

## **BAD CHECK WARRANTS IN THE MAGISTRATE COURT OF HOUSTON COUNTY**

Welcome to the Magistrate Court of Houston County. We are here to serve you and to assist you with the procedures of this Court. This information is of a general nature and is not meant to be a complete disclosure of the services of this Court or of legal principles and procedures of this Court. Bad check applicants must first complete an application with this Court, provide the Court with the original check, copy of the notice letter sent according to law, and proof that the letter was sent (either the green card or the returned envelope). Although some magistrate courts issue citations for bad checks, the Magistrate Court of Houston County issues warrants which are sent to the sheriff's office directing that the check writer be arrested.

Bad check cases are now called "deposit account fraud." In 1994 the law was changed to add debit card sales receipts to checks, drafts, and orders for the payment of money. Checks written on an out-of-state bank or for \$500 or more are felony cases and are prosecuted in the Superior Court. Checks written on in-state banks for less than \$500 are misdemeanor cases and are prosecuted in the Magistrate Court. The Magistrate Court issues the warrants for both felony and misdemeanor bad check cases.

### **WHAT IS A BAD CHECK?**

Not all checks returned from the bank can be prosecuted in a criminal proceeding. The following is a guide in making a determination of whether you should apply for a criminal warrant. (1) Was the check given for present consideration or wages? If not, you must file a civil suit to collect. Present consideration generally means that services or goods are delivered at the same time that the check is received. It also includes rent, a debt of state taxes, and child support payments when there is a written court order. A payment on a credit account would not be present consideration. (2) Did the person who accepted the check know the check was not good at the time it was given? If you knew the check would not be honored when you accepted it, then you cannot prosecute the person who gave it to you. Examples of this would be when a customer asks you to hold a check until a specific day or when you accept a postdated check. In both instances you have extended credit even if it is only for a few days. When you extend credit, you do not have a bad check offense, but you could still file a civil suit to collect. (3) Was the check returned because of "No Account" or "Nonsufficient Funds" (NSF)? If the check was returned for any reason other than no account or insufficient funds, you probably do not have a check that can be prosecuted as a criminal offense. A check marked "Closed Account" or "Unable To Locate" or "Refer To Maker" may fall under the "No Account" provision. However, you should inquire with the bank to see if the account was closed or there were insufficient funds on the date the check was passed. If this was the case, you may prosecute. You should get the bank to verify this information by letter or by putting the information on the face of the check and having the bank official then initial it. (4) Was the check marked "Stop Payment?" A stop payment cannot be a violation of the criminal bad check statute.

## **HOW TO PROCEED WITH A CASE**

In order to prosecute a bad check case the prosecutor must be able to prove that the maker of the check intended to defraud the merchant or person receiving the check. This is difficult to do. To lessen this burden, the Deposit Account Fraud Statute provides that it is prima-facie evidence that the accused knew that the instrument would not be honored if (1) the accused had no account with the financial institution at the time the instrument was made or delivered or (2) payment was refused by the financial institution for insufficient funds when deposited or presented within 30 days after delivery to the holder (merchant) and the accused does not pay the holder the amount of the instrument plus a service charge within ten days after receiving written notice that payment was refused by the bank. The form of the Ten Day Notice is provided in the Statute, and a copy is provided at the end of this brochure, or a copy may be obtained from the Magistrate Court.

When a check is dishonored and returned, you must send the Ten Day Notice by certified or registered mail, return receipt requested. The notice must be sent within ninety (90) days from the time you discovered the check was bad, or a warrant may not be issued. The purpose of the notice is to let the customer know that the check is not good. The notice should be sent to the address shown on the check, and if you know of another address for the customer, you should send it to both addresses, certified or registered mail. The object is to get your money, so every notification increases your chances of recovery without having to resort to the court system. Make an actual copy of each letter you send to use as evidence in obtaining a warrant. You are required to use the exact wording provided in the Statute. This notice is accepted in all 159 counties in Georgia. If the money plus the service charge is not paid, you can then proceed through the judicial system.

## **THE EVIDENCE YOU NEED**

To file your application for a bad check warrant, you need to bring to the Magistrate Court:

1. The Bad Check;
2. A copy of the actual Ten Day Notice sent to the customer;
3. The Green Card which is the certified or the registered mail receipt (make sure you have waited 10 days after the letter was signed for or 10 days after the letter was returned by the post office). If the letter was not accepted by the addressee, bring the original letter in the original envelop as returned by the post office;
4. The name of the person who accepted the check; and,
5. Any other information you think may be important, including any response, whether oral or written, from the maker of the check. This information is to be provided on the Application for Bad Check Warrant.

## **ISSUANCE OF WARRANT**

After your application is filed an arrest warrant will be prepared by the Magistrate Court. You will then be contacted to come to the Court to swear to the warrant. This certifies that the information provided in the warrant is true. The Court then sends the warrant to the Warrant Division of the Houston County Sheriff's Office. When the accused is arrested on a misdemeanor check charge, an arraignment day (plea day) is set in the Magistrate Court. Prior to that day, the accused may come to the Court and post a No Contest Cash Bond representing a fine, court costs, and restitution. If the accused does not appear in court, the bond is forfeited, and the restitution is sent to the merchant. If a No Contest Cash Bond is not posted, the accused appears on arraignment day and enters a plea to the charge. If a guilty plea or nolo contendere plea is entered, the accused is immediately sentenced, and in most cases placed on probation in order to pay the fines, costs, and restitution. If a not guilty plea is entered, a trial date is set. You will need to appear in court on the trial day to prove the case. Trials are prosecuted by the Solicitor's office.

If the case is a felony charge, then after arrest the warrant is sent to the District Attorney's office for prosecution. The trial will be scheduled in Houston Superior Court, and you will be contacted by the District Attorneys office.

## **ADDITIONAL NOTES**

You are not allowed to receive any payments on the checks after you apply to the Magistrate Court for a criminal warrant.

The crime occurs in the county in which the giving and receiving of the check took place.

The giving of a proper Ten Day Notice provides the holder with civil immunity even when the notice is not required to be sent.

Applicability to post dated checks. - This section is not applicable to a post dated check where payee accepts it before date due with knowledge that there were no funds to cover it. *Strickland v. State*, 27 Ga. App. 772, 110 S.E. 39 (1921); *White v. State*, 27 Ga. App. 774, 110 S.E. 40 (1921).

Stopping payment on check, even if fraudulent, does not constitute uttering of a bad check. - While it is true that one stopping payment on a check after obtaining a benefit thereunder and with intent to defraud might be guilty of cheating and swindling, that same conduct does not establish uttering of a bad check. *Hardeman v. State*, 154 Ga. App. 364, 268 S.E.2d 415 (1980).

Giving a bad check to pay antecedent debt does not violate section. - Giving of a check to pay an antecedent or preexisting debt, without funds in bank, and without obtaining anything of benefit thereby does not constitute a crime under this section. *Vasser v. Berry*, 85 Ga. App. 435, 69 S.E.2d 701 (1952).

**TEN DAY NOTICE**

“You are hereby notified that the following instrument(s)

Number	Date	Amount	Name of Bank
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

drawn upon \_\_\_\_\_ and payable to \_\_\_\_\_  
\_\_\_\_\_, (has)(have) been dishonored. Pursuant to Georgia law, you have ten days from receipt of this notice to tender payment of the total amount of the instrument(s) plus the applicable service charge(s) of \$\_\_\_\_\_ and any fee charged to the holder of the instrument(s) by a bank or financial institution as a result of the instrument(s) not being honored, the total amount due being \_\_\_\_\_dollars and \_\_\_\_\_cents. Unless this amount is paid in full within the specified time above, a presumption in law arises that you delivered the instrument(s) with the intent to defraud, and the dishonored instrument(s) and all other available information relating to this incident may be submitted to the magistrate for the issuance of a criminal warrant or citation or to the district attorney or solicitor-general for criminal prosecution.”