



WORTHLESS CHECK POLICY & PROCEDURE

The county attorney prosecutes worthless checks that have been stamped “insufficient funds” or “account closed”. Kansas statutes require the following of the merchant upon the receipt of a worthless check:

*The merchant must send a **Seven (7)-Day Worthless Check Notice**, by restricted delivery certified mail, return receipt requested to the issuer of the check to the address that appears on their check or their last known address. Be sure to keep a copy of the notice/letter sent.*

If the issuer of the check has not paid or responded to the merchant after seven (7) days, you may forward the check to the county attorney's office. The following items are required:

- The original check **MUST** have the following information: driver's license number, date of birth or social security number, and phone number for the issuer wrote on it for the Sheriff's Office to actively pursue an individual on a summons or warrant. Without this crucial information, **THIS OFFICE WILL BE UNABLE TO PURSUE THE CASE.**
- Proof of certified mailing (the signed green card or returned letter).
- A photocopy of the *Seven (7)-Day Worthless Check Notice* that was mailed.
- A completed *Affidavit for Prosecution*, unsigned. If you have more than one check from the same person, you will need to complete an Affidavit for each check.

Upon presentation of this information to the county attorney's office, an attempt may be made to contact the issuer of the check offering them the opportunity to take care of the matter prior to completing the Complaint. If the issuer of the check does not respond within the provided specified time, a Complaint will be prepared. The merchant will then be notified to sign the Complaint and Affidavit. The signed Complaint and Affidavit will be filed with the District Court.

As a merchant, please be aware of the following:

- This office is unable to pursue criminal charges on any check where partial payment was accepted. Any negotiations for additional time to pay must be made before referring the matter to our office. If a merchant has accepted partial payment, a petition will need to be filed in civil court.
- Kansas Statutes allow a merchant to request a maximum service fee of \$30 on all worthless checks.
- Once you have turned the original check over to the Thomas County Attorney, do not accept payment from the issuer of the check. You will need to direct them to the county attorney's office. If charges have yet to be filed, we will accept the payment and send it directly to you.
- If you have questions regarding this process, please call the Thomas County Attorney's Office at (785) 460-4580.

Christopher A. Rohr
Thomas County Attorney

SEVEN (7)-Day Worthless Check Notice

DATE OF NOTICE: _____

MERCHANT INFORMATION:

Name: _____ **Address:** _____

Phone #: _____

ISSUER OF CHECK INFORMATION:

Name: _____ **Address:** _____

Phone #: _____

The following check has been returned to us as worthless and has not been paid for the following reason:

Check Dated: _____ **Check #:** _____ **Amount of Check:** _____ **Service Fee:** _____

Check Drawn On (Name of the Bank): _____

Insufficient Funds: _____ **Account Closed:** _____ **No Account:** _____

If the amount of the check, plus the above service charge provided by statute has not been paid within seven (7) days, it is presumed that the check was given with intent to defraud, knowing at that time of presentation there were no funds or insufficient funds on deposit with the above-named depository. Said check will be handed over to the Thomas County Attorney for criminal prosecution.

Merchant's Signature & Title

Date

NOTE: This notice must be mailed as certified mail, return receipt requested, in the United States mail, addressed to the issuer of said check at his/her address as it appears on the check or at the last known address.

AFFIDAVIT FOR PROSECUTION

STATE OF KANSAS)
) SS:
COUNTY OF THOMAS)

COMES NOW THE UNDERSIGNED and deposes and says:

That on _____, the check a copy of which is attached hereto as “Exhibit A,” was given to _____, by a person who was personally known as _____, who in return for said check received merchandise and/or cash and that said check was not given for pre-existing debt. Further, the check was personally accepted by _____.

FURTHER, affiant states as follows:

1. That at the time the check was made, uttered, and passed, the maker or passer did not indicate by words or actions that he/she did not have deposit in or credit with the bank for the payment of the check.
2. That we were not requested to hold the check.
3. That the maker or passer of said check did not borrow any money and give the check as security for the debt.
4. That the check was not postdated.
5. That the check was submitted to the bank for payment during the usual course of business and was not held.
6. That on _____, we sent by certified mail, a letter addressed to the address as it appears on the check advising the maker of the failure of the check to clear the bank and if said check was not paid within seven (7) days, it would be submitted to the Thomas County Attorney for prosecution.

The check a copy of which is attached hereto as “Exhibit A” is submitted to the Thomas County Attorney’s office for the sole purpose of prosecution, with the full understanding that the prosecution will not be dismissed because restitution has been made. I am aware that by signing this Affidavit and accompanying Complaint, criminal prosecutions will be initiated by the State of Kansas, by and through the Thomas County Attorney, and not for the collection of any funds due or for the enforcement of any civil remedies otherwise available to affiant or corporation, business or agency that affiant represents.

Further, I am aware of the provisions of K.S.A. 21-3709, causing unlawful prosecution of a worthless check is a Class A Misdemeanor, punishable by not more than one (1) year in County Jail and/or a fine not to exceed \$2500.00, and the costs of the unlawful prosecution. Affiant hereby states that he/she understand that at the filing of this Affidavit, knowing that one or more of the above listed conditions did not exist at the time said check was accepted constitutes an unlawful prosecution of a worthless check.

FURTHER AFFIANT SAITH NOT.

Signature

Title

SUBSCRIBED AND SWORN to before me on this _____ day of _____, _____.

Notary Public

(Seal)