

# Filing a Worthless Check Complaint

## You can help us prosecute criminals who pass worthless checks

Bad checks cost you money. Filing a worthless check sworn complaint affidavit with the State Attorney's Office may enable you to collect restitution and service fees - at **no charge** to you - and at the same time assist the State Attorney's Office in punishing those who threaten the viability of our business community.

You can help. You can do something. Know that the giving of a worthless check is a criminal offense and, as a recipient of checks, you are a potential victim. Nevertheless, your State Attorney's Office is powerless in prosecuting these cases and bringing these criminals to justice without the understanding and cooperation of the business community. In order to combat the bad check passers and curb the circulation of bad checks, you and your employees must be knowledgeable of Florida's worthless check statutes and the procedures for accepting checks set forth within these laws.

**You and your employees** are our first line of defense against worthless check offenders. Become familiar with the information in this brochure so you will have the required information available to file a sworn complaint affidavit with our office. Help us so that we can successfully prosecute those who purposely set out to defraud you. Help us with our endeavors to collect restitution for you. And, join us in our fight to rid our community of our number one economic pestilence, worthless checks.

## Identifying the person giving you the check

According to Chapter 832 of the Florida Statutes, the person accepting the check must obtain the following information from the check presenter **and** must also write it on the check itself:

- Full Name
- Home Address
- Home Phone Number
- Place of Employment
- Sex
- Date of Birth
- Height
- Driver's License Number or State Identification number, specifying the state of issuance (Optional )

Further, for identification purposes:

**When a driver's license is used for identification**, the person accepting the check must verify that the photograph on that driver's license matches the person presenting the check and that the signature on the driver's license is similar to the signature on the check. Note: The acceptance of an out-of-state driver's license is discouraged. Recommend to your customers that they obtain a Florida identification card.

**When a check-cashing card is used for identification**, all the required identification information listed above, along with the signature of the person using the check-cashing card, must be on file with the business. The number of the check-cashing card must be recorded on the check.

**When a check is received in the mail or from a representative of the checkwriter**, the recipient of the check must have an original contract, order or request for services for which the check purports to pay, bearing the signature of the check signer - unless all of the above required information, along with the signature of the checkwriter, is on file with the business.

**The check should be signed in the presence of the person accepting the check**, and the person accepting the check should initial it or print their employee number on the check to acknowledge this fact and that proper identifying information was taken.

## **Establishing Intent to Defraud**

The reason for dishonoring payment of the check [usually "NSF" (indicating nonsufficient funds) or "Account Closed"] **must** be stamped on the check by the bank or there must be an official bank notice attached to the check explaining the bank's refusal of payment.

Florida law also requires that when a check is returned NSF a notice of such must be sent certified or registered mail, evidenced by return receipt, or by first class mail, evidenced by an affidavit of service of mail, to the checkwriter at the address printed on the check or given at the time the check was written. Such notice will be deemed sufficient, whether it is returned undelivered or not.

This legal notice gives the maker of the check 15 days from the date of the notice to pay restitution and service charges. If payment is not timely made, the notice further provides that the holder of the bad check may turn the matter over to the state attorney for criminal prosecution. Notice is not required if the check is initially returned by the bank unpaid because the account was closed or there was no account found. The dishonored check stamped with the bank's reason for nonpayment and a copy of the required legal statutory notice, if the check was returned NSF, are important evidence of the maker's knowledge of insufficient funds and intent to defraud.

For your convenience, we have provided links below to the forms needed in order to turn the worthless check into our office for prosecution.

Please cooperate with us by filing affidavits as soon as possible after the worthless check is returned to you. Our experience has been that the sooner we receive the affidavit, the better chance we have of collecting restitution for you.

## **We cannot prosecute cases where:**

- Checks are postdated or stale
- Checks are not completely filled out or are illegible
- Checks are not deposited within a reasonable period of time (generally 30 days)
- Checks have machine-stamped signatures
- Checks only have one signature where two are required
- You agreed to hold the check before depositing it **regardless** of how briefly it is held
- The reason for dishonor is not stamped on the check by the bank or acknowledged officially by the bank in writing
- You knew or had good reason to believe that the checkwriters funds at the bank at the time the check was given were insufficient to pay the check

## **Where to get information**

Click on the link below for our packet of information detailing the procedures to be followed in filing a worthless check complaint, or if you have any questions, you may contact us at any of our office locations. You can find our addresses, phone numbers and hours [here](#).

You will need [Adobe Acrobat Reader DC](#). After downloading, print the application and complete it with a pen. This form cannot be filled out on your computer. You can mail or deliver completed affidavit to any of our offices.

Click [here](#) for Filing Your Complaint step-by-step instructions.

- Sworn Complaint for Worthless Check [here](#)
- Statutory Notice [here](#)
- Affidavit of 1<sup>st</sup> Class Mail Service [here](#)