

# Cutting Losses From Bad Checks



1. Make personal contact with the check writer; if you are unsuccessful, send a courtesy notice. The check writer has 5 days to respond and remit payment.
2. If you do not hear from the check writer or receive payment, contact law enforcement to file a complaint.
3. Fill out the complaint form, attach originals (you retain photocopies) of all checks and notification documents, such as return receipts and bank notices, and mail to:

## Check Acceptance Tips



- Institute a check acceptance policy. A clearly posted check acceptance policy for your employees and customers can go a long way toward reducing your losses.
- Accept checks written only with today's date. Post dated checks are civil matters and are not accepted for prosecution.
- Trust your instincts! If something doesn't seem right, ask questions or ask for another form of payment. You are not obligated to accept a check.

# Check Screening Tips

**Check Screening Tips**

Get a complete street address, not just a P.O. Box, and verify phone number.

Be wary of new accounts.

Note the check's date. Post dated checks normally can't be prosecuted.

Observe the writer's signature and make sure the signature matches their I.D.

Make sure figure and written amounts match.

John Doe  
123 Somewhere Ave.  
Anytown, USA 12345  
(999) 000-0000

1002

9/9 20 03

Your Business \$ 75.31

Seventy Five Dollars & 31/100

MEMO \_\_\_\_\_ John Doe

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- Make sure figure and written amounts match.
- Be wary of new accounts.
- Note the check's date. Post dated checks normally cannot be prosecuted

## WHAT YOU NEED TO KNOW ABOUT BAD CHECKS:

The following information is needed to successfully prosecute a bad check case:

1. **IDENTIFICATION:** In every criminal case, the prosecution must have a witness personally identify the defendant in court as the person that committed the crime. In bad check cases, that means that a witness must be able to identify the defendant in court as the person that passed the bad check. It is not sufficient for the clerk to say: "I checked the person's driver's license." The clerk or another witness must make an in-court identification of the person passing the bad check. I realize that clerks see many customers in a day, and may not be able to make an in-court identification weeks and months after the check was passed. However, judges are duty-bound to dismiss a case if the prosecution cannot prove identification, whether it is a bad check case or a murder case, or any other crime in-between. Other means of proving identification include the use of videotaped cash register transactions or in-person interviews that include the bad check passer admitting that he or she passed the bad check. The issue of identification is often the most significant impediment to being able to successfully prosecute a bad check case; please do not overlook this issue.

2. **5-DAY NOTICE:** Michigan law requires that a 5-day notice be sent to any person passing a bad check before the person may be prosecuted for passing the check. The law is designed to give persons an opportunity to pay off the bad check before being prosecuted.

3. **NON-LOCAL BANKS:** The prosecutor must introduce into evidence at trial the defendant's bank records in order to prove a bad check case. The records are hearsay. The only way to introduce the bank records into evidence is to have a bank employee testify as a "keeper of the records." The bank records are then admissible into evidence pursuant to "the business record exception to the hearsay rule." Problems arise when the bad checks are written on non-local banks. The prosecution is required to pay the travel and lodging costs to bring bank representatives to Leland for court. These costs can be expensive, depending on the travel distance for a bank employee to appear in court in Leland. As a result, it may be cost prohibitive to bring a bank witness from an out-of-state bank for bad checks written for small amounts.

4. **THREE-PARTY CHECKS:** Three-party checks create unique proof problems for the prosecution. In every criminal bad-check case, the prosecution must prove not only that the person passed a check with insufficient funds on deposit, but that the person passed the check with intent to defraud. Three-party checks leave defendants a successful excuse nearly every time. Defendants on three-party checks often argue to the court that they had funds on deposit in the account, but, unbeknownst to them, the other party on the checking account made a withdrawal. The defendant making this argument is often acquitted on the defense of "mistake," which negates criminal intent. I strongly urge business owners to refrain from accepting third-party checks for this reason.

5. **STARTER CHECKS:** Starter checks do not contain any pre-printed identifying information from the check-passer. These are highly risky checks to accept unless you personally know the check-passer. I strongly encourage business owners to reject starter checks.

6. **COPY OF BAD CHECK:** Save the original bad check and give it to the investigating officer. The bad check is needed so that it can be introduced into evidence at trial.

7. **AMOUNT OF CHECK:** Michigan law makes the fraudulent passage of all bad checks a crime, regardless of the amount of the check. The Leelanau County Prosecutor's Office will criminally charge on all bad check case that we can prove.

8. **PROSECUTION WILL BE PURSUED:** Prosecuting bad check cases involves the use of police, prosecutor's office and court resources. It is our job to prosecute criminal activity, and passing a bad check with fraudulent intent is a crime. Do not request that criminal charges be dismissed against a bad check passer just because the bad check passer offers to pay restitution after charges have been authorized. Bad check cases are charged by our office with the full expectation that the business owner will cooperate and participate in the prosecution until there is a conviction, regardless of whether the defendant offers to pay restitution, or not. The law enforcement mechanism of the police - prosecutor - court has wide discretion and authority to prosecute crime, and it must not be used as a means of coercing bad check passers to make restitution. The prosecutor's office will pursue prosecution through conviction on those bad check cases that can be proven with the full expectation that the aggrieved business owner will cooperate through conviction on the case.