



County Attorney
Worthless Check Policy and Procedure

Did you know that turning over “hot checks” to the county attorney for prosecution can be an effective way of recovering your money? We will prosecute “hot checks” but there are a few things you, the Merchant, need to know for us to do our job.

Kansas statutes require that when a merchant receives a worthless check, they must notify the check writer by certified mail, return receipt requested at his/her last known address. It is the policy of the County Attorney’s Office that we will prosecute any check marked by the bank as “insufficient funds” or “account closed” but only after the Written Notice form has been sent to the check writer by the merchant.

Once the merchant mails the certified letter, the check writer has seven (7) days from the time he/she receives the letter to pay the merchant. Once the seven days has expired, please bring the following items to our office:

1. The original check
2. Proof of certified mailing of Written Notice form (either the green card or the returned letter)
3. A copy of the Written Notice
4. A completed Affidavit for Prosecution, unsigned.
5. A Worthless Check Receipt with merchant and check writer information completed, to be signed by the person at the County Attorney’s office accepting the check.

**If you have more than one check from the same person, you will need to complete and Affidavit for each check.

**On the Worthless Check Receipt, multiple checks by the same check writer may be listed on same receipt.

If the certified letter is returned from the Post Office without delivery having been made, you can immediately bring the above mentioned items to the office and charges will be filed immediately.

After you bring in the above documents, the complaint will be prepared. The office will call you when the complaint is ready for you to sign. The complaint and affidavit are then filed with the District Court.

*PLEASE NOTE: This office is unable to pursue criminal charges on any check where partial payment has been accepted. Any negotiations for additional time need to be made before the check is delivered to our office. If a merchant has accepted partial payment, a petition will need to be filed in civil court.

A merchant may assess a service charge not to exceed \$30.00; however, the amount must be posted in a conspicuous location. The service charge needs to be identified on the

Written Notice form when mailed to the check writer. Once a check is delivered to our office, a \$30.00 service charge will be requested. This amount is set by Kansas statutes.

Also, **it is absolutely necessary that a driver's license number, date of birth, or social security number be written on the check**, in order for the Sheriff's Office to actively pursue an individual on a summons or warrant. Please instruct your employees to obtain at least one of the listed identifiers. Without that crucial information, **THIS OFFICE WILL BE UNABLE TO PURSUE THE CASE.**

Please find enclosed all the forms referred to above. Feel free to make photocopies as you need them. If you have any questions, please contact the County Attorney's Office at 785-460-4580.

Kevin N. Berens
County Attorney

AFFIDAVIT FOR PROSECUTION

STATE OF KANSAS)
) SS:
COUNTY OF THOMAS)

COMES NOW THE UNDERSIGNED and deposes and says:

That on _____, the check, a copy of which is attached hereto as "Exhibit A," was given to _____, by a person who was personally known as _____, who in return for said check received merchandise and/or cash and that said check was *not* given for a pre-existing debt. Further, the check was personally accepted by _____.

FURTHER, affiant states as follows:

1. That at the time the check was made, uttered, and passed, the maker or passer did not indicate by words or actions that he/she did not have deposit in or credit with the bank for the payment of the check.
2. That we were not requested to hold the check.
3. That the maker or passer of said check did not borrow any money and give the check as security for the debt.
4. That the check was not post dated.
5. That the check was submitted to the bank for payment during the usual course of business and was not held.
6. That on _____, we sent by certified mail, a letter addressed to the address as it appears on the check advising the maker of the failure of the check to clear the bank and warned that if said check was not paid within seven (7) days, it would be submitted to the Thomas County Attorney for prosecution.

The check, a copy of which is attached hereto as "Exhibit A" is submitted to the Thomas County Attorney's office for the sole purpose of prosecution, with the full understanding that the prosecution will not be dismissed because restitution has been made. I am aware that by signing this affidavit and accompanying complaint, criminal prosecutions will be initiated by the State of Kansas, by and through the Thomas County Attorney, and not for the collection of any funds due or for the enforcement of any civil remedies otherwise available to affiant or corporation, business or agency that affiant represents.

Further, I am aware of the provisions of K.S.A. 21-3709, causing an unlawful prosecution of a worthless check is a Class A Misdemeanor, punishable by not more than one

year in County Jail and/or a fine not to exceed \$2,500.00, and the costs of the unlawful prosecution. Affiant hereby states that he/she understands that at the filing of this affidavit, knowing that one or more of the above listed conditions did not exist at the time said check was accepted constitutes an unlawful prosecution of a worthless check.

FURTHER AFFLIANT SAITH NOT.

TITLE

SUBSCRIBED AND SWORN to before me on this ____ day of _____, 2011.

Notary Public

(Seal)

WRITTEN NOTICE

YOU ARE HEREBY NOTIFIED that your check(s) written on the _____ day of _____, 20____, made payable to the order of _____, in the amount of \$_____, plus service charges in the amount of \$_____, being a total of \$_____, written on _____ Bank of _____, has been returned as

- _____ Insufficient Funds
- _____ No Account
- _____ Account Closed

This letter is to notify you that under the laws of the State of Kansas, you have seven (7) days after this notice is deposited as certified mail, return receipt requested in the United States mail to reimburse said debt directly to the undersigned business or person, or said check will be handed over to the Thomas County Attorney for the purpose of criminal prosecution.

By: _____

Title: _____

NOTE: This notice must be deposited as certified mail, return receipt requested, in the United States mail, addressed to the drawer of said check at his/her address as it appears on said check or at the last known address.

Thomas County Attorney
Worthless Check Receipt

Received From: _____ Of: _____

Checks:

Drawer	Bank	Date	Amount

Received By: _____ Date: _____

Attention Merchant: Once you have turned an original insufficient check over to the Thomas County Attorney, do not accept payment from the check writer. Direct them to our office. If charges have not been filed, we will accept the payment and send it directly to you. If charges have been filed, we will direct the check writer to appear before the judge on his/her court date. When you receive full payment from the Clerk of the District Clerk or the County Attorney's Office for the check/s above, fill out below and return to the Thomas County Attorney Office, 300 N Court, Colby, KS 67701. Thank you.

I do hereby state that restitution was received in full from the Thomas County District Court Clerk or the Thomas County Attorney's Office on the ____ day of _____ 20 ____.

Total Received (include \$30.00 service charge): \$ _____

Received by: _____