

FRANKLIN COUNTY ATTORNEY'S OFFICE

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WORTHLESS CHECK POLICY

Criminal prosecution will be **denied** in the following circumstances:

- 1) Insufficient identification was obtained at the time the check was passed and/or the individual accepting the check is unable to positively identify the check passer.
- 2) The check is written for less than \$10.00 and no other checks were submitted which would make the combined total exceed \$10.00.
- 3) Legal notice was not properly given. Notice is presumed to have been given when a certified, restricted delivery, return receipt requested letter is mailed to the check passer at the address appearing on the check. Notice must indicate that if the check is not paid within seven days, the check will be submitted to the County Attorney for prosecution.
- 4) The service charge in the letter of legal notice exceeds \$30.00 per check which is allowable under Kansas law.
- 5) The address on the check is missing or incomplete.
- 6) The information in the report you submitted does not indicate who accepted the check.
- 7) The check was returned marked, "Uncollected Funds" or "Refer to Maker." This usually means that the bank has put a hold on the checking account. Contact the bank concerning the reason for return.
- 8) All the items necessary for criminal prosecution of a worthless check have not been submitted. We must have the actual check, a copy of the letter sent, the signed green receipt or returned envelope, the completed Affidavit for Worthless Check and the Offense Report.
- 9) The check was not submitted within 120 days from the date it was written.
- 10) The identification information appearing on the check indicates it was passed by someone other than the signer of the check.
- 11) The issuance of the check must have caused you to give up something of value. It cannot be for payment of an antecedent debt.
- 12) Bankruptcy has been filed. Contact the bankruptcy report to advise that you are a creditor.
- 12) Criminal charges have already been filed and the case has been resolved.
- 13) Two party checks and Stop Payment checks are exempt from criminal prosecution.
- 14) You do not provide our office with identifying information on the check writer such as social security number or driver's license number **and** date of birth so that we can run a criminal history background check on the check writer.

Pursuant to K.S.A. 21-3707, before we prosecute someone for writing you a bad check, you must send a letter to the check writer, notifying him/her of the bad check. We have attached a sample letter that you may use as your official notice to the check writer. You must mail the notice letter to the check writer at the address listed on the check. Notice must be mailed in the U.S. mail **certified - return receipt requested - restricted delivery**. The approximate cost is \$7.00-\$8.00 for this type of mailing. If the postal service charges you much less, please double check with them to make sure the letter is being mailed properly. When you bring in the green card/returned letter, if the same is not marked as restricted, we will decline to prosecute the case.

Within 14 days of sending the notice letter, you will either receive the green card showing that your letter was picked up or you will receive the entire envelope marked "Unclaimed, Refused, Attempted, Not Known," etc.

Once you receive either of the above from the U.S. Postal Service, please bring the following items to our office: (1) either the green card or the returned letter in its envelope and (2) the original check - **no photocopies will be accepted**.

We will provide you with a sworn affidavit and offense report to complete in our office. On the affidavit you must name the person who accepted the check from the check writer, what identification was obtained from the check writer and who in your business set the notice letter to the check writer.

After submitting the above documents to our office, do not accept any payment from the check writer. If you accept payment from the check writer, we will not prosecute the case. Send the check writer to our office and tell them they must deal with us.

Our policy, consistent with most other jurisdictions, is to send a courtesy letter giving the check writer 10 additional days to pay the check at our office. Our letter explains in detail what the check writer needs to do to pick up the check and pay it, prior to our office filing a criminal complaint. It is your responsibility to contact our office to determine whether payment has been made to our office. If payment has not been made to our office, usually within 90 days (due to the high volume of check cases our office processes) and all criteria has been met by you and your employees, we will file a criminal complaint against the check writer. **If the check has been paid by the check writer and./or the above criteria has not been met by you, we will decline to prosecute the case.**

Once our office has filed a criminal complaint against the check writer, either a summons or a warrant will be issued for the check writer. You will be notified by subpoena if a trial is scheduled. Also subpoenaed for trial will be the person who accepted the check, the person who wrote the notice letter and the person who mailed the notice letter.

Our office hours for bringing in checks and picking up money which we have collected prior to the filing of a criminal complaint are Tuesday, Thursday and Friday 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5 p.m.

If you have any questions or problems, please feel free to call Julie Furst at our office, 785-229-8970.