

Greenlee County Attorney

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TO OUR FRIENDS IN THE BUSINESS COMMUNITY:

As a member of the business community, you and I share a common concern about those in our community who cheat you and your other loyal customers by intentionally writing bad checks.

At one time or another many people have inadvertently overspent or have made a mistake in balancing their checkbook and end up 'bouncing' a check. While this is clearly an inconvenience to your business and an embarrassment to the bad check writer, the person who makes such an honest mistake will usually make every effort to make things right with the merchant. The criminal justice system, and more specifically, my office, is not primarily concerned with people who make honest mistakes and deal with their errors in a forthright manner.

The bad check writers that concern us are those who deliberately and intentionally write bad checks they know they cannot cover and ignore the merchant's attempts to collect. These are the people that cost you extra time, money and headaches when trying to recover these losses. They are also the people who help drive up prices for all of the other honest customers.

The Greenlee County Attorney's Office continues to offer a program to assist in collecting bad checks. In order to be effective in this effort, the County Attorney's Office needs your cooperation in following the procedures outlined in this booklet. Because bad check cases are criminal cases, our office must be able to prove the bad check writer's criminal intent beyond a reasonable doubt. By following the rules and procedures outlined in this Handbook, you become our first and best means of gathering the evidence necessary to prosecute the criminal bad check writer.

I appreciate the service you offer our small community through your business. Your efforts add to the quality of life we all enjoy here. My office also appreciates the efforts you take to ensure that this program continues to be effective. If there is anything my staff can do to assist you in understanding or applying this program, please do not hesitate to contact my office. Together we can make our community a better place to live and do business.

Sincerely,

Jeremy Ford
Greenlee County Attorney

Introduction

This Bad Check Handbook has been written specifically to help recipients of checks to minimize their losses due to bad checks. It explains specific procedures to use when you accept checks that will reduce the number of returned checks. It describes the specific procedures you are to use when requesting a bad check charge against someone who will not pay you for a returned check. It also explains other information about the services that are available to you through the Bad Check Program of the Greenlee County Attorney.

The prime objective is to crack down on bad check writing and help each person who experiences a bad check loss to recover the money that belongs him/her.

There will be an opportunity for most offenders to resolve the problem by paying restitution along with a collection fee. The prosecution-based approach means that the County Attorney's Office will stand behind each bad check recipient and endeavor to secure what is rightfully theirs. If the check writer does not respond to the recipient, they will have to respond to the County Attorney or be prosecuted. The law makes the issuing of a bad check a class one misdemeanor offense, punishable by a fine of up to \$2,500.00 and/or up to six (6) months imprisonment in the County jail. Basically, if a person does not respond within twelve (12) days to your initial warning that the returned check be paid off, it will then be directed for prosecution through the County Attorney's Office.

This is a tough approach, but this is a tough problem. In the past, victims of this crime have had few resources upon which to call to solve the matter. When the procedures in this Handbook are followed, the desired results should occur.

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When You Receive a Check

To safeguard against taking a bad check and as a **prerequisite to** the service of the **Bad Check Program (BCP)**, be certain to do the following:

A. LOOK AT THE CHECK

(See also Appendix A: Steps to Follow When Accepting a Check)

John Dough	No. 102
123 First Street	
Clifton, AZ 85533	_____ 20 _____ ⁹¹⁻² ₁₂₂₁
Pay to the Order of _____	\$ _____
	_____ Dollars

Morenci Bank (018)
PO Box 999
Morenci, AZ 85540

For _____

1. DOES IT HAVE A LOW CHECK NUMBER OR NO PRINTED CHECK NUMBER?

About 90% of bad checks are drawn on accounts less than one year old. If check numbers are handwritten or are lower than 125, exercise caution.

2. IS THE DATE ON THE CHECK ACCURATE?

This eliminates the possibility of receiving post-dated checks (those dated in the future). That a check was post-dated is one of the defenses under the new law.

3. VERIFY THAT IT IS NOT FORGED.

(See also Appendix B: How to Spot Forged Checks)

- a. Arizona banks have Federal Reserve District numbers of "11" or "12", so check the first two digits of (1) the nine-digit series at the lower left of the check and (2) the denominator of the fraction at the upper right. If the check names an Arizona bank, but the two-digit number is not "11" or "12", you may have a forged check.

- b. Special magnetic ink is used for automated check sorters. It has a dull finish. Check the numbers on the lower right of the check. If they shine or reflect light, there may be a forgery.
- c. You will feel perforation on at least one edge of all legitimate checks (except for government checks printed on computer card stock). Most forgers use a regular paper cutter, leaving all four sides smooth.

4. **DO THE WORD AMOUNT AND THE NUMBER AMOUNT MATCH?**

A check which is for \$16.25" should say in words: "Sixteen and twenty five/100 dollars" or "Sixteen and 25/100 dollars."

5. **DO THE AMOUNTS APPEAR TO HAVE BEEN ALTERED?**

Check the numerals and the words to see if they appear to be consistent with the other writing, if there is crowding, and if there is any contrast in ink color or density. Any inconsistencies may suggest an alteration.

6. **DOES IT APPEAR THAT THE NAME(S) OF THE PAYEE(S) HAS BEEN CHANGED?**

If the color, density or writing of the name appears different, there may have been an alteration. If a check appears to be made payable to two or more payees in the alternative (e.g. "AB or CD"), and the second name appears different in color, density or writing from the first, there may have been an alteration.

B. ALWAYS DEMAND IDENTIFICATION

1. **PRIMARY IDENTIFICATION is an ARIZONA DRIVER'S LICENSE**

- a. An Arizona Driver's License should be used as identification in all cases, even when a bank guarantee card is presented.
- b. Compare name and address on license to those on check.
- c. Compare signature on license to that on check.
- d. Compare photograph on license to person passing check.
- e. Make sure driver's license has not expired. Do not accept checks with expired identification.

2. **SECONDARY IDENTIFICATION**

- a. Military identification
- b. Credit card with a name matching the one on the driver's license.

- c. Social Security cards are not appropriate I.D.

3. PURPOSE OF REQUIRING IDENTIFICATION DOCUMENTS

- a. To minimize the chance of receiving a bad check.
- b. A driver's license number written on the check allows us to obtain a copy of the license which contains a photograph. A date of birth also helps. The driver's license provides the photo, a hand-writing sample, and description of the check writer. All of this is needed for successful prosecution.

C. RECORD ALL INFORMATION ON THE FRONT OF THE CHECK

During the check clearing process, many banks place inker stamps on the back of the check which could cover up your I.D. entries. Moreover, federal banking regulations require all I.D. information to be on the face.

1. YOUR NAME, INITIALS, OR EMPLOYEE I.D. NUMBER AS RECEIVER OF THE CHECK

- a. A witness is required to successfully prosecute a criminal case. The witness must be the person who accepted the check. Be certain the clerk's identity (and branch location) can be determined from the face of the check by that person in your company who must fill out cover sheets to mail to our office.
- b. We must return the check if you do not provide us with this information.

2. THE DRIVER'S LICENSE NUMBER, BIRTH DATE, HOME ADDRESS AND TELEPHONE NUMBER

(Unless already imprinted on the front of the check.)

3. ANY OTHER IDENTIFYING NUMBERS OR INFORMATION

This would include things such as name(s) and number(s) from credit card(s), vehicle license plate numbers, etc.

D. IF YOU STILL HAVE DOUBTS ABOUT THE CHECK, *DON'T ACCEPT IT.*

- 1. You are not required by law to accept checks.
- 2. You may lose the sale, but you won't lose the item.
- 3. **REMEMBER:** You are testing to see if the **check** is good, not the person passing it. The passer may appear to be reliable, but you are concerned about the check.

What To Do With A Bad Check

A. PREPARING TO HANDLE BAD CHECKS

1. **ESTABLISH A STORE POLICY** to ensure that *all* steps outlined under the section “WHEN YOU RECEIVE A CHECK” are being followed.
2. **PREPRINT REQUIRED NOTICE OF DISHONORED CHECK ON YOUR LETTERHEAD** (See Page 12)
3. **MAINTAIN A SUPPLY OF NEEDED FORMS:**
 - a. Notice of Dishonored Check (Page 12)
 - b. Bad Check Sheet (Page 13)

B. WHEN YOU RECEIVE A BAD CHECK

1. **PREPARE A BAD CHECK SHEET.** Be sure to include the date the Dishonored Check Letter is sent and what the date will be in seventeen (17) days. The number “17” is used because the law assumes that the bad check writer has 5 days to receive the letter and provides 12 days to respond. Keep the Bad Check Sheet and check in an alphabetical file.
2. **Prepare the NOTICE OF DISHONORED CHECK LETTER** and cause it to be served on the issuer/passers. The Dishonored Check Letter must be sent to the PERSON who issued/passed the check. The Letter must be delivered by certified mail, return receipt requested. It is required that the responsible person receive notice. You should print or type “ADDRESS CORRECTION REQUESTED” on the envelope in the event the addressee has moved. *Do not change the language in the Letter.* This language is required by law. (File a copy with the Bad Check Sheet.)
3. **COMPLETE A CONTROL CARD** or control calendar

You will need some time control system so that you know when the 17th day is approaching and/or has been reached. That is the purpose of the CONTROL CARD or CONTROL CALENDAR system.

- a. CONTROL CARD system:

Obtain file folders (or index cards) labeled “1st”, “2nd”, etc., through “31st” of the month. Prepare Control Cards which contain the check writer’s name, address, phone number, the check number(s) and the date the Dishonored Check Letter was sent. File the Control Cards in the folder under the date 17 days after the letter was sent. (This system is the most accurate and useful, as you will see in “4^f” below.)

b. **CONTROL CALENDAR**

Obtain a large calendar with date spaces sufficiently large to hold several names and first initials for each date. In the date 17 days from the day the Dishonored Check Letter was sent, write the last name and first initial of the check writer.

4. **AS INDIVIDUALS RETURN TO PAY THEIR CHECKS**, do the following:

- a. Pull the alphabetical file which contains the copy of Notice of Dishonored Check Letter, Check and Bad Check Sheet.
- b. Pull the Control Card or cross the name off the Control Calendar, depending on which system you use.
- c. **ACCEPT ONLY CASH, MONEY ORDERS OR CASHIER'S CHECKS!**
- d. Be certain to collect your reasonable costs fee, as well.
- e. Return the checks to the individual, if paid off completely.
- f. If you use the CONTROL CARD system, you may either destroy the card, or mark it "paid" and file it alphabetically in a "RESOLVED CHECKS" file. This will allow you to detect those people who continue to write bad checks to you.

5. **EACH DAY, PULL THE CONTROL CARD DATE FOLDER OR EXAMINE THE CONTROL CALENDAR FOR YESTERDAY'S DATE.**

Those Control Cards (or Control Calendar entries) remaining represent checks that have not been paid.

6. **NEXT, PULL THE ALPHABETICAL FILE CONTAINING THE NOTICE OF DISHONORED CHECK LETTER, CHECK AND BAD CHECK SHEETS** for the unpaid checks which were due the preceding day. Decide which ones you wish to refer to the County Attorney Bad Check Program.

7. **AS TO EACH AND EVERY CHECK** you wish to submit to the County Attorney, do the following:

- a. **BE CERTAIN ALL ITEMS ON BAD CHECK SHEET ARE COMPLETED**
- b. **IS THE FULL NAME, WORK ADDRESS AND TELEPHONE NUMBER OF THE PERSON WHO RECEIVED THE CHECK ON THE BAD CHECK SHEET? Do **not** send an item without this information. We must know who this witness is and how to reach this witness.**

8. **DO NOT HOLD ONTO BAD CHECKS ANY LONGER THAN NECESSARY**

Turn bad checks into the County Attorney's Office timely. The older the bad check is, the more difficult it is to collect.

9. **PLACE THE FOLLOWING IN A LARGE MAILING ENVELOPE:**

1. Check; (The original check(s) must be sent, not a copy)
2. Bad Check Sheet
3. Copy of Notice of Dishonored Check Letter
4. Green Return Receipt card from Post Office, showing check writer received the Dishonored Check Letter (or the returned Envelope, showing check writer refused the letter).

10. **MAIL PACKET TO:**

Greenlee County Attorney
PO Box 1717
Clifton, AZ 85533

or, deliver to the County Attorney's Office in the Courthouse. Any questions can be directed to the Bad Check Program Director at 865-4108.

Additional Information

A. ONCE YOU HAVE FILED A BAD CHECK WITH THE COUNTY ATTORNEY BAD CHECK PROGRAM:

1. DO NOT ACCEPT RESTITUTION FOR THE CHECK FROM ANYONE EXCEPT THE COUNTY ATTORNEY

By Arizona law, all monies for such checks must be collected by the Bad Check Program.

2. IF YOU DO ACCEPT RESTITUTION FROM ANYONE OTHER THAN THE COUNTY ATTORNEY:

- a. You are undermining the deterrent effect of the Bad Check Program, which must be maintained.
- b. You will be liable for a collection fee and the Bad Check Program will not accept or collect your bad checks in the future.

3. YOU DO NOT COLLECT THE FEE FOR A RETURNED CHECK
However, the full restitution will be paid to you if collection is successful.

B. RESTITUTION MONIES WILL BE HANDLED AS FOLLOWS:

1. WHEN A BAD CHECK WRITER PAYS RESTITUTION, the BCP will forward payment to the victim.

2. A COVER LETTER WILL BE MAILED TO THE VICTIM WITH THE CHECK with the following information:

- a. The name of the Bad Check writer
- b. The bad check number

C. CHECKS THAT CANNOT BE RECOVERED

If, after all notices have been sent, complaint has been issued and is unable to be served, and additional detective work has been unable to yield results, you will be given the option of having the bad check returned to you so that you may charge it as a loss for tax purposes if you choose to do so.

D. CIVIL JUDGMENTS

If you have obtained a civil judgement, the check cannot be processed by this office. Do not send such checks to the Bad Check Program.

Matters Not Handled by the Greenlee County Attorney Bad Check Program

1. Two-party checks
2. Warrants and checks issued by a government agency. (Government immunity from suits)
3. No post-dated checks, post-dated from date of receipt /acceptance.
4. Credit card or debit card slips (these are not checks).
5. Checks drawn upon a bank located in another state (this state cannot expediently compel production of bank records from such a bank)
6. Checks where the issuer/passer is located in another state (legal and financial impediments to extradition for a misdemeanor offense).
7. Checks issued by a debtor to:
 - a. a credit adjustment company he/she has retained, or
 - b. a collection agency retained by his/her creditors, for transmission of funds to his/her creditors.
8. Checks which the holder has first given to any private collection agency for action.
9. Checks redeemed by a guarantor.
10. "Stop Payment" checks.
11. Checks received for collection only, whether or not discounted(excluded by statute).
12. Checks issued/passed in another county or state and not introduced into Greenlee County by conduct of the issuer/passer (the crime occurred in the other locale).
13. Checks issued in matters which constitute civil disputes.
14. Checks presented by a holder who has previously accepted payment from a check writer after submitting said check to this program for process.
15. Checks where the payee has been expressly notified that the writer did not have on deposit sufficient funds to ensure payment (statutory defense).
16. Dual-signature checks (not to be confused with checks written on joint accounts).
17. Checks where the insufficiency of funds resulted from an adjustment to the account by the credit institution without notice to the check writer (statutory defense).
18. Checks written more than six months prior to submission to the Program may be rejected because of insufficient time to process within the statute of limitations, or difficulty of locating witnesses.

Most of the above may be pursued civilly.
You are advised to seek private legal counsel.

What Becomes of the Bad Check Writer

The maximum penalty for each bad check offense is six months in jail and/or a \$2,500 fine; a statutory collection fee; a merchant's protest fee, and restitution of up to twice the amount of the check or \$50, whichever is greater.

As soon as the County Attorney Bad Check Program receives your packet containing the bad checks, a letter is sent to the bad check writer indicating the check has been turned over to the County Attorney, lists the amount due, including the Co. Attorney's fees, and gives a deadline in which to respond. A determination is made whether the person will be offered the diversion option or be prosecuted.

A bad check writer who responds to the County Attorney's letter and is eligible for diversion may pay the entire amount of the restitution, merchant's protest fee and statutory collection fee to the BCP and charges will be dropped or not charged.

If it is determined that the person is not eligible for the diversion program due to previous arrests, previous bad check charges, other pending criminal charges, an excessively large check, strong evidence of intent to defraud, or some other valid reason, he/she will be prosecuted. A Complaint will be drafted by the County Attorney's office and sent to you to file in the appropriate Justice of the Peace Court. Please file these Complaints as soon as possible. We cannot proceed further in our attempts to collect if you do not file the Complaint in the JP Court.

If the bad check writer does not respond to the County Attorney's letter, a Complaint is prepared for filing by the merchant. If your case should go to trial, subpoenas will be issued for the individual who originally accepted the bad check for your business.

Any necessary warrants will be served, defendants will be arrested, and every attempt will be made to collect all restitution monies and deal appropriately with the offender.

This approach has been used in many other locations and the results have been very good. The occurrence of bad checks declined greatly, the collection rate went up, and repeat offenders virtually eliminated.

The Legal Authority

The authority to operate this program was given to County Attorneys during the 1984 Legislative Session. HB 2246 amended §13-1801 of Arizona Revised Statutes and added §§ 13-1807, 13-1808, 13-1809 and 13-1810.

Section 13-1807. **Issuing a bad check; violation; classification.**

- A. A person commits issuing a bad check if he issues or passes a check knowing that the person does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check as well as all other checks outstanding at the time of issuance.
- B. Any of the following is a defense to prosecution under this section:
 - 1. The payee or holder knows or has been expressly notified before the drawing of the check or has reason to believe that the drawer did not have on deposit or to the drawee's credit with the drawee sufficient funds to ensure payment on its presentation.
 - 2. The check is post-dated and sufficient funds are on deposit with the drawee on such later date for the payment in full of the check.
 - 3. Insufficiency of funds results from adjustment to the person's account by the credit institution without notice to the person.
- C. Issuing a bad check is a class 1 misdemeanor.

(Sections 13-1809 and 13-1810 describe the collection process and the diversion option.)

Section 13-1809. **Jurisdiction; restitution; fees; deferred prosecution.**

- A. The county attorney may prosecute any violation of section 13-1807. If the defendant is alleged to have committed multiple violations of this section within the same county, the county attorney may file a complaint charging all of the violations that have not previously been filed in the justice of the peace precinct in which the greatest number of violations are alleged to have occurred.
- B. A person charged with an offense under this chapter may make restitution for the bad checks. Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office. Restitution shall include at a minimum the face amount of the check. The fact that restitution to the party injured is made and that any cost of filing with the County Attorney are paid is a mitigating factor in any imposition of punishment for any violation of this chapter. On sentencing, the court may require any person convicted under this chapter to make restitution in an amount not to exceed twice the amount of the dishonored check or fifty dollars, whichever is greater, together with all applicable costs and fees. This is in addition to any other punishment imposed under this chapter.
- C. A County Attorney may collect a fee if the county attorney's office collects and processes a check if the check is issued or passed in a manner which makes the issuance or passing an offense under Statutes 13-1802, 13-1807 or 13-2310, or has been forged under Statute 13-2002.
- D. The County Attorney may collect the fee from any person who is a party to an offense as described in this section.
- E. The amount of the fee for each check shall not exceed:
 - 1. Fifty (50) dollars if the face amount of the check does not exceed one hundred (100) dollars.
 - 2. Seventy-five (75) dollars if the face amount of the check is greater than one hundred (100) but does not exceed three hundred (300) dollars.
 - 3. One hundred (100) dollars if the face amount of the check is greater than three hundred (300) dollars but does not exceed one thousand (1,000) dollars.

4. Fifteen percent (15%) of the face amount of the check if the check is greater than one thousand (1,000) dollars.
- F. If the person from whom the fee is collected was a party to the offense of forgery under section 13-2002 and the offense was committed by altering the face amount of the check, the face amount as altered governs for the purpose of determining the amount of the fee prescribed in subsection E of this section.

Section 13-1810. Deferred prosecution of bad check cases.

- A. Each County Attorney may create within his office a deferred prosecution program for bad check cases.
- B. The County Attorney may refer a bad check case to the bad check deferred prosecution program. This chapter does not limit the power of the County Attorney to prosecute bad check complaints.
- C. On receipt of a bad check case, the County Attorney shall determine if the case is one which is appropriate to be referred to the bad check deferred prosecution program. In determining whether to refer a case to the bad check deferred prosecution program, the County Attorney shall consider the following guidelines:
 1. The amount of the bad check.
 2. If there is a prior criminal record of the defendant.
 3. The number of bad check complaints against the defendant previously received by the County Attorney.
 4. Whether or not there are other bad check complaints currently pending against the defendant.
 5. The strength of the evidence of intent to defraud the victim.
- D. On referral of a complaint to the bad check deferred prosecution program a notice of the complaint shall be forwarded by mail to the defendant. The notice shall contain all of the following:
 1. The date and amount of the check.
 2. The name of the payee.
 3. The date before which the defendant must contact the office of the County attorney concerning the complaint.
 4. A statement of the penalty for issuance of a bad check.
- E. The County Attorney may enter into a written agreement with the defendant to defer prosecution on the bad check for a period to be determined by the County Attorney, not to exceed one year for misdemeanors, pending all of the following:
 1. Completion of the bad check deferred prosecution school program conducted by the County Attorney or a private entity under contract with the County Attorney.
 2. Full restitution being made to the victim of the bad check, as specified in §13-1809, subsection B.
 3. Full payment of fees under §13-1809.
- F. For each check, monies received from a person pursuant to section 13-1809 shall be applied first to satisfy restitution to the victim.

Notice of Dishonored Check

Date: _____

Name of Issuer: _____

Street Address: _____

City, State, Zip Code: _____

You are, according to law, hereby notified that a check or instrument numbered _____, dated _____, 200__, drawn on _____ (bank or other drawee), in the amount of \$_____ and payable to _____, has been dishonored. Pursuant to Arizona law, you have twelve (12) days from receipt of this notice to pay or tender to _____ the full amount of the check or (Holder) instrument, together with all reasonable costs and protest fees of \$_____, the **total amount** due being \$_____. Unless this amount is paid in full within the specified time above, the holder of the check or instrument may turn over the dishonored check or instrument and all other available information relating to this incident to the Greenlee County Attorney, Jeremy Ford, for criminal prosecution.

Bad Check Sheet

INSTRUCTIONS: Please complete all blanks. List only one name in B or one check in C. Use extra sheets for additional checks or names. **Submit the original check with this page to the County Attorney.** Please hold checks 17 days before sending to BCP. Do not solicit or accept payment from anyone except the BCP or Court after turning over to the County Attorney.

A. VICTIM:
(Merchant)

1. Name: _____
2. Phone: _____
3. Store Mailing Address: _____
4. Store Contact: _____
5. Contact phone: _____

B. ISSUER:
(Passer / Accused)

6. Name: _____
7. Mailing Address: _____
8. Phone: _____
- *9. AZ Driver No. _____ Exp. Date: _____
- *10. Date of birth: _____
11. Other ID Information (job, family, credit cards, description, etc):

C. CHECK:

12. Date passed: _____
- *13. Witness who received check: _____
14. Witness' address (physical, not mailing) _____

15. Witness daytime phone: _____
- *16. Can witness identify check issuer/passers? YES No
17. Date Dishonored Check Notice letter sent: _____
- *18. Was demand letter served by certified mail, with a return receipt showing to whom and date received? YES No
19. Was Notice letter returned to you undelivered? YES No
- *20. Was the check post-dated? YES No

Enclose with this Bad Check Sheet:

- Original Check
- Copy of Notice letter
- Post Office return receipt postcard *or* Undelivered Notice letter

(* The County Attorney Bad Check Program will not accept without this information)

I certify that I have read all of the information contained on the above Bad Check Sheet and that it is true to the best of my knowledge, information and belief.

Date: _____

Signature of Victim / Representative