

Take checks in your business? Here's how to avoid accepting a bad check and what to do if you get conned into taking one. The three most common reasons checks are dishonored (not paid) are: the check was written on a closed account; the customer stopped payment; or the account was open but did not contain sufficient funds ("NSF") to cover the check.

Preventative Procedures

To avoid getting stung, use these simple procedures for each check transaction.

1. Always ask for, then compare the photo ID to the person presenting the check.
2. Compare the photo ID signature to the check signature.
3. Do the ID and check addresses match? If not, determine the correct address.
4. Never accept pre-signed or post-dated checks.
5. Write the ID number on the face

- of the check in your handwriting.
6. Look at the check writer—does the person appear nervous, or overly friendly?

If you are uncertain of the ID or the check, decline to complete the transaction. Leave the customer for a moment. Come back to the customer, tell them the check has been declined and you'll be happy to take cash or any other acceptable form of payment. Using these preventative procedures makes good business sense.

Call Your Customer

If you use these procedures and still get a check returned, immediately call your customer. Good customers willingly pay the check and your bank charges. Here are some tips on dealing with the other kind of customers.

If your customer does not respond to your phone call, run a NSF check through again. Don't waste your time redepositing account closed or stop payment checks.

Criminal Prosecution

Police departments have stringent requirements before they accept a check for prosecution. Some jurisdictions, like West Palm Beach, Florida created special bad check restitution programs designed to get the merchant paid and keep the check writer out of jail. If you want to prosecute the check writer, contact the local

By David Paul Williams



Business Break

Battling Bad Checks

police department (this can generally be done online) to see if your situation meets their prosecution requirements. The reality is that due to budget constraints and evidentiary issues, bad checks are a low priority crime for most police agencies. Factor into your decision that once the check enters the criminal system (which may include restitution if a conviction is gained), you lose the right to sue.

Civil Damages

Every state except Delaware, Kentucky, Nebraska, Oklahoma and Texas, has civil laws allowing you to recover the face amount of the check and more. How much more depends on your state.

In Washington, you can collect a reasonable handling fee (not to exceed \$40) plus the face amount of the check. Additionally, if you mail written "notice of dishonor" using the statutory form, the maker (check writer) has 15 days to pay the check and reasonable handling fee. Ignoring the deadline can dent their pocketbook, because you can sue the maker for the check amount, reasonable handling fee, interest, reasonable attorney's fees, plus a penalty of three times the check up to \$300.

A bad check writer in Florida has 30 days after notice to pay the check in cash plus a service charge (a sliding scale based on the amount of the check). If payment is not made, then

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you can sue for three times the check amount, court costs, attorney's fees and bank fees.

Since checks are negotiable instruments, they are governed by the Uniform Commercial Code as adopted by each state. This means only a few defenses can get the maker out of paying a check. If you are dealing with a stop-payment check, talk with your attorney before filing suit, as the penalty damages may not apply.

State Law Variations

The notice form, waiting period and damages vary in each state. For example, Connecticut requires the notice be given in both English and Spanish. Nevada requires the notice be sent by certified mail, while Ohio only allows the maker 10 days after the notice to pay the check. Make sure to review the statutes in your state (go to www.USlegalforms.com then enter "notice in dishonor," select your state and click "search" to find the applicable statute and form) or talk with your attorney for more information.

The civil procedure works. A housecleaner client of mine was stuffed on a \$135. check by her wealthy customer who ignored the statutory notice and ended up paying over \$3,500 to resolve the case.

Using the preventative procedures will help you avoid being fleeced. And, if you get stuck with a bad check, now you know your collection options.

Editor's Note: David Williams, of Bellevue, Washington, has resolved legal issues for small businesses and their owners since 1979. In addition, he is a freelance writer for trade journals and consumer magazines. He can be reached at The Williams Lawfirm, P.O. Box 1455, Bellevue, WA 98009. On the web you'll find him at DPWLaw@earthlink.net or you can call (425)990-8800. This is the first in a series of short "Business Break" articles from ArrowTrade. Unlike our full-length features, they're designed to be short enough for staff to read them during breaks. Permission is given to make copies of this entire article or any section for store use. ←

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