

**GUIDELINES FOR FILING A "HOT CHECK" WITH THE
NEWTON COUNTY CRIMINAL DISTRICT ATTORNEY'S OFFICE**

Under the law there are certain procedures that **MUST** be followed before this office can accept a "hot check" for prosecution. These procedures are not "our rules", but are **REQUIRED BY LAW**. These rules are as follows:

1. The check **MUST** have been presented to the bank for payment within 30 days of the date it was written, even if it is known that the check will not be honored. The bank stamp must be on it.
2. **AFTER** the check is dishonored by the bank, the holder of the check **MUST**:
 - a. Give written notice to the maker (writer) of the check informing him or her that the check was not honored by the bank, and the reason why. Certain wording must be used in the notice letter, and an example is attached.
 - b. The written notice must be given by **CERTIFIED MAIL, REGISTERED MAIL, or by TELEGRAM** with proof of receipt requested.
 - c. The holder (you) must retain a copy of the written notice (letter) and the original of the return receipt (the green card).

As with many provisions in the law, there is an exception to the requirement of written notice outlined above. If the check has been returned by the bank stamped "ACCOUNT CLOSED", no written notice is required.

If the maker (writer) does not pay the check within ten (10) business days after the notice was received, then it may be brought to the Criminal District Attorney's Office for possible prosecution. The check must be presented in person by the holder (the person to whom it was written), who must furnish:

- A. The original check with the bank flag or other proof of dishonor such as a bank stamp;
- B. A signed postal receipt on the returned UNOPENED letter marked "refused" or "unclaimed";
- C. A copy of the notice letter;
- D. The full name, address, and telephone number of the person who **ACCEPTED** the check and who can identify the person who issued (wrote) the check;
- E. A description of the person who issued (wrote) the check;
- F. Specific identification of the maker of the check, such as a driver's license number, date of birth, social security number, etc.

Under Texas Law, the Criminal District Attorney's Office **CAN NOT** accept the following kinds of checks:

1. Post-dated, "Hold" or "Stop Payment" checks, (unless evidence exists to prove that the "stop payment" was used to prevent the check from being returned as a "NSF" check (or other legal evidence of intent to commit fraud);
2. Checks upon which the statute of limitations has run (2 years, if less than \$2500, 5 years if \$2500 or more);
3. Checks not presented and marked "dishonored" by the issuer's bank within the 30-day period;
4. Checks where partial payment has been received pursuant to a payment agreement;
5. Checks for insurance premiums or service policies, where no actual loss has been sustained;
6. Checks received through the mail;
7. Two-party checks, (except payroll checks);
8. Checks presented (passed) outside of Newton County;
9. Checks presented for the payment of debts, loans, charge accounts, illegal gambling debts, court orders/judgments, or child support;
10. Altered or forged checks (these are to be filed with the Newton County Sheriff's Department or the Newton Police Department, whichever has jurisdiction).

Additional reasons that the Newton County DA's office may decline the processing of a hot check:

- Out of state checks written in an amount less than \$2500 (any amount less than that makes it a misdemeanor and an out of state offender can not be extradited for a misdemeanor offense)
- Checks in which the "Pay to the Order of" line is left blank (it is difficult to prove that the party in possession of the check is the party in which the check writer *intended* the check to be paid to)
- Checks written in an amount less than \$100 (any amount less than that makes it a Class C misdemeanor offense and must be handled by a Justice of the Peace or in small claims court)

WORTHLESS CHECK INFORMATION

Please furnish us as much of the information called for by this form as possible. Complete the form and attach the certified letter receipt (green card) or the unopened returned letter and any receipts for merchandise you may have to back up this form, along with the ORIGINAL check.

PLEASE NOTE: We do not accept "hot checks" for prosecution without the basic information, which can be obtained from the Driver's License or the D.P.S. Identification Card: The check writer's driver's license number, date license expires; date of birth; sex; and address. Any additional identifying information such as a telephone number and Social Security number are helpful, but not required. How much information you require is up to you, but we will not accept a check for prosecution without the basic information referred to above.

Mr.
Maker of Check: Mrs. _____
Miss _____

Driver's License: State _____ # _____ DOB/Age _____ SSN: _____

Home Address: _____ Phone: (____) _____
Street City Zip Code

Description of Maker: Sex _____ Race _____ Height _____ Hair _____ Eyes _____

Distinguishing Marks: _____

Date of Check: _____ Amount: _____ Bank: _____

Reason Check Returned: (Circle One) NSF Account Closed Other: (please specify) _____

Have you contacted maker? (Circle One) Yes No If so, how? Certified/Registered Mail Telegram Phone

Other: (Please specify) _____

Check given for: (Circle one) Cash Salary Loan Future Rent Past Rent Merchandise Groceries

Other: (Please specify price, quantity, and description of each item listed above) _____

Person who took check from maker: _____

Home Address: _____ Phone: (____) _____
Street City Zip Code

Can he/she identify maker in court? (Circle One) Yes No If so, how? _____

Did he/she take check thinking it to be good? (Circle One) Yes No

Was this a post dated or held check? (Circle One) Yes No

Was check received in the mail? (Circle One) Yes No

Was check given as payment toward the balance on a pre-existing account? (Circle One) Yes No

Was check given as partial payment for purchase? (Circle One) Yes No

Has the maker made any payment towards the check? (Circle One) Yes No

Money collected should be sent to: _____

Address: _____ Phone: (____) _____
Street City Zip Code

Your Name: _____ Position: _____
(Please Print)

I, _____ hereby state that the above is true and correct to the best of my knowledge.
(Your Signature)

*****PLEASE DO NOT ACCEPT ANY PAYMENTS ONCE THE CHECK HAS BEEN TURNED
OVER TO THE DISTRICT ATTORNEY'S OFFICE FOR COLLECTION AND PROSECUTION.*****

Sample Notice Letter

September 9, 1999

Mr. John Doe
1401 Bandit trail
Somewhere, TX 12345

RE: Returned "*Insufficient Funds*" Check

Dear Mr. John Doe:

The check that you presented to me for the icemaker that you purchased on April 1st of 1999, drawn on the Somewhere State Bank in the amount of \$156.00, has been returned by your bank marked "*INSUFFICIENT FUNDS.*"

This is a demand for payment in full for a check or order not paid because of lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution.*

Therefore, you have 10 days from the receipt of this letter to present payment in the form of cash, money order, or certified check for your returned check or the matter will be referred to the Newton County Criminal District Attorney's Office.

Sincerely,

**MERCHANT PLEASE NOTE: This is required to be included in the notice letter by Texas Penal Code Sec. 31.06. Failure to include this paragraph will result in the need to begin the certified process all over again.*