

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 \$1,500.00 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.

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Lincoln County Attorney