



BILL MONTGOMERY
MARICOPA COUNTY
ATTORNEY

MARICOPA COUNTY
ATTORNEY'S OFFICE

CHECK ENFORCEMENT GUIDEBOOK



CHECK ENFORCEMENT PROGRAM

- ACCEPTING A CHECK
- WHAT TO DO WITH A BAD CHECK
- HOW TO SUBMIT A CHECK TO THE PROGRAM
- WHERE TO SUBMIT A BAD CHECK
- THE ENFORCEMENT PROCESS

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www.maricopacountyattorney.org



A MESSAGE FROM
BILL MONTGOMERY
MARICOPA COUNTY ATTORNEY

Dear Citizen,

Each day, thousands of checks are written to pay for goods or services. Yet hundreds of these checks are not honored when presented at the bank due to insufficient funds, forgery or fraud. As a result, hardworking merchants and others go unpaid.

Fortunately, there is a legal remedy for victims of bad checks. Our Check Enforcement Program can recover restitution from bad check writers and even prosecute repeat offenders. To date, the program has recovered over \$40 million in restitution for people and businesses who've received checks that cannot be honored.

Best of all, our Check Enforcement Program is a completely FREE service.

This guidebook will explain the enforcement process and walk you through the steps you can take to recover funds if you or your business has received a bad check. It also contains helpful tips on how to protect yourself and how to avoid accepting a bad check in the first place.

Issuing a bad check is a crime, and one which my office takes very seriously. With your help and participation in the Check Enforcement Program we can hold bad check writers accountable and ensure that you receive the funds a check writer has promised to pay and to which you're entitled.

Sincerely,

Bill Montgomery
Maricopa County Attorney

INTRODUCTION

This guidebook provides valuable information on reducing and eliminating losses due to bad checks. The Maricopa County Attorney's Office created specific procedures for merchants and individuals accepting checks to follow, minimizing exposure to bad checks and providing evidence against the check writer. This guidebook provides directions for processing bad checks and supporting the prosecution of bad check writers. Please read this guidebook carefully and follow the instructions.

In addition to this guidebook, Program staff members are available to provide free training to merchants on check acceptance and forgery detection. Training will help reduce the high costs associated with bad check writers.

The Maricopa County Attorney's Office Check Enforcement Program will work with victims to identify bad check crimes and quickly enforce full restitution for victims of these crimes. Together, significant reductions in bad checks can be achieved.



WHAT WE DO

The Maricopa County Attorney's Office Check Enforcement Program may help you receive full restitution on bad checks passed to you or your business. Fees are paid by the bad check writer -

MAKING THIS A FREE SERVICE TO VICTIMS AND MERCHANTS

Our staff will process your submittal as a request for prosecution and attempt to contact the check writer. The check writer is required to make payments in full, to the Program, including all state mandated fees to avoid further prosecution.

A possible misdemeanor or felony complaint could be filed against the check writer for issuing bad checks, or committing theft or fraud; all of which include a criminal court summons or arrest warrant being issued.

If convicted, the check writer may face fines, jail and/or probation - the penalties could be as much as 6 months in jail and a \$2,500 fine for each check, plus full restitution.

A FREE PUBLIC SERVICE



STATISTICS

- The Check Enforcement Program has been in existence since the late 1980's.
- To date, the Program has recovered over \$41 million in restitution.
- The Program files on average 1,800 criminal cases per year.
- The Program repays to victims on average \$1.2 million in total restitution per year.
- The Program has roughly 140,000 bad check writer names in its database.
- The Program receives, on average, 6,000 new bad checks to process each year.



MATTERS NOT HANDLED BY THE PROGRAM

Certain types of check cases are not handled by the Maricopa County Attorney's Office Check Enforcement Program:

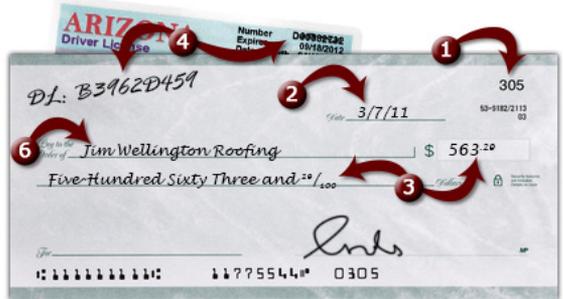
- **Stale Checks:** Checks that are older than 180 days past the date issued are considered stale and usually are declined. It is preferable that all checks are submitted as promptly as possible.
- **Postdated Checks:** These types of checks are considered an extension of credit and are inappropriate for prosecution under Arizona law.
- **Credit Card Accounts**
- **Traveler's Checks**
- **Health Savings Accounts**
- **Civil Litigation or Property Subject to Civil Remedies:** Matters that result in civil litigation are not handled by the Check Enforcement Program. This includes checks that are part of small claims actions and/or final judgments. As another example, a rent check returned as "NSF" should not be submitted because the time delay in collecting on the check may be more than 90 days after submittal. Civil law provides specific remedial action for such an incident separate from a criminal prosecution.
- Checks issued, passed or accepted in **another county or state** and NOT introduced into Maricopa County by the issuer or the passer.
- Any check for which **partial payment** has been accepted. Acceptance of a partial payment constitutes extension of credit or a loan, resulting in a civil defense.

ACCEPTING A CHECK

Follow this simple checklist to reduce the possibility of accepting a bad check. Early detection eliminates many hardships that result from accepting a bad check. The preventative steps listed below should be utilized by you and your employees. These steps will reduce losses and increase the chances of full recovery.

LOOK AT THE CHECK

1. **Look at the check number:** Be cautious of checks that have low check numbers or no printed check numbers. Nearly 90% of bad checks are drawn on accounts less than one year old.
2. **Check the date for accuracy:** Eliminate the possibility of receiving a postdated check. A postdated check may be a defense to prosecution and full restitution.
3. **Compare the amounts written on the check:** Make sure that the numeric dollar amount matches the written dollar amount. A valid check for \$35.50 should be written: “Thirty-five and fifty/100 dollars” or “Thirty-five and 50/100 dollars.”
4. **Demand identification and write it on the check:** Verify the identity of the check writer by requesting picture identification and write the information on the face of the check yourself. This protects against the check writer providing false numbers. **NEVER** let the check writer write his/her own ID number on the check.
5. **Examine the printing on the check:** A check that appears to be altered, or uses two or more type sets may be a forgery. Check the numbers and words for consistency. Review for crowded letters. Check for contrasts in ink color or density. Inconsistencies are keys to catching forgeries.
6. **Look at the name of the payee:** Changes or additions to the name indicate a possible forgery. If the color, density or writing of the name appears different, or if the check appears payable to two or more payees, there may have been an alteration.



VERIFY, LOOK, REACT



WHAT TO DO WITH A BAD CHECK

A few bad checks will still be received regardless of how cautiously these techniques are followed. Preparation for handling these bad checks is key to the successful recovery of restitution. It is important to establish and follow strict business policies regarding bad checks. This section outlines methods for recovery.

- Call the check writer at the telephone number written on the check. Many bad checks are accidental and can be quickly cleared up with a courteous telephone call.
- If a check is returned as “Lost/Stolen,” “Forged” or “Counterfeit,” your local police department should be contacted immediately. They may have additional forms for you to complete.
- A Notice Letter may also be prepared by you and sent to the check writer. Checks returned to you as “NSF” should be considered for a notice letter. Many of these checks are also accidental and are promptly paid once the check writer receives a letter.
- Notice letters can be personally delivered, sent by certified mail or first-class mail to the check writer.
- A sample notice letter is available on our website: www.maricopacountyattorney.org. This letter contains language established by Arizona Law. In the middle portion of the letter, staple a copy of the bad check.
- Do not return the original bad check to the check writer with this letter.
- If you hand deliver the notice letter, please wait 12 calendar days before submitting the check to the Check Enforcement Program.
- If you mail the notice letter, the law provides an extra five days. So you must wait 17 calendar days from the date of mailing before submitting the check to the Check Enforcement Program.
- If you mail the notice letter, make sure to include “Return Service Requested” on the envelope in the event the check writer has moved.
- Often the check writer will offer to pay for the bad check after receiving a telephone call or letter from you. Remember to accept only money orders or cashier’s checks. Never accept partial payment.
- Do not return the original bad check to the check writer until you have been paid in full.

If you are still unsuccessful in recovering your money or if the check was returned to you as “Account Closed,” “Unable to Locate” or “Refer to Maker,” please submit the check to the Check Enforcement Program. Complete a Submittal / Witness form (available on our website) and submit it to us along with the check.

SUBMITTING A CHECK TO THE PROGRAM

One **Submittal / Witness Form** must be used for each check submitted to the Check Enforcement Program. Forms are available on our website:

www.maricopacountyattorney.org

- Complete all parts of the submittal / witness form. Please make sure that the full name, work address and telephone number of the person who received the check is entered on the form.
- The person who received the check must also sign the bottom of this form. The only exception to this involves former employees. If the employee is no longer with the business, it is acceptable for the manager to sign the form.
- Do you know if the check writer has moved? Verify the address on the check. If it is different, please include the updated information on the form.
- Fill in the name of the check signer on the form. This is not always the business or company name or the person's name that is printed on the check. The name on the form and the signature on the check must match.

One **Victim Information Form** should be completed for all checks submitted to the Check Enforcement Program the first time. A Victim Identification Number will be assigned and you will be notified of that number. Reference this number on all future correspondence with the Check Enforcement Program. If any changes occur with your address, business name or telephone number, please complete a new form; your victim identification number will not change.

Don't forget to also include the original bad check or certified bank copies of the original bad check, copies of any notice letters you sent to the check writer and copies of all correspondence between you and the check writer.

Submit everything via the mail or drop it off in person to:

**Maricopa County Attorney's Office
Check Enforcement Program
3131 W. Durango, 2nd Floor
Phoenix, AZ 85009**

IF IN DOUBT - DON'T ACCEPT



THE ENFORCEMENT PROCESS

The enforcement process begins as soon as the submittal / witness form is received by the Check Enforcement Program. Each form is reviewed for complete and necessary documentation. The general information about the check and the check writer is entered into the Check Enforcement Program database and is compared to other check writer information already in the database. If other bad checks have been received, the most recent checks will be assigned to assist the prosecution of older bad checks.

FIRST TIME OFFENDERS:

If the submitted bad check involves a “first time offender” in the Program, the bad check writer may be able to avoid criminal prosecution. The Check Enforcement Program will send a letter to the bad check writer notifying them of the options available to avoid prosecution.

Approximately 90 days after receiving the bad check packet, the Check Enforcement Program staff will conduct a review to determine if the check writer has contacted the office and/or has completed payments. In some instances a decision will be made to return the original check and paperwork to the victim because the check cannot be successfully collected or prosecuted.

SEVERE CASES:

In some instances prosecution is initiated immediately. Witnesses may be contacted in preparation for the case. Cooperation with this investigation is imperative to successful prosecution and restitution.



FILING OF CHARGES:

Issuing a bad check is a class one misdemeanor. These cases are prosecuted in Maricopa County Justice Courts. The Check Enforcement Program files a charging document, known as a complaint, in the proper Justice Court. The check writer is notified of the criminal charges by a summons. The summons directs the check writer to appear in Court on a specified date to respond to the criminal charges filed against them. Sometimes the Court issues an arrest warrant if the check writer is not available by summons.

After the initial appearance in Court, the check writer is required to attend court proceedings. In some cases a prosecutor will authorize a plea agreement for the

check writer. If a plea is negotiated, the check writer will be required to complete full restitution for all prosecutable offenses. If a plea is inappropriate or is not acceptable, the matter proceeds to trial. At trial the prosecutor is required to present evidence through witnesses to prove the case beyond a reasonable doubt. If the check writer is convicted, the sentence could include fines and surcharges of \$2,500 and up to three years probation. In severe cases, a judge can also order a check writer to complete a jail term of up to six months for each check and pay full restitution of the check.



PAYMENT OF RESTITUTION:

A check writer who responds to the Check Enforcement Program’s notice or who is required by a court order to pay restitution will make payments directly to the Check Enforcement Program. The restitution is returned to the victims by the Check Enforcement Program, based upon the payments made by the check writer.

Repayment to victims is based upon the oldest checks first. The Check Enforcement Program will monitor timely payments.

SUBMITTAL STATUS:

Please wait at least 45 days before making an inquiry to the Check Enforcement Program regarding the status of your case. Be prepared to provide your victim identification number, along with the name of the check writer. These inquiries may be made by contacting the Check Enforcement Program at 602-372-7300.



IMPORTANT INFORMATION

Once a check has been accepted to the Check Enforcement Program, do not accept payment for the check!

Any money sent to you by the check writer should be immediately returned to the check writer or forwarded to the Check Enforcement Program with a note asking that the money be applied to your specific case.

RESTITUTION:

The Check Enforcement Program will utilize several lawful means to recover the face value of the check, except bank fees or return check charges. Recovery of the debt owed to you may take time and may be based upon a payment schedule as established by the Court. The check writer is responsible for all state mandated fees. When a check writer makes payment, the money is placed in trust. When restitution has been received for a victim, a payment is processed from the Check Enforcement Program to the victim.

ORIGINAL CHECKS WILL NOT BE RETURNED:

After a check has been submitted to the Check Enforcement Program, the County Attorney's Office retains the right to proceed with criminal prosecution against the check writer. When the County Attorney's Office proceeds with prosecution, the check is retained as evidence to the criminal proceeding. Even if the check is paid in full prior to a trial, the County Attorney will retain the original check for fiscal accounting and audit purposes. No checks will be returned once a criminal complaint has been filed in Court.

CIVIL JUDGMENTS:

The Check Enforcement Program will not handle your matter if there is pending civil litigation concerning the bad check or if a civil judgment has been obtained against the check writer.

VICTIM AND CHECK WRITER CONTACT:

After a check has been submitted to the Check Enforcement Program, we suggest you have no further contact with the check writer. If the check writer contacts you in an attempt to pay, inform the check writer that he/she should contact the Check Enforcement Program for further information.

CONTACT THE CHECK ENFORCEMENT PROGRAM

PHONE:

(602) 372-7300

FAX:

(602) 372-0014

MAIL:

Maricopa County Attorney's Office
Check Enforcement Program
3131 W. Durango, 2nd Floor
Phoenix, AZ 85009

EMAIL:

mcaocheck@mcao.maricopa.gov

OFFICE HOURS:

8:00 a.m. to 4:30 p.m.

Monday through Friday, excluding legal holidays

GENERAL DIRECTIONS:

The Check Enforcement Program is located on the second floor of the Durango Court Complex at 31st Avenue & Durango

VISIT THE CHECK ENFORCEMENT
PROGRAM WEBSITE AT

www.maricopacountyattorney.org

A FREE PUBLIC SERVICE

Maricopa County Attorney's Office
3131 W. Durango
Phoenix, Arizona 85009

