

LINCOLN COUNTY BAD CHECK POLICY

The following information should be read carefully and shared with each employee in your business. This information is provided in an effort to try to reduce the number of bad checks in Lincoln County. Remember that prevention is your best protection.

PREVENTION/PROTECTION

1. OBTAIN ACCURATE INFORMATION:
 - a. Full name, physical and mailing address, and phone number. (Remember: no one lives in a PO Box)
 - b. Driver's license number and birth date.
 - c. SEE a valid driver's license, preferably a Montana driver's license or a picture ID. Write down the number. Do not allow the check writer to do it for you.
 - d. Maintain a check cashing card and check out the information given you.
 - e. Witness the signing of the check and write your initials on the check.

2. NEVER ACCEPT:
 - a. Post-dated checks.
 - b. Out-of-state checks.
 - c. Two party checks.
 - d. Counter checks.
 - e. Checks having no or low digit numbers.
 - f. Checks not signed in your presence.
 - g. Checks in excess of the amount of purchase, unless your organization sets a limit.
 - h. Checks to be held until later.
 - i. Checks in restitution for bad checks.

PROSECUTION

1. When a check is returned for NSF:
 - a. It is preferred that you send written notice to the writer of the check in order to establish prima facie evidence of the writer's intent to defraud you. The notice should be, but is not required, to be sent by certified mail, restricted delivery, return receipt. See NOTIFICATION OF RETURNED CHECK form. If the letter is returned in the mail, please provide it to this office with any other documentation that you have.

 - b. If restitution is not received by you within five days, fill out the BAD CHECK INFORMATION WORKSHEET and send or bring the original check, BAD CHECK INFORMATION WORKSHEET, and any other documentation to the County Attorney's Office immediately. Keep a copy of your letter and a copy of the check for your reference and for use in court, if needed.

2. When a check is returned marked, "FORGERY" or "IRREGULAR SIGNATURE" it should be taken immediately to the Lincoln County Sheriff's Department.

3. If a check writer wishes to make restitution on a bad check after the check is sent to the County Attorney's Office:

- a. Restitution should be made directly to the County Attorney's Office. Do not accept payment for checks delivered to our office. If you do so it is possible the individual may be arrested even though he made restitution. This could expose you to a malicious prosecution suit.
- b. Restitution will be sent to the businesses on a regular basis. The businesses should remind the check writer to call the County Attorney's Office for instructions on payment of bad checks.
- c. It is the responsibility of the check writer to pick up the bad check from the County Attorney's Office.
- d. We collect 10% of the value of the checks or \$10.00, whichever is larger (for each check) directly from the check writer. This will not reduce the restitution you receive.

4. The County Attorney's Office:

- a. Cannot prosecute the following kinds of checks:
 1. Checks that have no identification
 2. Post-dated checks
 3. Payment stopped checks unless there were no funds in the bank when the check was issued
 4. Checks for less than \$20.00
 5. Checks over 90 days old
 6. Two-party checks
 7. Out-of-state checks for under \$500.00 if the check writer is not a Lincoln County resident.
 8. Checks for gambling debts
 9. We will not prosecute if the business and the check writer have agreed to a repayment plan.
 10. We will not prosecute forgeries until law enforcement fully investigates the case.
- b. We cannot collect anything other than the face amount of the check nor can we collect interest.
- c. Businesses will occasionally hold checks until they see the check writer's name in the paper. Often, it is too late to do anything about it at that time.

- d. Checks without identification are difficult to prosecute because the County Attorney's office cannot obtain arrest warrants from the Courts unless the writer's birth date and/or driver's license number are on the check issued.
 - e. We cannot collect a check unless we know who in your business accepted the check. We may not be able to prosecute or convict a bad check writer if no one from the business can identify the check writer or if no photo identification was taken or the person accepting the check is unwilling or unavailable to appear and testify in court.
5. If it is determined there is probable cause to do so, the County Attorney's Office will:
- a. Mail up to one letter to each check writer in an attempt to obtain restitution prior to prosecution.
 - b. File a criminal complaint for misdemeanor, felony or felony common scheme bad checks based on your complaint. A summons or warrant will be issued.

The law requires the County Attorney to prosecute bad checks delivered to us. We will defer prosecution on those check writers who make restitution upon the sending of a notice. We may issue a warrant of arrest for those check writers who do not respond to our notice, who write checks on a closed account, or who write checks in a felony amount.

The County Attorney exercises normal prosecutorial discretion, including who will or will not be prosecuted. We may not drop the charges at your request once charges are filed absent extraordinary circumstances warranting the dismissal.

Complaints filed in the Justice of the Peace Court for misdemeanor checks will be considered for dismissal after one (1) year of the date of filing. If the Sheriff is unable to locate the check writer for arrest in Montana within one year, it is unlikely that the check writer will be found.

Please remember there are also civil remedies available to all victims of bad check writers.

If you have any questions, feel free to call the County Attorney's Office at (406) 293-2717.

MARCIA BORIS
Lincoln County Attorney

BAD CHECK INFORMATION WORKSHEET

YOUR BUSINESS NAME: _____

MAILING ADDRESS: _____

CHECK ACCEPTED BY: _____
(Include name, address and phone number of person accepting the check.)

WAS PHOTO IDENTIFICATION TAKEN AT THE TIME THE CHECK WAS ACCEPTED? YES _____ NO _____
If so, state its type (Driver's license, ID Card, etc., and number.) If not, why?

Can the person accepting the check identify the check writer? Yes _____ No _____
Was the check handed to you by someone other than the check writer? Yes _____ No _____

CHECK WRITER: _____
(Please include any useful information you have about the person who wrote the check, including physical description, known whereabouts, etc.)

| CHECK NO. | DATE | AMOUNT | CHECK NO. | DATE | AMOUNT |
|-----------|-------|--------|-----------|-------|--------|
| _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |

Attach the original checks here.

HAS INDIVIDUAL BEEN MAILED A NOTIFICATION OF RETURNED CHECK? YES _____ NO _____
Date of Notification Letter _____ Please attach a copy of notification letter. If the letter was returned to you in the mail, please attach the original, including the envelope that it was mailed in.

Has check writer been notified by phone? YES _____ NO _____ Phone Number and Date: _____

I affirmatively state that the check was accepted with the express or implied understanding that it was good. The check was not post dated. The payee was not asked and did not agree to hold the check until a later date. The check writer did not state or imply that the check would not be honored at the bank. The check is not a two party check. I have not received any payment toward restitution of the check.

I understand that criminal charges may be filed as a result of my signing this complaint and that the check writer named above may be arrested. I further agree not to accept payment once the check has been given to the county attorney for prosecution.

Printed Name of Person Making Complaint

Signature and Title

Phone Number

Please submit the completed form and documentation to the Lincoln County Attorney's Office, 512 California Avenue, Libby, MT 59923. If you have questions please call (406) 293-2717

NOTIFICATION OF RETURNED CHECK

TO: CHECK WRITER NAME AND ADDRESS: _____

CHECKS RETURNED

| DATE | BANK DRAWN ON | AMOUNT | SURCHARGE |
|-------|---------------|--------|-----------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

The check we cashed for you has been returned to us unpaid.

Under the law, you have five days from the date of receipt of this notice to make full payment of the full amount of the check(s) plus service charge(s) of \$_____. You must also pay the cost of mailing this letter in the amount of \$_____. After that, criminal prosecution can be initiated by the holder of the check.

THE TOTAL AMOUNT OWING WITHIN FIVE DAYS OF RECEIPT OF THIS NOTICE IS \$_____

The cashing of checks is a service that we are happy to extend to our patrons, but understandably, this privilege can be continued only as long as it is not abused.

May we please hear from you soon?

DATE MAILED: _____

Merchant Name and Address

Phone

THE MONTANA BAD CHECK LAW PROVIDES THE FOLLOWING PENALTIES UPON CONVICTION:

- (a) A person convicted of issuing a bad check not exceeding \$500 in value shall be fined an amount not to exceed \$500. A person convicted of a second offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be imprisoned in the county jail for a term of not less than 5 days or more than 1 year and may be fined an amount not to exceed \$500.
- (b) A person convicted of issuing a bad check that exceeds \$500 in value and does not exceed \$5,000 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000.
- (c) A person convicted of issuing a bad check exceeding \$5,000 in value or as part of a common scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years.