

Office of the State Attorney 10th Judicial Circuit



WORTHLESS CHECK PROSECUTION



The Office of the State Attorney, 10th Judicial Circuit, prosecutes Worthless Checks and offers a Diversion Program for Worthless Check Offenders that can avoid resolution through the court system. The advantage of this program for merchants is that it increases the speed and rate of recovery.

The information given below answers many questions concerning worthless checks and what is needed to prosecute these cases.

What is a Worthless Check?

Under Florida law, any check returned from a bank stamped with any of the following is a Worthless Check:

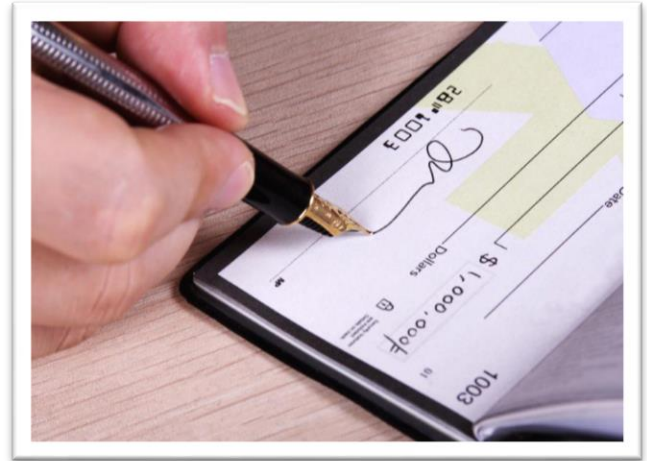
- NSF (Non-Sufficient Funds)
- Insufficient Funds
- No Such Account
- Account Not Found
- Account Closed
- Closed Account
- NSF Unless Otherwise Indicated



Worthless Checks may be subject to prosecution under Florida's criminal statutes. Checks returned "**Refer to Maker**" or "**Uncollected Funds**" may require additional investigation before being charged criminally.

Checks stamped "**Stop Payment**" may, in certain circumstances, be the subject of criminal charges, but you should be aware that Stop Payment Orders are not generally criminal and may have to be resolved in a Small Claims Court civil suit.

Checks returned with the stamp "**Unauthorized Drawer's Signature**" are generally not suitable for prosecution as worthless checks because they are probably forgeries committed by someone other than the owner of the checking account. Forgery does not fall under the Worthless Check Diversion Program and must be filed with the law enforcement agency in the jurisdiction where the check was uttered or forged.



Accepting a check: What to do and what NOT to do

You are never under any obligation to accept a check from someone for payment of goods or services. While checks are certainly a convenience, you may opt to ask for cash or certified checks or money orders.

In order for the State Attorney's Office to prosecute insufficient funds or account closed checks, it is necessary that the identification of the individual issuing the check be made by the taker of the check. Therefore, if you decide to accept checks, please follow these guidelines:

1. **Be sure you can positively identify the person** giving you or your employee the check. You should ask for some type of picture identification, either a driver license or ID card issued by a governmental agency. **Be wary of "ID Cards" that can be obtained through the mail or at flea markets.** Examine the ID carefully to make sure that it has not been altered in any way and to make sure that the person presenting the check is the person on the ID card.
2. If you personally know the check writer and **can identify** that person, you need only put the driver license number, state of issue, and date of birth on the back of the check and compare signatures. However, if you do not know the check writer personally and cannot identify the check writer at a later date, you should do the following:
 - a) Compare the picture and signature on the driver license to that of the check writer, making sure that the individual uttering the check is the individual on the driver license. If the check writer does not have a driver license, then you should ask for another type of picture identification or military identification.
 - b) Record the driver license or picture identification number and the state in which it was issued on the back of the check.
 - c) Obtain the following from the picture identification: Full Name, residence address, date of birth, sex, race, height, and driver license number. Also obtain the home phone number, place of employment and business phone from the individual. Enter all of the above information on the back of the check, except that which is printed on the face of the check.
 - d) Initial the check to indicate that you received it.

3. DO NOT accept checks that are post-dated (a check bearing a date in the future, i.e., a check written on January 1, 2003 should not be dated January 2, 2003) or checks with no date on them at all unless you are willing to take a chance, since post-dated checks cannot be prosecuted by the State Attorney's Office if they are dishonored.
4. DO NOT agree to hold a check for ANY length of time. If you do, you are that you knew the check was bad when you took it. Such checks cannot be prosecuted by the State Attorney's Office.
5. DO NOT accept third-party checks, since the person who wrote the check is not the giving it to you, and you may be accepting a forged or stolen check.

What information should be taken on the check?

Florida law specifies that you should ask for certain information about the check writer. Generally most of this information is already printed on the check. You or your employee should ask the writer if that information is correct and current. If there are differences between the information on the check and any ID that you asked for, you should ask for an explanation before you accept the check.

You may also record this information on a check-cashing card application that you keep on file, giving your customers a check-cashing card with a specific number that you or your employees will write on the checks instead of all the information listed below. It would still be a good idea, however, to ask for a picture ID even with the check-cashing card; this will cut down on the possibility of taking a forged or stolen check.

The following information about the check writer should be pre-printed or written on the check:

- ✓ **Name**
- ✓ **Race/Height**
- ✓ **Driver's License Number**
- ✓ **Place of Employment**
- ✓ **Home Address**
- ✓ **Employer's Telephone Number**
- ✓ **Home Telephone Number**
- ✓ **Social Security Number**
- ✓ **Date of Birth**

What should I do when I receive a worthless check?

1. Send the required fifteen-day statutory notice letter to the person who gave you the worthless check. This gives the person passing the bad check seven(7) days from the receipt of your letter a notice to pay you the face amount of the check, plus a **service charge** which should not exceed the following amounts:

Amount of Check	Fee per Check
\$50.00 or Less	\$25
\$50.01 - \$300.00	\$30
\$300.01 or More	\$40*
*Or an amount equal to 5% on the face Value of the Check, whichever is greater.	

Why Should a Registered or Certified Letter Be Sent?

- a) It generates restitution and allows you to collect service charges which should more than offset the cost of sending registered or certified mail.
 - b) It strengthens our prosecution case if the defendant goes to trial because it increases the presumption of guilt plus it gives us a physical piece of evidence to support your testimony as to the transaction.
 - c) The letter gives you immunity from civil liability under Florida Statute 832.07. Liability insurance coverage to protect you from civil suits for false arrest, malicious prosecution, or slander would cost you far more than costs of mailing registered or certified notices.
 - d)
2. **If the check is returned “NO ACCOUNT” or “ACCOUNT CLOSED”, you do not need to send a statutory notice letter.**
 3. Once you have either received the return receipt or the unclaimed letter and have waited the required seven days from the date the check writer would have received the letter, criminal prosecution may begin.
 4. **Filing Criminal Charges** - To file a criminal charge, go to the law enforcement agency which has jurisdiction over the location where the check was issued. The following documents must be presented when charges are filed on worthless checks:
 - a) The original check(s) and the original certified/registered mail receipt (green card) the notice, or the returned unopened envelope containing the notice.
 - b) Names of witnesses who know something about the check.
 - c) The complaint affidavit fully completed and notarized.
 - d) Contracts, receipts or other supporting documents.
 5. Do not delay filing your complaint after the seven days have passed or the certified has been returned. Promises made by the maker are, for the most part, of no value that the check itself.
 6. Do make sure that the check is stamped by the bank indicating the reason it was dishonored. **Without the stamp, prosecution is not possible.**

May I Ask to See a Credit Card?



You may ask to see a credit card as an indication of credit worthiness on the part of the check writer, but you may not write down the credit card number or expiration date, only the type of card and the check writer's name.

This does not prohibit you from requesting a credit card number and expiration date in lieu of a deposit to secure payment in the event of default, loss, damage or similar occurrence.

What are the penalties for passing a worthless check?

Worthless checks are either 1st-degree Misdemeanors or 3rd-degree Felonies under Florida law. A 1st-degree Misdemeanor can mean up to one year in a County Jail and a \$1,000 fine, while a 3rd-degree Felony can mean up to five years in a State Prison and a \$5,000 fine. Sentences may also include probation, payment of supervision costs (probationary fees), payment of restitution, merchant fees (based on the value of the check), community service work, and court costs.

Most first offenders are allowed to take advantage of the Worthless Check Diversion Program through the State Attorney's Office. For more information, or questions, contact the State Attorney's Office at (863)534-4800 and ask for the Worthless Check Division.

What happens if a worthless check cannot be prosecuted?

If, for some reason, a worthless check cannot be prosecuted by the State Attorney's Office, you may wish to pursue the matter in a Small Claims Court suit for breach of contract. You may wish to consult a private attorney before pursuing such a matter, as there are filing fees involved that you will have to pay to the Clerk of Court. However, treble damages, meaning three times the amount of the check, may be awarded to you by the Court after a trial; this is not an option available to the Court in criminal prosecution.