

COLLECTING ON BAD CHECKS



WINCHESTER POLICE DEPARTMENT

Bad Check Policy

It is the policy of the Winchester Police Department to investigate all bad check cases which individually or in the aggregate, have a dollar value of greater than \$50.00; or when the accused has previously been convicted of Bad Checks (RSA 638:4); or where the accused is known to have issued three or more bad checks in a three-month period; or when the investigation shall assist another law enforcement agency in creating an aggregate value of over \$500.00.

WHAT WE NEED IN ORDER TO INVESTIGATE

- Complete information on the person who accepted the check: name, address, home phone, date of birth, social security number, and employment position.
- The original check. Keep a copy for your files.
- Clear copies of the letter, envelope, certified letter receipt and record of any other communication relative to your attempts to collect on the check (phone calls, letters, etc.)
- Any other business documentation you may have on file such as courtesy card information, video camera surveillance tapes, etc.

ACCEPTING CHECKS

EDUCATE:

- Establish a policy for accepting checks and stick to it.
- Train employees who will be accepting checks and those in a management capacity who will authorize the acceptance of checks.
- Examine each check thoroughly to ensure the information recorded is accurate and consistent.
- Be sure proper identification is made of the check issuer. Obtain photo ID, preferably a driver's license.
- Check the photo of the individual depicted on the ID used. Assure that the person presenting the ID appears to be the same person shown. Record all information shown on the ID: complete name, address, date of birth, height, weight, eye color, hair color, license number and state of issue are important.
- Any identification that does not have a photograph is virtually useless as a means of identification. Customers who are legitimate typically do not object to such close scrutiny. They have nothing to hide and appreciate why you need to take precautions. Those who complain may have something to hide.

Do not take a check from an individual whom you have not identified or with whom you have concerns.

WHAT TO DO FIRST

NH RSA 638:4, Issuing Bad Checks, reads in part, "...that it is an affirmative defense that the actor (issuer) paid the amount of the check, together with all costs and protest fees, to the person to whom it was due, within 14 days after having received notice that payment was refused..."

As a result, in accordance with the law, you should initially:

- Send a certified letter to the issuer at the address shown on the check
- Send the certified letter with a "Return Receipt" requested.
- Describe the check in the letter and **DEMAND PAYMENT** and any related charges in full within 14 days. **DO NOT ACCEPT PARTIAL PAYMENTS OR ENTER INTO TIME-PAYMENT AGREEMENTS**. Such payments or agreements damage possible criminal prosecution if the issuer does not live up to the agreement.
- In the letter, advise the issuer you will turn the matter over to the Winchester Police Department for prosecution if you do not receive full payment within 14 days.
- If you do not receive payment in full, report the matter to the Police Department **IMMEDIATELY**. Don't wait another day longer! Time can be of the essence in some criminal investigations.

Because the Winchester Police Department is not a collection agency, once you refer a bad check complaint to us for criminal investigation and possible criminal arrest of the issuer, we respectfully request that you do not subsequently accept payment of the check unless authorized by the investigating officer.

- **ALTERNATE OPTION: SMALL CLAIMS** – Should you wish to pursue collection via small claims, contact Keene District Court at 603-352-2559.

Collecting on a Returned Check

- Typically, most checks which are returned by the bank marked “NSF” (Non-Sufficient Funds or Insufficient Funds) are innocent bookkeeping errors made by the issuer. Checks which are written on accounts and returned marked “Account Closed” are still covered under the bad check statute. As a rule, a simple phone call to your customer will be enough to rectify the matter.
- However, all too often, individuals issue checks knowing there is an insufficient balance in the account. If you are unable to rectify the matter with a single phone call, two processes are available to you to attempt to recoup your money:
 - ❖ Filing a small claims action
 - ❖ Reporting to the Winchester Police

Checks will not be accepted by the Winchester Police Department for prosecution if any of the following conditions exist:

- The 14-day letter has not been sent to the maker and the receipt kept with the check. The 14-day letter must be sent certified mail, return receipt requested. This letter must advise the writer that his check was not honored and must demand payment from the writer including reasonable service charges. The 14-day letter is mandatory in cases where the check was returned for ***insufficient funds*** and/or ***account closed***.
- The check was originally post-dated with a date sometime in the future, or the complainant accepted the check and held it for a period of time before cashing it at the request of the writer.
- The complainant does not know what general items were purchased or obtained with the check (e.g., cash, goods, services, merchandise, etc.).

- The check was given to pay a gambling debt.
- The check is more than 90 days old.
- The check has not been presented to the bank within ten days of receipt.
- The complainant has accepted partial payment on the check.
- The check was accepted for payment of a previous worthless check which the complainant held on the writer.
- The complainant cannot identify the employee who accepted the check on behalf of the store, or cannot provide the time and date the check was passed.
- The check was returned on a "Stop Payment" order issued by the writer. This is a civil matter between the two parties.
- The check is for an amount less than \$50.00, excepting when combined/aggregated with other checks passed in this jurisdiction within fifteen (15) days of each one another and having a total amount exceeding \$50.00; or other criteria addressed in the Bad Check Policy attached (see Appendix I).
- Third party checks.

NH RSA 638:4 Issuing Bad Checks.

I. A person is guilty of issuing a bad check if he issues or passes a check for the payment of money and payment is refused by the drawee, except in cases where a legal stop payment order has been issued or where the drawee refuses payment for any other reason through no fault of the person who issued or passed the check.

I-a. A person who issues or passes a bad check is subject to prosecution in the jurisdiction in which he issued or passed the check.

II. For the purposes of this section, as well as any prosecution for theft committed by means of a bad check, a person who issues a check for which payment is refused by the drawee is presumed to know that such check would not be paid if he had no account with the drawee at the time of issue.

III. It is an affirmative defense that the actor paid the amount of the check, together with all costs and protest fees, to the person to whom it was due, within 14 days after having received notice that payment was refused. The actor's failure to make such payment within 14 days after receiving notice that payment was refused shall be prima facie evidence of a violation of paragraph I under this section.

IV. (a) Issuing a bad check is:

(1) A class A felony if:

(A) The face amount of the check exceeds \$1,500; or

(B) The defendant has 2 or more prior convictions under this section, the present and prior convictions were based on offenses committed within a 12-month period, and the aggregate face amount of the checks underlying the present and prior convictions exceeds \$1,500;

(2) A class B felony if:

(A) The face amount of the check exceeds \$1,000 but is not more than \$1,500; or

(B) The defendant has 2 or more prior convictions under this section, the present and prior convictions were based on offenses committed within a 12-month period, and the aggregate face amount of the checks underlying the present and prior convictions exceeds \$1,000 but does not exceed \$1,500;

(3) A class A misdemeanor if the face amount of the check does not exceed \$1,000 and the actor has been convicted of an offense under this section within the previous 12 months; and

(4) A class B misdemeanor in all other cases.

(b) In any prosecution under subparagraph IV(a), the prosecutor shall prove that the person issued or passed the check knowing or believing that the check would not be paid by the drawee.

(c) Face amounts involved in the issuance of bad checks committed pursuant to one scheme or course of conduct may be aggregated in determining the grade of the offense.

V. In addition to any other sentence which it imposes, the court shall, if restitution is authorized under RSA 651:63, order any person convicted of a violation of this section to make restitution to the person to whom the check was due. Such restitution shall include the amount of the check and may include all reasonable costs and protest fees.

VI. (a) Notwithstanding any other provision of law to the contrary, in any judicial proceeding under this section, a notarized or sworn statement by the bank official who is the keeper of the records of the bank upon which the check was drawn shall be admissible as evidence at trial to prove the status or account balance of the person's account on the date the check was issued or passed. The admission of this statement shall eliminate the need for the keeper of the records to personally appear and testify before the court.

(b) Nothing in this paragraph shall prevent the person who issued the check for which payment was refused from securing the appearance of the keeper of the records before the court by subpoena or other legal process.

NOTICE AND DEMAND FOR PAYMENT OF DISHONORED CHECK

To _____ (insert name) of _____ (insert address), you are hereby notified that a check presented by you to the undersigned dated _____, drawn on the _____ (insert name of bank) of _____ (insert name of city), in the amount of \$ _____ (insert check amount), bearing the signature of _____ (insert signature on front of check), has been returned unpaid with the notation that the payment has been refused because _____ (insert reason given by bank for non-payment). In addition, bank costs and protest fees (postage) amount to _____ for a total amount due of _____ (insert total amount). Your attention is called to the Revised Statutes Annotated of the State of New Hampshire below. Demand is hereby made for the payment of this check and all costs and protest fees. Failure to pay the check and related costs within fourteen (14) days of the date on this notice will result in the undersigned taking further action as allowed by law.

DO NOT IGNORE THIS NOTICE.

Dated _____ Remit to _____
Address _____