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DEALING WITH BAD CHECK THEFT

Instructions on Filing
Criminal Charges for Bad Check Theft
in Sioux County
-and-
Information on Small Claims/Civil Actions
for Bad Check Losses

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Dear Merchant:

Businesses in Sioux County lose thousands of dollars from bad check theft each year. Bad check theft affects everyone pushing the costs of goods higher to cover the losses. As you probably know, bad check theft can be devastating to any business.

Willful intent to receive goods or services with payment by bad check is theft or fraud. This makes it a matter for law enforcement and the proper subject of a criminal charge.

If you have received a bad check, presented it to the bank a second time, and have sent out a Ten-Day Notice for payment to the check writer and still have not received payment, you may be able to file a criminal charge against the person who wrote the bad check. This brochure describes the types of bad checks that are eligible for criminal charges and what you will have to do to file the charges with a Sioux County Magistrate.

This brochure also gives information on how you can use the civil "small claims" process in Magistrate Court to collect bad checks. This brochure also has tips on how to avoid being a victim of theft by bad check.

We encourage you to read this brochure and call the Sioux County Attorney's office or your local law enforcement agency if you have any questions.

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Small Claims/Civil Actions for Collecting on Bad Checks

Iowa law also allows merchants to pursue a civil action in small claims court for dishonored checks.

- [See Iowa Code §554.3513.](#)

The merchant must:

- Conspicuously post a statement that civil damages may be sought for a bad check.
- Make a written demand for payment by restricted certified mail at least 30 days before filing a small claims action. If the person refuses to sign for the certified mail, sheriff's service may be necessary.
- Present the check twice for payment by the bank.

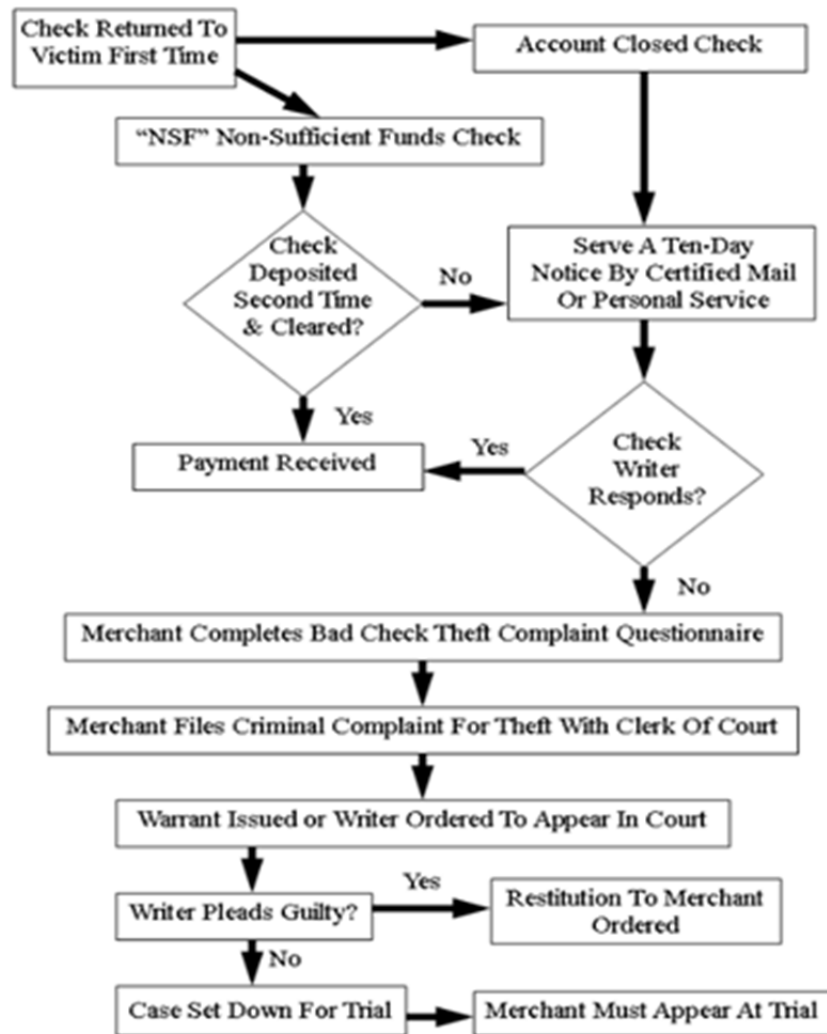
The Sioux County Clerk of Court (712-737-2286) will provide the appropriate forms and an instruction manual for filing a small claims action.

The merchant may claim either triple damages (three times the face value of the check, as long as the total recovered would not exceed by more than \$500 the face value of the check) or a \$30 bad check surcharge (pursuant to Iowa Code §554.3512).

You may hire an attorney to assist you with civil bad check cases, and attorney fees may be claimed in the civil action. This information on civil remedies is provided solely for informational purposes, does **not** constitute legal advice, and the reader is further advised to seek legal advice before proceeding with any civil remedies.

If you obtain a judgment against the Defendant, either at trial or by default, then you must attempt to collect on that judgment - which may be the most difficult part of the process. The merchant will need to seek the assistance of the Sheriff's Office to garnish wages or a bank account; or possibly to seize nonexempt assets which may be sold and the proceeds paid to satisfy the judgment.

Bad Check Theft Process



Tips for Avoiding Bad Check Theft:

- Do not take a check from a stranger without checking identification, preferably a photo ID.
- Check the writer's photo ID to ensure that the photo matches the person writing the check.
- If the address on the ID matches the address on the check, circle the address on the check. If it doesn't match, ask for other ID to confirm the writer's current residence.
- Place the writer's driver's license or other ID number on the check. Do not request or use a Social Security number as identification.
- Do not accept an expired driver's license or other expired identification as ID.
- Get a vehicle license plate number if you have concerns about the writer.
- Limit the check amount to the purchase amount or a small amount above the purchase price.

What is Bad Check Theft?

Bad check theft happens when someone presents a check in exchange for goods or services and the writer intends that the check will not be honored when it is presented to the bank on which it is drawn. If you receive a bad check and mail or have law enforcement serve the Ten-Day Notice described in these instructions, Iowa law holds that you may assume that the writer intended that the check would bounce when presented to the bank. In general, if a Ten-Day Notice has been properly served or mailed to the writer and you have not received your money, you may contact your local law enforcement agency and file a criminal charge.

A Simple Misdemeanor Theft Charge on a Bad Check may be Filed IF:

- The check is for \$200 or less. (For greater amounts, the appropriate law enforcement agency will investigate and inform the County Attorney's office.)
- The check was received in Sioux County and deposited in a bank in exchange for goods or services that were given at the time the check was presented.
- The merchant examined an ID at the time the check was accepted and recorded the driver's license number (or other ID number) of the check writer.
- The merchant can identify the writer of the check or can testify that the ID checked matched the description of the writer of the check.
- The merchant has initialed the check and is able to testify at trial that the merchant took the check from the writer.
- The merchant presented the check for payment at least twice before seeking to file criminal charges.
- The check is no more than 60 days old.

In general, you may NOT file criminal charges if:

- The check is post-dated. (Example: The check was presented on June 15 but dated July 1.)
- The check was accepted when both parties knew there wasn't enough money in the account to cover the check at the time it was written.
- The merchant was asked to "hold" the check until the writer could get money in the bank.
- The check was paid on account rather than in exchange for goods and services.
- The check is a payroll or other two-party check.
- The merchant does not know the identity of the check writer or did not verify the check writer's identification at the time the check was accepted.

The appropriate law enforcement agency or County Attorney can assist you in determining if criminal charges are appropriate.

When to Take Action:

If the check has been presented twice to the bank for payment and returned both times, it is time to mail or serve a Ten-Day Notice on the check writer.

The [10-Day Notice](#) form is available on this website. Certified mail will cost approximately \$6.48. You are entitled to restitution for costs if the check writer is convicted.

After the notice has been mailed or served on the writer and the writer refuses to make the check good within the ten-day period, you should contact your local law enforcement agency or County Attorney's Office for assistance in filing a criminal complaint. The original complaint should be given to the appropriate law enforcement agency or County Attorney for filing with the Sioux County Clerk of Court.

What to Expect:

After criminal charges are filed with the Sioux County Clerk of Court, a warrant or summons will issue arresting or ordering the write of the check to appear in Magistrate Court for Sioux County. If the check writer pleads guilty, that person will probably be assessed a fine and ordered to pay restitution to the merchant within a certain time period. If the check writer fails to pay the restitution, the County Attorney's office will ask that the defendant be held in contempt of court. Repeat offenders may receive a more severe sentence, including possible jail time. If the check writer pleads not guilty the case will be set for trial and the merchant will be notified when to appear as a witness at that trial.

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