

OFFICE OF THE CHEROKEE COUNTY ATTORNEY

CHECK COMPLAINT GUIDELINES

The Cherokee County Attorney's Office wishes to assist, as much as possible, in preventing losses due to the passing of worthless checks. Please be advised, however, that this office is not a collection agency and cannot legally act as one. Our primary function is to prosecute crime. Unfortunately, due to many legal considerations, we can prosecute on checks submitted to us only if they meet certain requirements. These guidelines are offered to help us put together a prosecutable case, in order to increase your chances for a full recovery.

FORMS TO PREPARE

There are two forms that must be filled out completely before this office can consider prosecution. First, there is the "Affidavit for Prosecution of a Worthless Check". Second, there is the "Offense Report". The affidavit needs to have all the blanks filled in. Make sure the blank for the name of the person who received the check is filled out correctly. Do not add any writing along the margins or anywhere else on the affidavit. Make sure you read the affidavit carefully; you are swearing under oath that the information put on the affidavit is true. The affidavit must be notarized. Use **black** ink (blue does not come out well on the copies that have to be made). Use one affidavit and offense report per each individual check. If you have any more information to add about the passer or receiver of the check write it on the offense report. The person who actually accepted the check must fill out the offense report. When you sign and submit these forms to our office, you are agreeing to cooperate in the prosecution of this matter. The affidavits are to be signed in front of a notary. If you do not have access to a notary, bring the forms (**unsigned** to our office and we will notarize them for you).

We have a waiver form that can be filled out and signed if you wish. It states that you do not wish to be notified of defendant's court hearings unless you are specifically needed.

JURISDICTION

The check must have been passed in Cherokee County, Kansas. If not, you must contact the proper authorities in the county where the check was passed.

INTENT TO DEFRAUD

We must prove that the check writer intended to defraud you at the time he/she gave you the check, and that you accepted the check in good faith that it would clear the bank on the day that it was actually written. We cannot accept checks that are post-dated or that you agreed to hold and deposit later. The check must be marked “Insufficient funds” or “Account Closed”. If the check is marked in any other manner, including “Stop Payment”, then we ask that you contact our office to determine what action to take.

IDENTIFICATION

Because it is not possible to prosecute on a check without a way to identify the maker or passer of the check, we must decline prosecution on checks where there is no basis to identify the maker or issuer of the check. From a practical and legal point of view, the person who received the check must be able to positively identify the check writer under oath in Court, or have some method of identifying the writer which connects the writer with the check he/she is alleged to have written. One of the best ways to establish a basis for identification is to require positive picture identification at the point of sale along with other pertinent information. Merchants are well advised to require the following information, which should appear on the check, when accepting the check:

- Driver’s License Number
- Date of Birth
- Home or Work Phone Number
- Name of Employee

In addition, the person who accepts the check should request positive identification at the time the check is given to the merchant. If you do not require positive photo identification and follow the above-stated guidelines, you risk accepting stolen or forged checks, and your chances of recovery are thereby severely diminished. You should have a method of identifying the person who took the check such as initials in the upper left-handed corner of the check. It is the merchants’ responsibility to maintain contact with employees so they can be located if necessary for trial.

NOTIFICATION

The worthless check law at K.S.A. 21-3707 states that you must send a certified letter to the check writer at the address on the check allowing him/her ten (10) days from the receipt of the letter to pay the check. This letter must be sent **CERTIFIED MAIL, RESTRICTED DELIVERY** with **RETURN RECEIPT REQUESTED.** If the letter is accepted, the post office will return the signed receipt to you; if it is not accepted, the unclaimed letter will be returned to you upon request.

TIME FRAME

To be successfully prosecuted a check should reach our office in at least ninety (90) days from the date the worthless check was passed. If all known checks have been collected, charges filed, and the case resolved, then a merchant brings in more checks that were written in that same time period but did not refer them to us in a timely manner, no prosecution will be initiated. If a merchant holds checks so that a large number of checks are turned over for prosecution at the same time, this office will handle them as time permits.

RESTITUTION

Once you have forwarded a check to our office you have given up your rights to collect on the check(s). **Please do not accept restitution or partial payment of restitution unless you have first contacted our office.** This office will not, as a rule dismiss a case that has been filed upon payment of the restitution to a business. Further, you may subject yourself to civil liability if the check writer has paid you restitution and is later arrested. Please be advised that if you accept partial restitution prior to filing a criminal complaint, the check then legally becomes a promissory note, and we cannot prosecute.

FILING YOUR CASE

Bring the affidavit, offense report, and original bad check, copy of the notice letter and signed receipt or unclaimed certified letter with the GREEN CARD to our office. You may also mail these items to the Cherokee County Attorney's Office, P.O. Box 78, Columbus, Kansas 66725.

Our office will first attempt to notify the check writer and give him/her the opportunity to pay the check. If the suspect comes to you to pay the check, please call our office to see whether you should accept restitution. Our office number is (620) 429-3836.

Please contact our office with any questions you may have.

THINGS TO REMEMBER

- **We do not take checks that are post-dated, for rent, payment on a contract or loan. Further we do not take two-party-checks. ---Businesses only**
- **All checks must be posted as insufficient funds or account closed only.**

- **Don't forget to include all information you may have on the passer. Our office has to have the passers Date of Birth and/or their Driver's License number with the correct state. We have to be able to get proper identity of the passer and the above information is critical.**

- **OUR OFFICE HAS THE RIGHT TO NOT PROSECUTE A CHECK FOR ANY REASON.**

- **All blanks on the two forms must be completed. When possible the actual store must fill out the forms, not the Collector or the Franchise head. The person who has actually taken the check will better be able to give description of the passer than the Accountant of the Franchise.**