



**NAVAJO
COUNTY
ATTORNEY'S
OFFICE**

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TO THE PEOPLE OF NAVAJO COUNTY

Issuing a bad check is a crime under Arizona law. If a person issues or passes a check with knowledge that he does not have sufficient funds in his account, he is guilty of a class 1 misdemeanor.

It is not always easy to prove by direct evidence that the issuer of a bad check had knowledge of insufficient funds. A bad check writer rarely admits outright that he knows the check is bad. Therefore, the legislature has created certain presumptions to assist the state in establishing a violation of the bad check statute. For instance, if a person's bank account is closed at the time he issues the check, he is presumed to have knowledge of insufficient funds. Similarly, if a check writer is notified that the bank refused payment of the check, and he fails to pay the amount of the check, together with reasonable costs, within twelve days after receiving notice of that refusal, knowledge of insufficient funds will be presumed.

The purpose of this Bad Check Handbook is to describe the procedures that a person who receives a bad check must follow in order to make effective use of the laws designed to combat the problem of bad checks. This handbook also suggests several methods for identifying and avoiding potential pitfalls. In order to be successful in the collection of a bad check, certain standard operating procedures must be followed. Implementation of the policies and procedures described in this Bad Check Handbook will minimize the risk of financial loss due to bad checks.

With your cooperation and assistance, the County Attorney's Office will be better equipped to cope with the problem of bad checks.

**BRAD CARLYON
NAVAJO COUNTY ATTORNEY**

WHAT TO DO WHEN YOU RECEIVE A CHECK

In order to safeguard against taking a bad check, and to increase the effectiveness of the *Bad Check Program*, be certain to do the following:

A. EXAMINE THE CHECK

1. DOES IT HAVE A LOW CHECK NUMBER OR NO PRINTED CHECK NUMBER?

The vast majority of bad checks are drawn on accounts that are less than one year old. If check number is handwritten or if it is lower than 125, exercise caution.

2. IS THE DATE ON THE CHECK ACCURATE?

Checking the date eliminates the possibility of receiving a postdated check (i.e., a check that is dated in the future). A postdated check may provide the check writer with a defense under the new law.

3. VERIFY THAT THE CHECK IS NOT FORGED.

- a. Arizona banks have Federal Reserve District numbers of "11" or "12", so check the first two digits of (1) the nine-digit series at the lower left of the check and (2) the denominator of the fraction at upper right. If the check names an Arizona bank, but the two-digit number is not "11" or "12", the check may be forged.
- b. Special magnetic ink is used for automated check sorters. It has a dull finish. Check the numbers on the lower right of the check. If they shine or reflect light, the check may be a forgery.
- c. You will feel perforations on at least one edge of all legitimate checks (except for government checks printed on computer card stock). Most forgers use a regular paper cutter, leaving all four sides of the check smooth.

4. DO THE WORD AMOUNT AND THE NUMBER AMOUNT MATCH?

A check in the amount of "\$16.25" should state in words: "Sixteen and Twenty-five/100's dollars" or "Sixteen and 25/100's dollars."

5. DO AMOUNTS APPEAR TO HAVE BEEN ALTERED?

Check the numerals and the words to see whether they appear to be uniform with the other writing, whether the words and/or numbers appear to be crowded, and whether there is any contrast in ink color or density. Any inconsistencies may suggest an alteration.

6. DOES IT APPEAR THAT THE NAME(S) OF THE PAYEE(S) HAS (HAVE) BEEN CHANGED?

If the color, density and/or handwriting of the name appear different, there may have been an alteration. If a check is made payable to two or more payees in the alternative (e.g., "AB or CD"), and the second name appears different in color, density, and/or handwriting from the first, there may have been an alteration.

B. ALWAYS DEMAND IDENTIFICATION

1. PRIMARY IDENTIFICATION IS AN ARIZONA DRIVER'S LICENSE.

- a. *Compare the name and address on the license to those on the check.*
- b. *Compare the signature on the license to that on the check.*
- c. *Compare the photograph on the license to the person passing the check.*
- d. *Make sure that the driver's license has not expired.*
- e. *Make sure that the information on the license is current.*

2. SECONDARY IDENTIFICATION

- a. **Military identification.**
- b. **Credit card with a name matching the one on the driver's license.**
- c. **Some other form of identification, preferably with a picture.**
- d. *A Social Security card is not an acceptable I.D.*

3. PURPOSE OF REQUIRING IDENTIFICATION DOCUMENTS

The receiver of the check must be able to identify the check writer, should prosecution of the check writer become necessary.

C. RECORD ALL INFORMATION ON THE FRONT OF THE CHECK

During the check clearing process many banks place inked stamps on the back of the check, which could cover up your I.D. entries. Therefore, it is important to record identification information on the front of the check.

1. YOUR NAME OR INITIALS AS RECEIVER OF THE CHECK.

A witness is normally required to successfully prosecute a bad check writer. The witness will be the person who accepted the check. Make certain that the clerk's identity and the branch location can be determined from the face of the check. We will not be able to pursue the bad check writer if you do not provide us with this information.

2. THE DRIVER'S LICENSE NUMBER, HOME ADDRESS AND TELEPHONE NUMBER

Record the check writer's driver's license number, home address and telephone number unless this information is already imprinted on the front of the check.

3. ANY OTHER IDENTIFYING NUMBERS OR INFORMATION

You should record any additional relevant information such as name(s) and number(s) from credit card(s), vehicle license plate numbers, etc.

WHAT TO DO WITH BAD CHECKS

A. PREPARING TO HANDLE BAD CHECKS

- 1. ESTABLISH A STORE POLICY** to ensure that you follow all of the steps outlined in the section entitled "WHEN YOU RECEIVE A CHECK."
- 2. PREPRINT THE REQUIRED NOTICE LETTER** on your BUSINESS STATIONERY.
- 3. MAINTAIN A SUPPLY OF ALL NECESSARY FORMS:**
 - a. Notice letters**
 - b. Bad Check information/submittal forms**
 - c. Certified mail return receipt**
- 4. ESTABLISH A SIMPLE SYSTEM TO TRACK THE CHECKS**

Prepare a simple procedure that will allow you to send out the required notice letters and retrieve the checks for people who come to pay their checks. The system also needs to include a procedure to monitor the number of days since a notice letter was sent, in order to send appropriate checks to the Bad Check Office.

B. WHAT TO DO WHEN YOU RECEIVE A BAD CHECK

1. **COMPLETE A BAD CHECK INFORMATION/SUBMITTAL FORM.** Be sure to include the date the Notice Letter is sent and the Response Due Date. The Response Due Date is calculated to be 17 days from the date of the Notice Letter because the law presumes that the bad check writer will receive the letter within five days, and the bad check writer is allowed 12 days from receipt of the Notice Letter to respond. Maintain the Bad Check Information Forms by last name of the check writer.
2. **PREPARE A NOTICE LETTER** and send a copy of the letter to the last known address of the check writer. **SEND THE NOTICE LETTER CERTIFIED MAIL, RETURN RECEIPT REQUESTED.** Retain the green receipt card with the check writer's signature. Print "ADDRESS CORRECTION REQUESTED" on the envelope.

ADDITIONAL INFORMATION

A. ONCE YOU HAVE REFERRED A BAD CHECK TO THE COUNTY ATTORNEY BAD CHECK PROGRAM DO NOT ACCEPT RESTITUTION FOR THE CHECK FROM ANY SOURCE OTHER THAN THE BAD CHECK PROGRAM.

B. MONIES COLLECTED BY THE COUNTY ATTORNEY'S OFFICE WILL BE HANDLED AS FOLLOWS:

1. **WHEN A BAD CHECK WRITER MAKES RESTITUTION TO THE BAD CHECK PROGRAM,** the payment is entered into a computer and the money is deposited in a special bank account.
2. **RESTITUTION CHECKS WILL BE ISSUED TO BAD CHECK VICTIMS** on a periodic basis as to all checks which have been collected. The stub of the restitution check will contain the following information:
 - a. **The name(s) of the check writer(s).**
 - b. **The bad check number(s) and date(s).**
 - c. **The amount(s) of the bad check(s).**
3. **YOU WILL RECEIVE RESTITUTION ONLY IF COLLECTION EFFORTS ARE SUCCESSFUL.**

C. CHECKS THAT CANNOT BE COLLECTED

In the event that the County Attorney's Office is unable to secure payment after all remedies provided by law have been exhausted, you will be notified that the check is not collectable. The bad check will be returned to you so that you can claim it as a loss for income tax purposes.

WHAT BECOMES OF THE BAD CHECK WRITER

When the County Attorney's Office receives a packet containing a bad check, the bad check writer's name is entered into the computer. A preliminary decision is made as to whether the bad check writer will be offered a diversion option, or be prosecuted. If the person is eligible for diversion, he/she will be notified in writing that he/she may avoid prosecution by paying the entire amount of the restitution and the collection fees to the Bad Check Program within thirty (30) days. If the bad check writer fails to contact the County Attorney's Office within seven days and/or fails to make restitution within thirty days, a criminal complaint may be filed by the County Attorney's Office.

LEGAL AUTHORITY

The authority to operate this program was given to County Attorneys during the 1984 Legislative session. HB2246 amended §13-1801 of Arizona Revised Statutes, and added §§13-1807, 13-1809 and 13-1810.

A.R.S. §§13-1809 and 13-1810 describe the collection process and the diversion option.

§13-1809. JURISDICTION; RESTITUTION; FEES; DEFERRED PROSECUTION.

- A. *The County Attorney may prosecute any violation of §13-1807.*
- B. *A person charged with an offense under this chapter may make restitution for the bad checks. Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office. Restitution shall include at a minimum the face amount of the check. The fact that restitution to the party injured is made and that any costs of filing with the County Attorney are paid is a mitigating factor in any imposition of punishment for any violation of this chapter. On sentencing, the Court may require any person convicted under this chapter to make restitution in an amount not to exceed twice the amount of the dishonored check or fifty dollars, whichever is greater, together with all applicable costs and fees. This is in addition to any other punishment imposed under this chapter.*
- C. *A County Attorney may collect a fee if his office collects and processes a check if the check is issued or passed in a manner which makes the issuance or passing an offense under §§13-1802, 13-1807, or §13-2310, or has been forged under §13-2002.*
- D. *The County Attorney may collect the fee from any person who is a party to an offense described in this section.*
- E. *The amount of the fee shall not exceed:*
 - 1. *Fifty (50) dollars if the face amount of the check does not exceed one hundred (100) dollars.*
 - 2. *Seventy five (75) dollars if the face amount of the check is greater than one hundred (100) dollars but does not exceed three hundred (300) dollars.*

3. *One hundred (\$100) dollars if the face amount of the check is greater than three hundred (\$300) dollars, but does not exceed one thousand (1,000) dollars.*
4. *Fifteen percent of the face amount of the check if the check is greater than one thousand (1,000) dollars.*

F. If the person from whom the fee is collected was a party to the offense of forgery under §13-2002 and the offense was committed by altering the face amount of the check, the face amount as altered governs for the purpose of determining the amount of the fee prescribed in subsection E of this section.

§13-1810. DEFERRED PROSECUTION OF BAD CHECK CASES.

A. Each County Attorney may create within his office a deferred prosecution program for bad check cases.

B. The County Attorney may refer a bad check case to the bad check deferred prosecution program. This chapter does not limit the power of the County Attorney to prosecute bad check complaints.

C. On receipt of a bad check case, the County Attorney shall determine if the case is one, which is appropriate to be referred to, the bad check deferred prosecution program. In determining whether to refer a case to the bad check deferred prosecution program, the County Attorney shall consider the following guidelines:

1. *The amount of the bad check.*
2. *If there is a prior criminal record of the defendant.*
3. *The number of bad check complaints against the defendant previously received by the County Attorney.*
4. *Whether or not there are other bad check complaints currently pending against the defendant.*
5. *The strength of the evidence of the intent to defraud the victim.*

D. On referral of a complaint to the bad check deferred prosecution program, a notice of the complaint shall be forwarded by mail to the defendant. The notice shall contain all of the following:

1. *The date and amount of the check.*
2. *The name of the payee.*
3. *The date before which the defendant must contact the office of the County Attorney concerning the complaint.*
4. *A statement of the penalty for issuance of a bad check.*

E. The county Attorney may enter into a written agreement with the defendant to defer prosecution on the bad check for a period to be determined by the County Attorney, not to exceed six months, pending all of the following:

1. *Completion of the bad check deferred prosecution school program conducted by the County Attorney or a private entity, under contract with the County Attorney.*

2. *Full restitution being made to the victim of the bad check, as specified in §13-1809, Subsection B.*
 3. *Full payment of fees due under §13-1809.*
- F. For each check, monies received from a person pursuant to §13-1809 shall be applied first to satisfy restitution to the victim.*
- G. Fees collected under §13-1809 shall be deposited in the County treasury in a special fund to be administered by the County Attorney. The monies in the fund shall be used only for expenditures associated with the investigation, prosecution and deferred prosecution of offense pursuant to §13-1807.*

NOTICE LETTER

TO: _____

DATE: _____

You are, pursuant to law, notified that the check or instrument shown or described below, issued by you, has been dishonored:

Check number: _____	Check date: _____
Originating Institution, Bank or Other Drawee: _____ _____	
Amount: \$ _____ Payable to: _____ _____	
Reason for dishonor (marked on instrument): _____	

Pursuant to Arizona Law, you have twelve (12) days from receipt of this notice to pay or tender to the holder named below the full amount of the check or instrument, together with all reasonable costs and protest fees. Unless this amount is paid in full within the time specified above, the holder of the dishonored check or instrument may turn over it and all other available information relating to this incident to the County Attorney for criminal prosecution.

CHECK AMOUNT: \$ _____

BAD CHECK VICTIM'S SIGNATURE

FEE AMOUNT: \$ _____

BAD CHECK VICTIM'S NAME (PRINT)

TOTAL OWED: \$ _____

ADDRESS: _____

TELEPHONE NUMBER: _____



Brad Carlyon
Navajo County Attorney

BAD CHECK INFORMATION/SUBMITTAL FORM

DATE OF *CERTIFIED* NOTICE LETTER: _____

RESPONSE DUE DATE (17 DAYS FROM DATE OF NOTICE LETTER): _____

DATE REFERRED TO COUNTY ATTORNEY BAD CHECK PROGRAM: _____

VICTIM (You are the Victim): _____

Store#/Location: _____

Address: _____

PhoneNumber: _____

Contact Person Handling Bad Check Cases: _____

CHECK WRITER (This means the person who *actually* signed the check):

Name: _____

Address _____

City _____ State _____

Zip Code _____ Phone No. _____

Date check was received from Check Writer: _____

Address and City in which check was received: _____

Was the Check Postdated? Yes _____ No _____

CLERK RECEIVING BAD CHECK: _____

Can he/she identify the person who passed the check? _____

ATTACH ORIGINAL CHECK TO THIS FORM AND MAIL OR BRING TO:

Navajo County Attorney's Office Bad Check Program

Navajo County Governmental Complex

100 E. Carter Drive

P. O. Box 668

Holbrook, AZ 86025

(928) 524-4368

www.co.navajo.az.us

I AGREE NOT TO SOLICIT OR ACCEPT PAYMENT FROM THE ISSUER/PASSER OF THE CHECK WITHOUT AUTHORIZATION FROM THE NAVAJO COUNTY ATTORNEY'S OFFICE.

Date

Printed Name

Signature