

DISHONORED CHECKS

It is the goal of the Sherburne County Sheriff's Office to investigate and pursue prosecution on complaints of N.S.F. and account closed checks. The necessary forms are provided free of charge in this packet.

1. The first step is to complete a notice and demand for payment of dishonored checks (Form #1). This notice along with a copy of Minnesota Statute 609.535 - Issuance of Dishonored Checks and a copy of Minnesota Statute 604.113 - Issuance of Worthless Check, need to be mailed to the person from whom you received the check at the address shown on the check. These documents can be sent by either of these two methods:
 - a) By certified mail, return receipt requested; or
 - b) By regular mail, supported by an affidavit of service (Form #2).

You need to maintain copies of all papers sent to the person from whom you received the check and receipts involved in this process.

2. If full payment is not received within five business days after the mailing, or if your letter is returned unclaimed, fill out dishonored check form (Form #3) and return the following items to the Sherburne County Sheriff's Office for investigation and possible prosecution:
 - a) The completed Form #3 (Be sure you have signed as complainant and dated this form).
 - b) A copy of the notice and demand for payment (Form #1).
 - c) The **ORIGINAL** check.
 - d) The **ORIGINAL** of the return receipt for certified mail.
OR
The **ORIGINAL** certified letter (if not claimed).
OR
The **ORIGINAL** affidavit of service (Form #2).

IMPORTANT THINGS TO REMEMBER

- A. The identity of the check passer is very important. Identification must be by state photo I.D. or picture driver's license. The only time this is not necessary is when the check passer is a personal friend of the employee. The employee should verify the person passing the check matches the picture on the I.D. and also write the date of birth of the passer on the check. The employee should then initial the check. The best method of verification is to have the employee check the I.D. then circle the driver's license number on the check if it matches. If the number is not present on the check or does not match,

the employee should write the number off of the I.D. onto the check. Any lesser means of identification negates the chances of prosecution.

- B. Form #1 must be addressed to the individual who actually passed the check, not a business entity. A business may be civilly liable for the amount of the check. However, we cannot criminally prosecute a business. Also on Form #3 the name of the customer must be an individual, not a business.
- C. By virtue of accepting partial or complete payment on any dishonored check or by means of making arrangements for any other repayment schedule, you may have limited your legal remedies under either or both the criminal and civil dishonored check statutes.
- D. We are not able to pursue prosecution on post-dated checks or a check given for past consideration (i.e. payment on an account), except a payroll check or a check issued to a fund for employee benefits.
- E. If Form #2 is used, your signature needs to be witnessed by a Notary Public
- F. Be sure Form #3 is completed as thoroughly as possible. Incomplete information may result in our inability to help you with your complaint.
- G. Any prosecutions are left totally to the discretion of the County Attorney's Office.
- H. The investigation and prosecution of a criminal complaint does not guarantee that you, the victim, will receive restitution for your financial loss. Only the court can issue an order for financial restitution only after a defendant is found guilty of the accused crime. This order for restitution would be at the discretion of the judge.
- I. If this complaint becomes a suspected forgery, in addition to the items listed in number 2 above, a copy of the affidavit of forgery signed by the account owner must be submitted with the above documentation.

If you need more forms or have any questions regarding dishonored checks,
please call the Sheriff's Office at
(763) 765-3500 or (800) 433-5245

or address mailings to:

Sherburne County Sheriff's Office
13880 Business Center Drive, Suite 100
Elk River, MN 55330

PROSECUTING DISHONORED CHECKS

The Sherburne County Attorney's Office cannot prosecute post-dated checks or checks given for past consideration (i.e. payment on an account). Minn. Statute 609.535, Subd. 5.

Before a criminal complaint is filed

If you accept partial or complete payment, accept a repayment schedule or otherwise extend credit to the issuer of a dishonored check, the County Attorney's Office will not prosecute.

After a criminal complaint is filed

You may accept payment on a dishonored check. The County Attorney's Office, however, will follow through with the criminal prosecution and will expect your cooperation.

* At any time when payment is made on a dishonored check, send a copy of the receipt to the law enforcement agency handling the case.

NOTICE AND DEMAND FOR PAYMENT OF DISHONORED CHECKS

DATE _____

TO: _____

_____, you are hereby notified that a check dated _____, drawn on the _____ (drawee bank), in the amount of \$ _____, bearing the signature of _____ (signer), has been refused because _____ (reason given by drawee bank).

Please make immediate payment. If payment is not made in full within five (5) business days after the mailing of this notice, this matter may be referred to the proper authorities for prosecution. The drawee (your bank) will then be authorized to release information relating to your account to the person you issued the check to, check holder, prosecuting authorities or law enforcement agencies, in compliance with MN State Statute 609.535. Attached hereto is a copy of MN State Statute 609.535.

Additionally, notice that a service charge of \$30 would be imposed for issuance of a dishonored check plus additional civil penalties for nonpayment after thirty (30) days pursuant to MN State Statute 604.113 was conspicuously displayed on the premises when the check was issued. Therefore, if the amount of the dishonored check **AND** service charge is not paid in full within thirty (30) days after the date this notice was mailed you will be liable for additional civil penalties set forth in MN State Statute 604.113. Attached hereto is a copy of MN State Statute 604.113

Remit payment in the amount of \$ _____ (check plus service charge) to:

Dated: _____

Sincerely,

State of Minnesota
County of Sherburne

_____, being duly sworn, states and deposes

as follows:

That the original of the attached was addressed to _____

_____ and placed in the U.S. mail on _____, 20__

Signature

Subscribed and sworn to before me this _____ day of _____, 20__

Notary Public _____

My commission expires _____, 20__

DISHONORED CHECK FORM

Name of Employee Filing Form _____ Position _____

Name of Firm or Party Receiving Dishonored Check _____

Address of Firm Receiving Dishonored Check _____ Phone _____

Name of Employee Who Received the Check _____

Address of Employee Who Received the Check _____ Phone _____

Address Where the Employee Received the Check _____

Did This Employee Identify the Person Who Passed This Check at the Time of the Transaction? YES NO (Circle One)

Method of Identification (Photo D/L, Photo ID, Personal Knowledge, etc.) _____

Does the Employee Remember the Transaction? _____

Date on the Check _____ Date of the Transaction _____ Check # _____

What was Received in Exchange for the Check? _____

(609.535, subd. 5. Exceptions – this section does not apply to a post dated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.)

Date the Check was Actually Received _____ Value of Service or Merchandise _____

Amount of the Check _____ Did Employee Compare ID Signature with Check Signature? _____

Did Employee Mark or Identify Check in Any Way? _____ If so, how _____

Name & Address of Check Passer _____ Phone _____

Drivers License # _____ Date of Birth _____

Has the Passer Been Notified by Certified Mail or regular mail with attached form #2? _____

Date Demand Letter Sent _____ Result _____ Who Sent Letter _____

OTHER CONTACTS WITH CHECK PASSER

(Please note any statements or admission made by the check passer where they acknowledged having given you the check)

DATE	METHOD OF CONTACT (Phone, In Person, Etc.)	PERSON CONTACTED	RESPONSE
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____

DATE _____

Complainant's Signature

By prosecuting this customer, you are charging him/her with a crime. The court may or may not order restitution, fines or prison. You have a right to proceed in civil court to collect the check if you desire.

609.535 ISSUANCE OF DISHONORED CHECKS

SUBDIVISION 1 – DEFINITIONS – For the purpose of this section, the following terms have the meanings given them.

- (a) “Check” means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.
- (b) “Credit” means an arrangement or understanding with the drawee for payment of a check.

SUBDIVISION 2 – ACTS CONSTITUTING – Whoever issues a check which, at the time of issuance, the issuer intends shall not be paid, is guilty of issuing a dishonored check and may be sentenced as provided in subdivision 2a. In addition, restitution may be ordered by the court.

SUBDIVISION 2a -- PENALTIES –

(a) A person who is convicted of issuing a dishonored check under subdivision 2 may be sentenced as follows: (1) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is more than 500; (2) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is more than \$250 but not more than \$500; or (3) to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is not more than \$250.

(b) In a prosecution under this subdivision, the value of dishonored checks issued by the defendant in violation of this subdivision within any six-month period may be aggregated and the defendant charged accordingly in applying this section. When two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the dishonored checks was issued for all of the offenses aggregated under this paragraph.

SUBDIVISION 3 – PROOF OF INTENT -- Any of the following is evidence sufficient to sustain a finding that the person at the time the person issued the check intended it should not be paid:

- (1) Proof that, at the time of issuance, the issuer did not have an account with the drawee;
- (2) Proof that, at the time of issuance, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within five business days after mailing of notice of nonpayment or dishonor as provided in this subdivision; or
- (3) Proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within five business days after mailing of notice of nonpayment or dishonor as provided in this subdivision.

Notice of nonpayment or dishonor that includes a citation to and a description of the penalties in this section shall be sent by the payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed on the check. Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim certified or regular mail notice is not a defense that notice was not received.

The notice may state that unless the check is paid in full within five business days after mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or may refer the matter to proper authorities for prosecution under this section.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

SUBDIVISION 4 – PROOF OF LACK OF FUNDS OR CREDIT – If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

SUBDIVISION 5 – EXCEPTIONS – This section does not apply to a post-dated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.

SUBDIVISION 6 – RELEASE OF ACCOUNT INFORMATION TO LAW ENFORCEMENT AUTHORITIES – A drawee shall release the information specified below to any state, county, or local law enforcement or prosecuting authority which certifies in writing that it is investigating or prosecuting a complaint against the drawer under this section or section 609.52, subdivision 2, clause (3) (a), and that 15 days have elapsed since the mailing of the notice of dishonor required by subdivisions 3 and 8. This subdivision applies to the following information relating to the drawer's account:

- (1) Documents relating to the opening of the account by the drawer and to the closing of the account;
- (2) Notices regarding non-sufficient funds, overdrafts, and the dishonor of any check drawn on the account within a period of six months of the date of request;
- (3) Periodic statements mailed to the drawer by the drawee for the periods immediately prior to, during, and subsequent to the issuance of any check which is the subject of the investigation or prosecution; or
- (4) The last known home and business addresses and telephone numbers of the drawer.

The drawee shall release all of the information described in clauses (1) to (4) that it possesses within 10 days after receipt of a request conforming to all of the provisions of this subdivision. The drawee may not impose a fee for furnishing this information to law enforcement or prosecuting authorities.

A drawee is not liable in a criminal or civil proceeding for releasing information in accordance with this subdivision.

SUBDIVISION 7 – RELEASE OF ACCOUNT INFORMATION TO PAYEE OR HOLDER –

(a) A drawee shall release the information specified in paragraph (b), clauses (1) to (3) to the payee or holder of a check that has been dishonored who makes a written request for this information and states in writing that the check has been dishonored and that 30 days have elapsed since the mailing of the notice described in subdivision 8 and who accompanies this request with a copy of the dishonored check and a copy of the notice of dishonor.

The requesting payee or holder shall notify the drawee immediately to cancel this request if payment is made before the drawee has released this information.

(b) This subdivision applies to the following information relating to the drawer's account:

- (1) Whether at the time the check was issued or presented for payment the drawer had sufficient funds or credit with the drawee, and whether at that time the account was open, closed, or restricted for any reason and the date it was closed or restricted;
- (2) The last known home address and telephone number of the drawer. The drawee may not release the address or telephone number of the place of employment of the drawer unless the drawer is a business entity or the place of employment is the home; and
- (3) A statement as to whether the aggregated value of dishonored checks attributable to the drawer within six months before or after the date of the dishonored check exceeds \$250; for purposes of this clause, a check is not dishonored if payment was not made pursuant to a stop payment order.

The drawee shall release all of the information described in clauses (1) to (3) that it possesses within 10 days after receipt of a request conforming to all of the provisions of this subdivision. The drawee may require the person requesting the information to pay the reasonable costs, not to exceed 15 cents per page, of reproducing and mailing the requested information.

(c) A drawee is not liable in a criminal or civil proceeding for releasing information in accordance with this subdivision.

SUBDIVISION 8 – NOTICE – The provisions of subdivision 6 and 7 are not applicable unless the notice to the maker or drawer required by subdivision 3 states that if the check is not paid in full within five business days after mailing of the notice, the drawee will be authorized to release information relating to the account to the payee or holder of the check and may also release this information to law enforcement or prosecuting authorities.