

Livingston County



MIKE REGNIER

STATE'S ATTORNEY

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GENERAL OFFICE
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Dear Merchant:

Every merchant who accepts checks has been forced to deal with the problem of "bad checks". While often times a "bounced" or bad check may be the result of poor bookkeeping or carelessness on the part of the purchaser, unfortunately it can be the result of an intent to defraud by a purchaser who knows their account is closed or that it has insufficient funds. The purchaser in the latter scenario is committing the criminal offense of "Deceptive Practices".

In order to combat the problem, the State's Attorney's Office is distributing the following guidelines so that merchants can work with our office in discouraging the bad check writers before they strike and prosecuting those who insist on writing bad checks. Please review these guidelines closely as they are crucial to a successful prosecution.

I. Private Collection Efforts

When a check is returned by the bank, please make reasonable collection efforts yourself. We suggest that you send a registered letter to the maker of the check, informing them that the check was returned by their bank and remains unpaid. A copy of the letter should be retained by you in the event a criminal prosecution is pursued.

When private collection fails, bring the check to the State's Attorney's Office, along with all other relevant information related to the transaction.

II. Criminal prosecution by the State's Attorney's Office

Upon receipt of a bad check, it is the State's Attorney's intent to review the matter and decide based on the sufficiency of the evidence if a criminal complaint should be filed. Please note that a simple failure to pay a bad check will not support a criminal charge.

Our office must be able to prove: 1) an intent to defraud (i.e. that the writer of the check knew that the check would not be paid), 2) the identity of the person who signed and presented the check, and 3) that the subject matter of the purchase is property, labor or service and has been documented as such. If the State's Attorney's Office determines that any of these elements cannot be established, criminal charges cannot be proven.

To best enable use to evaluate the case, the attached form (the "Bad Check Information Sheet") must be completed for each check you present to our office. The following items are of particular importance and consistently where the most problems occur.

A. Identity of the writer of the check

One of the greatest difficulties in deceptive practices prosecutions is assuring that someone from the merchant's business can identify who signed and delivered the check, and what property, labor or service they received. This identification will need to occur by the witness, in court, under oath. In many instances, it is very difficult if not impossible for an employee to remember the specifics of a particular transaction, especially in large businesses where an employee may accept dozens of checks in a single day. However, there is a procedure which should enable an employee to identify the check writer in court.

1. The employee accepting the check should ask to see the check writer's driver's license and should carefully compare the photo on the license with the person who is presenting the check.
2. The employee should carefully, in their own handwriting, copy the driver's license number onto the check and place their initials next to the number. This will establish that an actual comparison of face and license photo was made. A preprinted driver's license number will not suffice. An actual comparison must be made.
3. The employee should also obtain from the check writer his social security number and write that on the check in a similar fashion as described above for the driver's license number.

B. Intent to Defraud

Insufficient Funds: In order to establish an intent to defraud, insufficient fraud checks must be presented to the bank twice and marked by the bank, "presented twice". The second presentation must be at least 7 days after the first.

Closed Account: Closed accounts checks need only be presented once to help establish an intent to defraud.

C. Current Address

To insure the ability of the State's Attorney's Office to obtain a current address, as well as establish identity, it is imperative that a driver's license number and a social security number be recorded when the check is accepted by the merchant.

D. Person receiving the bad check

The merchant or the merchants' employee who accepted the bad check must be identified on the "bad check information sheet" since that person would have to testify to the transaction at any trial on the matter

If a criminal conviction is secured, we will ask the Court to order restitution as part of the sentence against the person. If a conviction is not secured, we cannot guarantee any type of restitution. Our goal is to reduce this type of criminal action through strict enforcement and prosecution, and to assist businesses and individuals in creating a best practices way of accepting checks to avoid this occurring. Your cooperation is greatly appreciated. If you have any questions concerning this program, please contact the State's Attorney's Office.

Best regards,

MIKE REGNIER
STATE'S ATTORNEY