

# HOT CHECK SECTION

## IN ORDER FOR THE 38TH JUDICIAL DISTRICT ATTORNEY'S OFFICE TO PROSECUTE YOUR HOT CHECK, THE BAD CHECK MUST BE IN THE AMOUNT OF \$2,500.00 OR MORE

**Purpose.** The purpose of the Hot Check Section is to prosecute those individuals who commit theft by using a worthless check. It is not a collection agency. However, we will do everything legally possible to collect restitution. **Our services are free.** We want to help our businesses succeed, and prevention of this crime is our ultimate goal.

**Goal.** Our immediate goal is to bring about a conviction for the offense of theft by check and gain restitution for the victim. However, restitution cannot be obtained in every case. If you expect restitution in every case, you are being unrealistic and will be disappointed.

**"Theft by check" law.** A person commits theft when property, services or cash is obtained by deception through use of a check that is invalid due to insufficient funds or a closed account. The owner must exchange the property, services or cash at the time the check writer tenders the check. Otherwise, it is an extension of credit and not a theft case. It is also an offense for a check writer to issue a stop payment order and refuse to either pay the check or return the merchandise within 10 days after receiving notice. (Penal Code Sec. 31.03 and 31.04)

**"Issuance of bad check" law.** If there was an extension of credit, and the check writer knew there were insufficient funds in the bank when the check was written, it is a Class C misdemeanor offense of Issuance of a Bad Check. This case is filed with the Justice of the Peace in the precinct where the check was written. (Penal Code Sec. 32.41)

**Legal requirements.** The law requires the check to be presented to a bank within 30 days. Additionally, there is a presumption of theft if a letter is sent to the check writer by certified mail, return receipt requested giving the check writer 10 days to pay the check amount and processing fee. This is only a presumption; the letter may be sent by regular mail. The 10-day grace period allows those individuals who are careless, mistaken, or made a banking error to correct the situation. The Texas Penal Code specifies the exact language that must be used in the letter. A letter should be sent to every hot check writer. (Penal Code Sec. 31.06)

# STEP-BY-STEP COLLECTION PROCEDURE

**1. "Closed account" checks.** No letter is required; go to step 5 below.

**2. "NSF" checks.** Send the attached letter by regular mail to the address shown on (1) the check, (2) bank records or (3) your records. Keep a copy of the letter; if there is no payment within 10 days, go to step 4 below.

**3. "Stop payment" checks.** Send the attached letter by regular mail to the address shown on the check. Keep a copy of the letter. You must give the check writer the option to return the merchandise or pay the check amount. If the merchandise is returned, you can either accept or reject the merchandise but cannot file a criminal case. If there is no payment within 10 days, go to step 4 below.

## **4. Documents you must bring to the District Attorney.**

- Original check
- A copy of the letter sent to the check writer; if the letter is returned because of a bad address, bring the unopened letter, also.
- Affidavit for warrant of arrest. Fill out this form (see attached) and swear to it in the presence of a notary. If a notary is not available, you can use the notary at the District Attorney's office.
- Copies of the invoice, work order, cash register receipt (if any exist) and any notes about the transaction and the check writer. (This information is not required but is sometime helpful.)

**5. Deadline.** Bring the above documents to the District Attorney's office within 30 days of the date the check was written. If the check is over 30 days old, the case will be declined unless there is a reasonable explanation for the delay. When too much time goes by, the check writer has moved and cannot be located. This causes more work for us and less chance of restitution for you. Additionally, your delay could cause other merchants to be victims of other hot checks by the same check writer.

**6. Action by District Attorney.** Once we receive the required documents from you, we will send a postcard to the check writer demanding payment. If there is no response from the check writer within 10 days, we will type the complaint, sign it, and file a criminal case of theft by check or issuance of bad check using the affidavit for warrant of arrest from what you submitted. After the case is filed, the defendant is summoned to court. If the defendant fails to appear in court, the clerk sends an arrest warrant to the Sheriff's Office. Additionally, we cannot take further action until the check writer is arrested and the case is placed on the court docket. If the check writer has not been arrested, and you see the check writers or become aware of a new address for the check writer, you should call your local police department or the Sheriff's office and ask them to verify the warrant and arrest the check writer.

**7. After arrest.** If arrested, the check writer is given a court date. If the check writer cannot pay the check amount and fees in a lump sum, but is eligible for a probated sentence, he can be placed on probation with monthly payment obligations. His probation can be revoked, and he can be sentenced to **jail** if he has the ability to pay and does not pay as ordered.

**8. Order or payment.** When we receive several checks written by the same check writer, and the check writer starts making restitution, the payments are accepted in the order that the checks were turned in to the District Attorney's office: **first come, first Serve.**

## HIGH RISK CHECKS

**Temporary checks.** Checks that are not personalized are often a risk. They do not have the account owner's name printed on each check. How can you know that the person giving you the check owns the account on which the check is drawn?

**Low numbered checks.** 9 out of 10 bad checks have numbers smaller than 300.

**No driver's license.** Beware of checks offered by check writers who present passports, green cards, student IDs and military IDs. Non-local check writers. Non-local check writers are much harder for us to identify and prosecute. Out-of-state bank records are extremely difficult to obtain.

**No residence address on the check.** A post office box printed on a check as an address has been shown to be a risk factor.

**Illegible signature on check.** A sloppy signature may be an attempt to prevent easy comparison with the signature on an ID.

**Checks written for more than one purchase.** Cash is a highly desirable commodity to steal.

**Multiple checks on same day.** The check writer may be stealing as much as possible from you before you find out that the checks will not be honored.

**Checks written late in the day.** Check writers know when banks close and they know that the merchant cannot verify funds in the account after the bank is closed.

**Company checks.** A check receiver cannot be sure that the person presenting the check is authorized to sign a check drawn on the account; the company employee probably doesn't know the current balance on the account.

**Two-party checks.** It is usually impossible for us to establish which of the parties had intent to deceive.

**Pre-signed checks.** You cannot swear the signer signed the check in your presence, and nobody can prove the signer knew the amount for which the check would be written.

## PROCEDURE WHEN TAKING A CHECK

Be thorough when accepting a check as payment. Your business should set a policy for all customers, so no one will have a reason to feel that they are being treated unfairly. Post the District Attorney's **HOT CHECK LIST** (shown below) so each cashier can easily see it. It has the following reminders:

**Is it dated today?** Checks must be dated the same day they are given.

**Do \$ amounts written match?** If not, a bank will not accept it.

**Good signature?** The signature must match the name printed on the check. Do not accept previously signed checks. Compare the signature with the one on the ID.

**Street address?** Require a permanent **street** address, not a P.O. Box.

**Compare/write DL/ID.** Record on the check the type of ID and ID number. If the Drivers License number is pre-printed on the check, compare it to the DL itself. A Texas Drivers License has 8 numbers starting with a 0, 1 or 2. Get the Drivers License number for a person cashing a company check also.

**Write the date of birth.** In case the DL/ID # is written down wrong, we can use a DOB to locate a check writer. Without an ID number or date of birth, we cannot file a criminal case.

**Write your initials.** Put your initials on every check you cash for testimony purposes after you have followed the above steps.

*You can print this form out below on the bottom of this page and place it next to your register*

**38th Judicial District Attorney's Office  
Hot Check List**

**Dated today**

**\$ amounts match?**

**Good signature?**

**Street address?**

**Compare the photo**

**Compare/write DL/ID #**

**Write date of birth**

**Write your initials**

**Remember that crime prevention begins with alert and knowledgeable citizens.**

## FREQUENTLY ASKED QUESTIONS

**Q. Can I offer to dismiss the theft case if the money is paid?**

A. No. It is against the law to do so. Once the check is filed with the District Attorney's Office, we assume full control of the matter.

**Q. Can I accept payments after the check has been filed with the District Attorney's office.**

A. No. The check writer must make restitution through the District Attorney's office.

**Q. What happens to the check after the case is over?**

A. If paid, it is returned to the check writer; if never collected, it is returned to you.

**Q. What if the check writer claims the check was forged?**

A. Take the check to your police department if the check was written inside the city limits. Otherwise, take it to the Sheriff's office.

**Q. What if the check writer files for bankruptcy?**

A. This prevents all collection efforts, but the check writer can still be prosecuted.

**Q. Can I send the check to the District Attorney's Office if the check writer has made a partial payment?**

A. Yes. Bring in the standard documents plus the payment records. Partial payment does not prevent our office from filing a case and handling the matter for you.

**Q. Can I post a list of hot-check writers?**

A. Yes, but you may pay the consequences if you make a mistake. Anyone who has the money for a filing fee can file a lawsuit whether it has merit or not. Making a list with the title of "Hot Check Artist" may cause you a problem. A better approach might be to make a list with a notation of "Do not take checks written on the following account" or "ineligible check writers". A better practice would be to have the list viewable only by you or your employees.

**Q. If a check writer writes several checks, do I have to fill out a separate arrest warrant affidavit for every check?**

A. No, if all the checks are written to the same business during the same time period and are returned by the bank for the same reason. On the affidavit, write in the words "see attached" in the blanks for the date of check, check number, check amount and person accepting the check. Then fill in the blanks on the supplement page (page 2). Sign page 2 and attaché page 2 to the affidavit page.

**Q. Do I have to come in person to the District Attorney's office?**

A. No. If you have access to a notary, you can have anyone deliver the necessary items. If a notary is not available, you will need to come in person to sign the affidavit.

If you need information or have a hot check in the amount of \$2,500.00 or more you can call Investigator Debra Lankford at (830)741-6187 or email.