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PROCEDURE FOR HANDLING WORTHLESS CHECKS

If a check is returned to you from the bank by reason of "insufficient funds", "account closed" or "no account", the following procedure should be followed:

- A. A letter must be mailed to the person who wrote the check (the letter should be similar in content to the attached form letter).
- B. If restitution is not made to you in the time period specified in the above-mentioned letter, the check and a copy of the letter should be forwarded to the Assistant District Attorney's Office.
- C. The attached worthless check questionnaire is to be completed. This information is required for drafting the criminal complaint and the prosecution of the case.
- D. Once you have turned the check over to the District Attorney's Office **DO NOT**, under any circumstances, accept any payment from the person. You must refer the matter to me, as there are normally additional costs that have already been assessed and must be collected by our office.
- E. If the person is present in the store and you have any questions regarding accepting restitution, please call the District Attorney's Office at (920) 834-6830.

IMPORTANT FACTORS REGARDING ISSUANCE OF WORTHLESS CHECKS

1. If the bank indicates possible forgery as the reason for returning the check, that check should be taken to the local police officials for investigation as this could constitute a felony. Under Wisconsin Statutes 943.24, the District Attorney's Office can only prosecute "insufficient funds" checks, "no account" checks, or "account closed" checks. Any check returned to you for any other reason including "payment stopped" checks, should be turned over to your collection agent or attorney.
2. Once the check is brought to the District Attorney's Office, the Assistant District Attorney is the one who will decide whether to prosecute or not to prosecute. Even if a person makes restitution to you, you **CANNOT** promise to withdraw or dismiss the charge. Full restitution is not a defense to a criminal charge. If, however, you accept partial restitution, you have turned the matter into an installment contract and no further criminal proceedings can be taken by the District Attorney's Office.

Remember that the District Attorney's Office in many cases has checks from fellow merchants on the same individual and preventing prosecution by accepting partial restitution can be detrimental to your fellow merchants. **NEVER** accept partial restitution without calling the District Attorney's Office **FIRST**.

3. **In order to successfully prosecute a person for issuing a worthless check, the person who accepted the worthless check must be able to identify the check and the individual cashing said check.** Insist that your employees, when accepting an out-of-state check, please also obtain that person's birth date.
4. Early referral is the most important factor in obtaining a successful prosecution. Checks **MUST BE** in the District Attorney's Office within 90 days after they are written.
5. The time and place of the crime of issuing a worthless check is where the check is **FIRST** delivered. Therefore, if you accept a two-party check the crime did not take place where you accepted it, but where the first party accepted the check. A good rule to follow is to not accept two-party checks.
6. Worthless checks for less than \$10.00 will not be prosecuted through this office because the cost of prosecution exceeds the value of the check. You may consider processing these through Small Claims Court.

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ASSISTANT DISTRICT ATTORNEY

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WORTHLESS CHECK INFORMATION

IN ORDER TO COMPLY WITH THE NOTICE REQUIREMENT OF WISCONSIN'S
WORTHLESS CHECK LAW, BEFORE WE CAN PROCESS YOUR CHECK WE NEED A
COPY OF AT LEAST ONE LETTER NOTIFYING THE PERSON ISSUING THE CHECK
OF ITS RETURN BY THE BANK UNPAID.

Please fill in this form as completely as possible.

Complainant (Individual or company holding bad check)

NAME _____ Telephone _____

Address _____
(Street) (City) (Zip) (Township)

CHECK

Payable to: _____ Amount \$ _____ Service Charge \$ _____

Check # _____ Date Cashed _____ Bank Drawn On _____

Date First Presented to Bank _____ How Often _____

Reason refused by Bank: NSF _____ Account Closed _____ Was check post dated _____

Was check for merchandise _____ Cash _____ Both _____ Explain _____

Was check issued at the same time merchandise or service was obtained? _____

If no, explain: _____

Was check given in payment of an account of debt? _____ Explain: _____

DEFENDANT (Person issuing and signing check)

Name of Person signing check _____ Telephone _____

Address _____

Did he/she personally cash check? _____ How identified _____

How was check received? In person (by whom) _____ Through the mail _____

If through the mail - when received _____ or by Personal Delivery _____

If personal delivery - when received and by whom _____

Had defendant made any payment on check? _____

PERSON ACCEPTING CHECK

Name _____ Position _____

Address _____ Telephone _____

Does he/she remember what the defendant looks like? _____ Know personally? _____

Did she/he agree to hold the check before presenting it to the bank? _____

If possible, the District Attorney's Office will obtain restitution for your check. However, it must be remembered, that this check is being presented to the District Attorney for CRIMINAL PROSECUTION, and FROM THIS POINT ON, ITS HANDLING IS FULLY WITHIN THE DISTRICT ATTORNEY'S DISCRETION. The undersigned agrees to cooperate fully in this prosecution, WILL NOT ACCEPT PAYMENT without the approval of the District Attorney's Office and certifies that the above facts are true.

Complainant's Signature _____ Complainant Firm Name _____ Date _____

SAMPLE

(YOUR LETTERHEAD GOES HERE)

Mr./Mrs./Ms.
(Address)
(Address)

Dear

On _____, you issued a check payable to
_____ in the amount of \$_____, drawn on
_____ which was not honored by the bank.
(Bank name)

This check is (indicate one choice) N.S.F./Account Closed/No Account.

Wisconsin Statutes 943.24 makes it a crime to issue a worthless check that you do/did not intend to pay. If you do not make full restitution for this check within five (5) days, it is presumed that you do/did not intent to pay it. Therefore, demand is hereby made of you to make full restitution to us for the above mentioned check within five (5) days of your receipt of this letter, by cash, money order or cashier's check. If restitution is not made within five (5) days, this check will be turned over to the Oconto County District Attorney's Office for criminal prosecution.

Sincerely,