



## ***GARDINER POLICE DEPARTMENT***

### **Bad Check Procedures**



The following instructions have been revised in an effort to better assist receivers of “bad checks”. This policy has been reviewed by our District Attorney’s Office and their recommendations are incorporated into these instructions.

**In order to limit the number of bad checks you or your company receives; please take the following precautions.**

1. Make sure you have the correct, current address (in addition to PO or RFD Boxes) and telephone number.
2. Employees should initial or put an employee identification number on the check. This will be proof that the business actually received the check. This person may also be called upon to testify in court.
3. **Look at some type of photo identification. If it is a driver’s license, record both the license number and date of birth on the check.**

**If you or your business receives a “ Bad Check”, EXAMINE THE FOLLOWING:**

- I. Is this a two party check?
- II. Is this an out of state check?
- III. Is the check more than six months old?
- IV. Have you or your employees failed to identify the person who presented the check and/or failed to recall the date the check was tendered?
- V. Is the amount of this check under \$50.00?
- VI. Has partial payment been received on this check?

If you answered “Yes” to one or more of the above questions; this office cannot handle your check. This does not mean that your case is hopeless. The law requires that the maker of a bad check be given five (5) days to make the check “good” after being notified. Even though this check may not be feasible for prosecution, the five-day notice can still be served in hopes of collecting the funds. A further step in the process would be a suit in Small Claims Court. You may obtain information on Small Claims proceedings from the Maine District Court in Augusta.

If the check is not disqualified for any of the six reasons mentioned above, you might be able to proceed with a criminal case. You will be given ample copies of the necessary forms to get your case through collection and/or the court process. These forms are available from the Police Department free of charge, or you may make copies from a legible original.

## ➤ **BAD CHECK PROCEDURES:**

1. **Complete a bad check report.** The longer the delay in completing this report, the less likely that the employee will remember the details.
2. **If the check has been returned due to NON-SUFFICIENT FUNDS-**you are required by law to send the negotiator a five- (5) day notice, (attached). This should be served in person, if possible. If this is not possible, we would encourage the use of certified mail, restricted delivery. This may prevent the person, at a later date, from arguing that it was not received. If the certified mail is not claimed or refused, proceed with resending the notice by regular mail. As a last resort, provide oral notice to the writer and document the call. **The negotiator has not committed a crime until after the five- (5) day notice has expired and he has not taken care of the check.**
3. **If the check has been returned due to a CLOSED ACCOUNT-** a five- (5) day notice is still required to be sent. In the past, we have found that all too often, checks stamped "account closed", were closed after the check was written. So this problem may be alleviated, a five- (5) day notice must be sent on all bad checks.

### ◆ **Contact the Police Department when-**

- I. A five- (5) day notice, sent via certified mail, has been refused. We will attempt to locate the person for you and serve the notice. **For obvious reasons, we cannot promise to locate the person or person (s).**
- II. The five- (5) day notice has been accepted and not resolved in the five-day period. The check will then be set up for prosecution.

- ◆ If you proceed with contacting the police, please include copies of all pertinent paperwork with you. This should include the five- (5) day notice, certified mail receipts and the check or checks and copies of any documented action taken by you.

If the person resolves payment with you, you are asked to notify the police department, as well as, the Office of the District Attorney immediately. If the case is in process and the person fails to appear, an arrest warrant is issued. If the person has already resolved the matter with you and you have failed to notify us, you may be liable for a false arrest.

If the above requirements for returned checks are not met. We will be unable to accept the check until they are. These requirements are necessary under Maine State Law.

Thank you very much for your cooperation. We will do everything we can to assist you. If you have any questions or concerns, please contact us.

# FIVE DAY NOTICE

ISSUED TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

My business, \_\_\_\_\_, is in receipt of a check that has been returned to us by the bank.

Check # \_\_\_\_\_ Dated \_\_\_\_\_

Bank \_\_\_\_\_ Amount \$ \_\_\_\_\_

Reason: ☐ Non-sufficient Funds ☐ Account Closed ☐ Other

You can pay at the store, or mail a certified check or money order back to us, at the address listed below. Please be advised that this letter constitutes a five (5) day notice, as required by Title 17-A of the Maine Revised Statutes Annotated §708. If this matter is not resolved of within the prescribed five (5) days, it may be deemed prima facie evidence that Fraud was intended at the time it was issued. At the end of the five days, we will refer this matter to the local police department for criminal prosecution. Please contact us as soon as possible to avoid these actions.

Dated, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Mailing address: \_\_\_\_\_

(If different than above)

Phone: \_\_\_\_\_

# Complainant's BAD CHECK REPORT

- **BUSINESS INFORMATION:**

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Person Completing Report: \_\_\_\_\_ Job Title: \_\_\_\_\_

Home Address: \_\_\_\_\_ Home Phone: \_\_\_\_\_

- **CHECK INFORMATION:**

Address where check was accepted: \_\_\_\_\_

Date Accepted: \_\_\_\_\_ Check Number: \_\_\_\_\_ Amount of Check: \$ \_\_\_\_\_

Service Charge Imposed: \$ \_\_\_\_\_ Person Presenting the Check: \_\_\_\_\_

- **CHECK PRESENTER INFORMATION:** (completed by the person, who actually received the check).

Your Name: \_\_\_\_\_ Address & Phone: \_\_\_\_\_

Check Presenter's Description:

Race: \_\_\_\_\_ Age: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Hair Color: \_\_\_\_\_ Length: \_\_\_\_\_

Other: \_\_\_\_\_

Name given by the passer: \_\_\_\_\_

Address and Phone of passer: \_\_\_\_\_

Was photo identification used? Yes ☐ No ☐

If so, was it compared to the passer? Yes ☐ No ☐

Driver's license #: \_\_\_\_\_ State: \_\_\_\_\_

Other Identification used: \_\_\_\_\_

• **AUTOMOBILE DESCRIPTION:**

Make:\_\_\_\_\_ Model:\_\_\_\_\_ Color:\_\_\_\_\_

Other Marks: \_\_\_\_\_

License Plate Number & State: \_\_\_\_\_

Please describe any other person(s) with the passer. Include name(s), if known:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please list the name(s) and phone number(s) of other witnesses to the transaction:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

• **PASSER INFORMATION:**

Do you remember the transaction? Yes ☐ No ☐

Was the passer known to you? Yes ☐ No ☐

If yes, how? \_\_\_\_\_

Can you identify the passer? Yes ☐ No ☐

If yes, how? \_\_\_\_\_

What did the passer obtain in exchange for the check?

Credit for a bill ☐ Service ☐

Cash ☐ Amount \$\_\_\_\_\_ Merchandise ☐

If the passer received merchandise, please list. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Was the check post-dated and/or did the passer ask you to hold the check to a future date?

Yes ☐ No ☐

Was there any conversation regarding the passer's ability to pay the check at the time it was presented?

Yes ☐ No ☐ If yes, what? \_\_\_\_\_

Did the passer write the check and/or endorse the check in your presence? Yes ☐ No ☐

Did you initial, mark, or write on the check, at the time you accepted it? Yes ☐ No ☐

Did the passer make any statements about the check? Yes ☐ No ☐

If yes, what? \_\_\_\_\_

• **COLLECTION INFORMATION:** ( To be completed by the person completing this report)

Please detail the steps, you or your employees, have taken to contact the suspect and recover your losses: \_\_\_\_\_

By Whom? \_\_\_\_\_ When? \_\_\_\_\_

Where? \_\_\_\_\_ Results? \_\_\_\_\_

Has the passer attempted to make restitution? Yes ☐ No ☐

If so, please detail: \_\_\_\_\_

Have you successfully served the five-(5) day notice? Yes ☐ No ☐

If yes, how? \_\_\_\_\_ If no, why? \_\_\_\_\_

Do you feel that the passer, of the check, intended to defraud you when he/she passed the check?

Yes ☐ No ☐

Have you retained an attorney or turned this matter over to a collection agency, in an attempt to collect the check?

Yes ☐ No ☐ If so, whom? \_\_\_\_\_

What conversation have you had with the passer regarding the passer's ability to pay the check at the time it was passed? \_\_\_\_\_

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Was there any dispute over the quality of goods or service received by the passer?

Yes ☐ No ☐ If yes, please describe: \_\_\_\_\_

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Please indicate anything you may feel that would help in locating and prosecuting this person(s).

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## BAD CHECK PROSECUTION ACKNOWLEDGEMENT

The decision whether or not to prosecute this individual will be made by a representative of the District Attorney's Office. They will take into account numerous factors, including what evidence exists of: intent to defraud, identification, and the availability of necessary bank records. Criminal prosecution does not guarantee restitution, as prosecution is designed to punish, not to collect debts. **If you agree to prosecute this defendant, you cannot drop the charge if he or she offers to pay the check.** If a criminal case cannot be proven, the check will be returned to you UPON REQUEST.

I hereby understand and agree that all the information contained in this document is to be used by and disseminated among all law enforcement agencies, the Office of District Attorney and the Courts. I also understand and agree that this check is being submitted for criminal prosecution and if a criminal prosecution is instituted, it will be necessary for that person having knowledge, of the facts, to appear and testify in court.

I hereby certify that no one has accepted full or partial restitution for this particular check, as of this date. I further agree I will notify the Office of the District Attorney and the law enforcement department, if restitution is made.

I hereby certify that I have read and do understand the directions for this form, and that all facts written herein, to the best of my knowledge are true, accurate and complete. Further, I am aware that a person who KNOWINGLY makes a false, written statement, which he knows is not true, is subject to prosecution of a crime punishable as a Class D crime, under 17-A M.R.S.A. §453.

Date: \_\_\_\_\_

Business: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_