

# WORTHLESS CHECK DIVERSION PROGRAM

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Course Materials

Jack Campbell  
STATE ATTORNEY

## **Introduction**

The Worthless Check Diversion Program was created by the Legislature of the State of Florida in order to give people, like yourself, an alternative to being criminally prosecuted for passing a worthless bank check to a person or business.

The United State Chamber of Commerce estimated that some two million worthless checks are passed per day in the United States; while we do not know exactly how many of those are here in the State of Florida, we do know that in Leon County, which is part of the Second Judicial Circuit, approximately 13,000 complaints are filed annually for prosecution. Those complaints represent nearly \$1,500,00.00 in losses to merchants and private individuals and do not reflect all the bad checks issued in Leon County each year, so the losses are probably much higher than what we actually see. Those losses are felt by all of us, since banks, credit unions and savings banks must raise their fees to cover their losses caused by worthless checks, as do merchants and small business owners.

The State Attorney's Office offers the Diversion Program for the following reasons:

- As an education in Florida Law
- As a reminder to maintain good financial records
- As a warning to those who think passing bad checks is an easy way to get something for nothing or who think that bad checks are not taken seriously by the criminal justice system in Florida.

You will be watching a short recorded presentation which will, together with these materials, give you the foundation to get your checking account in order to give you some ideas about how to live without one in the future. Please pay attention to all the materials you have been given and think about how you may use them to prevent problems in the future; this course will do you no good at all if you do not change something about your finances, your recordkeeping, or your attitudes about money after today.

We also would urge you to seek help from your financial institution, family, friends, church or a professional counseling organization such as Consumer Credit Counseling Service if you need any further aid in maintaining a clean record from now on.

## **PART 1: EXCUSES**

It is not uncommon for people to make excuses for why their checks bounced to a merchant; while many of them are sincere in their belief that they did not break the law, the fact is that most of the reasons given in Court are not valid under Florida law. You will find below a list of the most commonly-cited excuses and a short explanation of why those excuses will not work as a defense to the charge of Passing a Worthless bank Check (PWBC) in a trial before a judge or jury.

**“I didn’t know I was writing a bad check”** –Many people believe that if they were not aware of the condition of their checking account when they wrote the check that they can not be found guilty of a criminal charge.

You must understand, first of all, that a check is merely a piece of paper with instructions written on it to a financial institution; it is not money, it just represents money that is supposed to be in your account when the check is issued. In other words, a check is a fancy IOU, given to others for merchandise or services. A check also represents the existence of a contract, which is basically a relationship between two parties, both of which have rights and both of which have responsibilities.

When you issue a check to someone for merchandise or services, that person or merchant is taking a check from you on faith, since they do not have the ability to check the condition of your checking account when you issue the check. That is why, under Florida law, you, as the check writer, have the responsibility for knowing how much money is in your account before you issue a check, since the other party to the contract is giving up something in exchange for your check on the belief that the money is in your account to cover the purchase you made with the check.

Today, many financial institutions give you a number of ways to be aware of the condition of your checking account before you go out to write checks; monthly bank statements, Internet access to your account, Touch-Tone calling services that allow you to discover which checks were paid as recently as the last business day as well as your current balance and ATM machines where you may use your ATM or Debit Card to find out your current balance (less any checks the bank has not yet received, of course). You may also go to your bank, credit union, or savings bank and get updated information from a teller or someone in Customer Assistance when you present proper identification.

In certain circumstances, it may be possible that you did not know the condition of your account; financial institutions do make errors from time to time, which is why you should maintain good records of your own and not rely

solely on their records for your finances. However, once you become aware of a bank error, you have the responsibility to make your financial institution aware of any error you may have discovered, whether it makes one of your checks bounce or not, and any checks that you may have written that are dishonored due to a bank error must still be paid back to the merchant, as you may still be held liable in a civil court for paying an outstanding balance.

**“No one sent me notice of a returned check or called to tell me about it; if I’d only known I would have taken care of it before this”**—You should understand that the law in Florida does not require a merchant to contact you before turning a check over to the State Attorney’s Office for prosecution; they are the victim who is now out some merchandise or service due to a bad check. In short, they do not have to write you, call you or send someone out to your house or place of employment to tell you about a bad check.

Florida law does give the victim of a worthless check the option to send a letter by certified or registered mail to the address of the check writer, giving that person fifteen days to pay the check plus a \$25.00, \$30.00, \$40.00, or 5% service charge (whichever is greater), along with any bank fees they may have been charged by their bank for dishonoring that check. The sending of that letter is optional, but does give prosecutors a slightly better case; so many merchants and other victims of bad checks are strongly encouraged to send out those notices; many do.

- Are you held responsible if the certified notice is not signed by you but by a family member who forgets to give it to you? Yes.
- What if you are not home when the post office employee tries to deliver it, do you still have to pay the service charge and does the State get a slightly stronger case? Yes.
- What if you no longer reside at the address on your check? You’ll still be responsible and will still have to pay the service charge.
- What if your address on the check cashing application you gave to the merchant is a very old one and you forgot to give them your new address when you gave them a check; will you still have to pay a service charge if they sent the notice to the address on your application? Yes.

**“I am joint on an account with a spouse, roommate, business partner, other family member, or significant other; I try to keep good records of my checks, but the other person is a deadbeat who writes checks and never tells me what is going on. Why are you prosecuting me when I tried the best I could but got tripped up by a joint account?”** –Simply speaking, Florida law does not recognize the “joint account” defense. When you write a check, you are supposed to know what the account balance is, regardless of what anyone

else who signs on the account has done; anything else would be unfair to the merchant or person who accepted your check on faith. How many people would be willing to accept a check from someone who, while they were writing out a check for merchandise or services, was complaining about what a deadbeat their spouse, roommate, business partner, or significant other was and that they were never sure how much money was in their account? Probably very few, and the few that did would not be in business for very long.

Again, remember that your financial institution has a number of tools available to you to help you know the balance of your account, statements, Touch-Tone telephone information systems, internet websites, and ATM/Debit Card inquires at an ATM Machine. Use those tools on a frequent basis, along with talking to the other person(s) joint on the account with you about their financial habits. Do not try to hide behind someone else, as you are still responsible for any check that has your signature on the bottom right hand corner.

**“I was expecting some money to come in to cover the check”** –Under Florida law, if you issue a check when the money is not present in the account, you have broken the law. Too many people try to “beat the check” to the bank after one is issued; sometimes it works, many times it does not. The safest route is to not issue a check unless you are sure the money in there to cover it.

Sometimes people who participate in this Program complain that the money was in their account when the check was written, but that they had a family emergency that they felt took precedence (or, a social occasion, car repair, or... well you get the idea) and they took the money out after the fact for that emergency. Unfortunately, taking money out of the account after the fact makes a very strong case for the prosecution in a PWBC trial; once you write the check, the money no longer belongs to you. Under extremely rare circumstances you might be within your legal rights to Stop Payment on a check, but you should think long and hard before you do, as it is increasingly expensive to do so and may still leave you liable both in civil court action and, in some cases, criminal court as well.

**“They (the merchant or person whom you gave a check) did not run my check through a second time; if they had, it would have been good”** –The merchant does not have to run your check a second time, according to Florida law, since the check was supposed to be good a first time. Many merchants run a check through twice as a favor to their customers, but many have stopped that practice because of the increasing costs of having the check bounce a second time as well as the increasing number of checks that bounce twice. Never, never, never assume that a merchant will redeposit a check;

many have made that assumption and not gone to the merchant to make the check good after getting a notice, only to get arrested later for passing a worthless bank check after the merchant returns it.

**“I did not write the check with the criminal intent to defraud the victim”** – This is the “I’m not a crook” excuse that many people use when charged with bad checks; it is based on the mistaken belief that a prosecutor must prove that they are somehow evil or that they meant to deprive the victim of merchandise or services with a bad check. However, the prosecutor only has to prove that you knew, or had the ability to know, the balance in your account when the check was issued; he or she does not need to prove you intended or thought about defrauding a victim of bad checks of their goods or services. This is why you need to work at maintaining good records in your checking account at all times, so you will not bounce a check due to negligence; the penalties for bouncing a check due to negligence are the same as for bouncing one with intent to defraud someone of their goods or services.

**“I’ve made restitution by paying for the check and any service charges; why are you still prosecuting me?”** –Because, while paying for a check is certainly good, right, moral and the ethical thing to do, it is not a defense to the charge of passing a worthless bank check. The crime occurred when the check was issued with insufficient funds or when it was issued on a closed account and simply paying the check back to the victim is no more a defense to the charge of Passing a Worthless Bank Check (PWBC) than would a robber giving the money back after knocking over the corner bank in a heist. Paying the money back may have an impact on the sentence you receive in the future for any worthless bank checks issued after completion of this Program, but it is not a guarantee that charges will be dismissed.

Please keep in mind that PWBC is probably the most commonly committed crime in the State of Florida. It costs untold millions to merchants and private individuals each year, resulting in higher prices and higher taxes to support law enforcement’s efforts to recover the losses and punish the guilty.

## **PART II: HOW TO MAINTAIN A CHECKING ACCOUNT**

In this section we will examine how to maintain a checking account by simply using a few “rules of thumb” that can be easily followed. If you think you need more help, contact your financial institution, a trusted family member or friend, or seek professional help through an agency like Consumer Credit Counseling Service in cases of severe financial distress.

**Write everything down!** Of the errors that cause problems in checking account, the failure to write down checks, service charges, check printing charges, ATM card withdrawals and automatic debits (for mortgage payments, credit cards insurance drafts, and the like) is the most common. Get in the habit of writing down all transactions as soon as you have completed them; do not wait them on the weekend or when you “get around to it”, since all too often it is too late by then. After you write down a check, ATM transaction, deposit, or the like, remember to double-check your addition or subtraction, as people frequently say they erred in figuring out the new balance. Make sure you do not add a deposit in twice, since that will obviously give you more money on paper than you really have on account.

**Use your monthly bank statement.** All too often people never look at their statement after they receive it, missing bank errors, service charges, ATM fees, checks that they received from someone else that may have been dishonored, as well as their own errors. The statement is the bank’s version of what happened in your account since the date of the last statement and is itself generally ten to fourteen days old, so looking at the line that says “Your current balance is...” will do you more harm than good since that balance is accurate.

Open the statement within 24 hours of receiving it and examine it for any obvious errors. Banks do make errors occasionally and it is your responsibility to report an error made at your financial institution within thirty days of receipt of the statement; if you fail to report an error, you may give up some important legal rights.

Sit down at a table with your bank statement, your check book, a piece of paper, a pencil, and an inexpensive electronic calculator (many are now available for less than \$10.00) within a day or so of receiving the statement. You are now going to reconcile the statement; that means you check your records against those of the financial institution’s in order to come to a true balance.

Update your checkbooks with any fees or costs that the bank has assessed you and add any interest you may have earned.

Starting with the top of the statement, use the pencil to check off each check listed as being paid on the statement against your records in your checkbook; if you wrote it and the bank lists it on the statement, then it has cleared or posted. Place a checkmark both by the number of the check on the statement and in your checkbook. If a check does not appear on your statement, then it has not cleared and you need to make a list of all check amounts that have not cleared on the piece of paper. ATM withdrawals and automatic drafts will be handled in the same manner.

Repeat the procedure with your deposits, remembering to write down in a separate list from the checks and deposit you have made that does not show up on your statement.

Add up the uncleared checks with the calculator and write down the total on your paper; then add the uncleared deposits together and write that amount down on your paper separate from the total of the uncleared checks.

Find the bank's balance for your account on the date the statement was printed ("Your current balance is...", enter that amount into your calculator or write it down on the paper to do it the old-fashioned way), add the total of the uncleared deposits, then subtract the total of the uncleared checks. If everything has been done correctly, you should get a total that is the same, or very close to the total that is on the bottom line of your checkbook; if it is not within a few pennies, do it again, do it backwards, or just do it until you find your error. Do not quit before you find your mistake; all too often people tell themselves that the mistake will even out next month (i.e., "I was short this month, I'll probably be over next month, so it'll all even out in the end.") and experience has shown that checking accounts rarely balance themselves. You must keep working at it until you either get the right answer or you find your mistake; failing either of those, you should go to your financial institution and get some help.

You should get your last month's bank statement out and flip one of the pages over; all statements have the same procedure for reconciling a checking account printed on the back of each page. The form you'll find on the back of the page may aid you in verifying the balance of your account.

Some additional tips for handling your checking account properly:

Be aware of the fees your financial institution charges for its services.

Know your institution's policy about the availability of deposits - personal checks, out-of-town or out-of-state checks and cash deposited during the afternoon may not be available for use by you immediately.

Don't write so many checks. Writing checks for everything you purchase is expensive, since you have to reorder checks often, and the more checks you write greatly increases the likelihood that you will make an error in your record keeping. Set a limit, say \$5.00 or \$10.00, under which you will not write a check and for which you will use cash instead. You'll find yourself saving money and making your monthly task of reconciling your account much easier, since there will be fewer checks to account for. As an example, a college student wrote a check at a grocery store for \$0.21 to purchase a piece of candy; the check bounced and by the time he finished paying for his bank fee,

the fee to the grocery store (they had sent him a certified notice) and the Diversion Program fee, the piece of candy cost him \$52.21!

Open a savings account at the same financial institution as your checking account and have an agreement with them that, in the unlikely event of an overdraft after your attendance at this Program, they will transfer money from the savings account first to prevent the check from being dishonored. Be prepared for your institution to collect a fee from you if they have to make such a transfer (unless you are keeping a good eye on your account and make the transfer yourself by telephone, internet or by going in and seeing a teller) and know that your institution will probably not allow such a transfer by them to occur more than three times within a quarter (ninety days) without closing out your account.

While ATM cards and Debit cards are very convenient, you need to remember to write down all transaction sin your checkbook as soon as you can; keep the receipts from the cashier or the ATM machine until you can update your records, whether you make a withdrawal, a deposit or a purchase. Never write your Personal Identification Number (PIN) on your ATM or Debit card or on a piece of paper in your wallet or purse; additionally, never make your PIN the same as your telephone number, street address, or date of birth, because if your wallet or purse is stolen, the thief will have access to all that information and will use it to take the money from your account.

If you aren't any good at maintaining records, let someone else in your family handle the records like your spouse, parent or child.

### **PART III: ALTERNATIVES TO CHECKING ACCOUNTS**

Not everyone can handle a checking account successfully; if you know that you cannot handle a checking account, you should close it out as soon as possible and not continue to write checks. There are a number of viable alternatives that you should consider and use in order to get your financial house in order.

First, you should make sure that all checks written on your account have been paid. Leave some money in your checking account for a few weeks along with double-checking your records and the merchants you usually shop with to insure that all checks have been paid or otherwise accounted for. Destroy all old checks by burning, shredding, or cutting them so that no one else can use them; do not leave the old checks sitting around your house, or sitting in a care, and do not throw them in a trash can or dumpster, as the incidence of stolen checks being used by roommates, family members, transients and the like has increased dramatically the

last few years and your credit history can be adversely affected by someone using your name improperly by writing checks that should have been disposed of.

Second, you may wish to consider using a savings account in conjunction with an ATM card or more likely a Debit card. A Debit card looks like a credit card, as it is generally issued by VISA or MasterCard, and will be accepted by any merchant who accepts such a credit card, but the money will be taken out (“debited”) from your savings account. You will have access to your money 24 hours a day practically anywhere in North America; the fees for the use of a Debit card will generally be small and less than the cost of reordering checks. Of course, you will have to keep good records, as you would not want to run out of money at an inopportune time (like a week or two before payday), but for many people this will be the best way of living without a checking account. Please remember that you will have to be careful not to write your PIN on your card or anywhere in a wallet or purse that a thief could use to take money from your account and you should remember to keep the receipts from any purchase.

Third, you may decide to use a savings account and make your purchases using cash from withdrawals or by the purchase of money orders or certified checks. While this is a little bit more trouble than using a Debit card or ATM card, it will force you to have a more hands-on approach to your money by having to see a teller or make withdrawals at an ATM machine where you could check your balance before taking any money. You should never send cash through the mail for a purchase or a bill payment, as it can easily be lost or stolen in transit; always use money orders or certified checks for those payments and keep the carbon copy until you know the money order or certified check was received by the other party; if it is lost in the mail you can use the carbon copy to get a refund or to see who cashed it.

If all else fails, use cash only; just remember to keep it in a secure place.

#### **PART IV: WHAT HAPPENS IF YOU BOUNCE ANOTHER CHECK?**

If you decide to maintain a checking account after completion of the Diversion Program you must make every effort to keep good records and take the precautions we have discussed in the sections before this to keep any checks from being dishonored by your financial institution. Should a check bounce due to a bank error or by something outside of your control, you should keep all receipts and letters documenting the problems as well as paying the check as soon as possible. However, if the check is dishonored due to your error or intent, please keep in mind the following:

Worthless bank checks are either a 1<sup>st</sup> degree Misdemeanor, punishable by up to one year in jail and/or a \$1,000.00 fine or a 3<sup>rd</sup> degree Felony, punishable by up to five years in State Prison and/or a \$5,000.00 fine. While you might not receive the maximum sentence, you should be aware that you will face the possibility of jail time as well as the assessment of fines and costs, payment of restitution to the victim, the requirement to complete Community Service or a labor program, as well as the possible loss of your ability to maintain a checking account while you are on probation.

If you are convicted of either a Misdemeanor or Felony worthless bank check charge, you will have a criminal record that will likely impact your ability to find and maintain meaningful employment. A Felony conviction will mean that you lose the right to vote or to maintain a firearm and will likely follow you for the rest of your life.

### **PART V: CLOSING COMMENTS**

We hope that you will take all the steps necessary to maintain your checking account in good order or that you will take one of the alternatives discussed above should you chose not to keep a checking account in the future. Please remember that the responsibility for handling your personal finances is not in the hands of the merchant or the bank, but is rather in yours. We strongly suggest that you make whatever adjustments in your financial habits that are necessary to maintain a good balance and good records for your checking account. Experience in prosecuting worthless check cases has indicated that those who make no changes in their handling of their checking account after completion of the Diversion Program will likely return to Court with another worthless check within two years, facing jail time as well as substantial financial penalties.