(person/business)

dated _____, 20____, drawn on the _____

_____ Bank, of _____
(Name of Bank) (Town/City)

in the amount of \$ _____, bearing signature of _____

has been returned unpaid with the notation that payment has been refused because of _____

(NSF/Account Closed)

*Unless this check is paid **in full** within five (5) business days after mailing this notice, we will begin prosecution under Minnesota Statutes Section 609.535, violation of which is a Misdemeanor, Gross Misdemeanor, or Felony, and the financial institution shall release information relating to this checking account to us as prosecuting authorities.*

Demand is hereby made for payment of this check by cash, cashier's check, certified check, or postal money order, **do not** send a personal check. Make any cashier's check or money order payable to: _____

within 5 days after the date of mailing this notice, and mail to:

Enclosures: MSA 609.535

P.S. If payment is not made within the five days, a complaint will be filed against you in court. If at that time you make payment, the complaint will not be dismissed and you will still be required to appear in court on your appointed date.

AFFIDAVIT OF SERVICE BY MAIL

State of Minnesota

County of Nobles

_____, of _____,
(Your Name) *(Name of Business)*

of _____, County of Nobles, in the State of
(Address of Business)

Minnesota, being duly sworn, says that on the _____ day of _____
(Date being mailed out)

20_____, he/she served the annexed Notice and Demand for Payment of Dishonored Check
on _____, by mailing to him/her a copy thereof,

enclosed in an envelope, postage prepaid, and by depositing the same in the post office at
_____, Minnesota, directed to him/her at
(Name of Post Office)

_____, that being the address printed on the
dishonored check.

Subscribed and sworn before me

this _____ day of _____, 20_____.

NOTICE OF BAD CHECK CHARGE

You are hereby notified that Minnesota Law provides that a store or merchant who accepts a check from someone who writes a NSF check is entitled to be compensated for their additional trouble and costs involved in processing said checks.

You are hereby notified, and demand for payment is now being made, for payment of \$15.00 for this.

This is a separate and distinct matter from criminal prosecution of this matter. If you do not make payment within 5 days, actions will be taken to process this through the civil court system.
