

GRIGGS COUNTY

COOPERSTOWN, NORTH DAKOTA

County Commissioners

John Wakefield	1 st Dist.
Binford	
Shawn Steffen	2 nd Dist.
Cooperstown	
Ron Dahl	3 rd Dist.
Cooperstown	
Troy Olson	4 th Dist.
Cooperstown	
Dale Pedersen	5 th Dist.
Luverne	
Griggs County Courier	
Official Newspaper	



County Officers

Samantha M. Quast	Auditor
Connie Eslinger	Treasurer
Kelly Vincent	Recorder & Clerk of Court
Jayne Tenneson	State's Attorney
Cia Gronneberg	Director of Social Services
Robert S. Hook	Sheriff
Wayne Oien	Road Supt
Rick Cushman	Coroner
Dennis Kubischta	Veterans Service Officer
Patricia Lorenzen	Dir of Tax Equalization
Robert S. Hook	DES Coordinator

December 2015

RE: Criminal Prosecution of Nonsufficient Funds (NSF) and Closed Account Checks- 2015 Update

Dear Merchant:

I write to inform you of a change in the policy of the Griggs County State's Attorney's Office with respect to non-sufficient fund and closed account checks.

The enclosed updated policy and forms reflect 2013 Legislative changes and are effective as of **August 1, 2013**. **Please discard all prior policies and forms.**

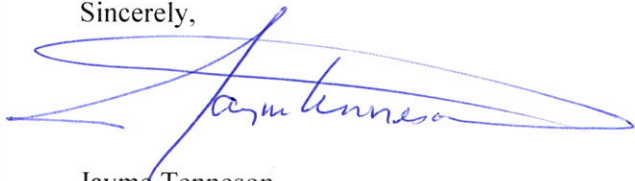
1. Griggs County State's Attorney on Prosecution of Non-sufficient Fund and Closed Account Checks (Rev. August 2015): This document explains how this office processes bad check matters. I encourage you to read it thoroughly.
2. Notice of ID requirement for Checks: **For law enforcement purposes, the merchant is required to review the ID and date of birth on all checks that may be submitted to our office for prosecution.** From time-to-time, some customers may complain about a merchant requiring them to produce ID. In those cases, the merchant may wish to show the customer there is a law enforcement reason for the requirement. Accordingly, for the merchant's assistance, I have enclosed a brief Notice of ID Requirement. While the ID requirement is mandatory, the use of the enclosed Notice is entirely at the merchant's discretion. A merchant may wish to keep that notice at the cash register, so he/she may direct a concerned customer's attention to that language.
3. Notice of Dishonored Check (example): North Dakota law requires a Notice of Dishonored Check, substantially similar to the enclosed form, be sent prior to presenting a check to the State's Attorney's Office for prosecution. The enclosed form is provided as an example.
4. Affidavit of Service by Mail (example): North Dakota law requires proof of mailing a Notice of Dishonored Check. That proof may be made by return receipt or by an Affidavit of Mailing signed by the individual making the mailing. The enclosed form is provided as an example.
5. Affidavit of Insufficient Funds or Closed Account Checks: This form must be used for any check submitted to the Griggs County State's Attorney's Office for consideration of prosecution. A separate affidavit must be completed for each check, even if multiple checks on the same account are submitted to our office.

The enclosed policies and forms are intended to balance the merchant's needs, our prosecutorial needs and the statutory requirements. The policy is similar to these used in other urban areas within our region. While the enclosures are similar to our previous ones, we have made some changes. I encourage you to review the policy and ensure your practice is consistent with it.

The enclosures apply to those merchants who choose to submit bad checks to our office for prosecution. If you choose not to submit checks for prosecution, then you are not required to comply with our office policy.

If you have questions regarding the enclosures or our policy, then please feel free to contact our office at (701) 797-2413. Thank you.

Sincerely,



Jayme Tenneson
Griggs County State's Attorney
PO Box 541
Coopertown, ND 58425
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Enclosures:

1. Policy on Criminal Prosecution of Insufficient Funds and Closed Account Checks
2. Notice of ID requirement for Checks
3. Notice of Dishonored Check
4. Affidavit of Service by Mail
5. Affidavit of Insufficient Funds or Closed Account Checks

GRIGGS COUNTY STATE'S ATTORNEY
POLICY ON CRIMINAL PROSECUTION OF
INSUFFICIENT FUNDS AND CLOSED ACCOUNT CHECKS

The Griggs County State's Attorney's Office (hereafter "SAO") will consider prosecution on insufficient fund (NSF) and closed account (also known as "no account") checks under North Dakota Century code Chapter 6-08 only when all of the following criteria are met. The term "merchant" as used below relates to any party, and their employee(s), that accepts a check and intends to submit that check to the SAO for prosecution.

ID REQUIRED: The merchant must review a photo ID (drivers' license preferred of the check writer). The merchant must **write on the check** the ID number **and** date of birth shown on the ID. In the case of a non-driver photo ID, the merchant must write the ID issue date. It will not be sufficient for the merchant merely to ask if everything on the check is correct. It will not be sufficient for the merchant merely to review a social security card and report social security numbers on the face of the check as if a ND driver's license number.

ID numbers are verified by the SAO. The SAO will decline for prosecution any checks where the ID information reported by the merchant is not valid.

WRITTEN NOTICE/PROOF OF SERVICE: Before submitting checks to the SAO for prosecution the merchant, or their agents, must prepare a written notice of dishonor for each check to the check writer. If the check is drawn on a business account, notice must still be served on the check writer, not the business. The notice must, among other things, give the check writer **ten (10)** days from receipt of the notice to pay the check. The merchant must also serve that notice upon the check writer. It is sufficient to serve that notice by mail. The merchant must also obtain proof of such service. For the purposes of this policy, proof of service by mail may be made by obtaining a return receipt (certified mail) or by preparing an affidavit of mailing signed by the individual making the mailing. A letter alone will not serve as Notice unless it is substantially similar to the form.

PREPARING AFFIDAVIT OF INSUFFICIENT FUNDS OR NO ACCOUNT

CHECKS/FILING WITH SAO: The person who actually accepted the check, whether that is the merchant or the merchant's employee (no exceptions), must complete an Affidavit of Insufficient Funds or No Account Checks. The merchant must then file the following four things with the SAO: **(1)** the Affidavit of Insufficient Funds or No Account Checks; **(2)** the original check; **(3)** a copy of the written notice of dishonor; and **(4)** proof of service (e.g., affidavit of service by mail or return receipt).

STATUTE OF LIMITATIONS: In general, prosecution for all bad checks must be filed with the court by the SAO within **one hundred twenty (120)** days after dishonor by the drawee. Therefore, it is the policy of the SAO that the merchant or their agent must submit all NSF or Closed Account checks to the SAO no more than **ninety (90)** days after dishonor. That time

frame will allow the SAO time to review the facts, prepare the necessary papers and timely file any necessary documents with the court.

EXCLUSIONS: The making of a postdated check knowingly received as such, or a check issued under an agreement with the payee that the check not be presented for payment for a specified time, is not a violation of the state statute and cannot be prosecuted by the SAO. The SAO cannot prosecute two-party checks and refer-to-maker checks because they are neither insufficient funds nor closed account checks. The SAO will no longer prosecute rent checks or payroll checks due to evidentiary issues arising with these types of checks. The merchant should present to local law enforcement for investigation, checks that returned as forgeries. The merchant should also present to local law enforcement checks that are returned with a “stop payment” stamp, if the merchant feels that payment was stopped to intentionally defraud the merchant. If the check is excluded under this section, the merchant may be able to pursue remedies through means such as small claims court. Refer to section 8 below.

QUALIFICATIONS: The check must be presented for payment within **fourteen (14)** days of the date the check was received and must have a bank stamp of NSF or Account Closed on it. Checks that have been presented for payment twice (not required by statute), being NSF on the first presentation and account closed on the second are considered to be NSF. The status of the account is determined when the check is first presented for payment.

JURISDICITON: The SAO will only accept checks that are written in Griggs County and passed by persons living in North Dakota or a border state. The SAO will not accept checks issued by people living in Canada. Furthermore, the SAO reserves the right to decline prosecution of any insufficient funds or closed account check where the bank or depository upon which the check is drawn is located in another state or country as a reasonable exercise of prosecutorial discretion in allocating limited prosecutorial resources.

NOTIFICATION OF PAYMENT RECEIVED: If a merchant directly receives payment of the insufficient funds or closed account check after the check has been turned over for prosecution, the SAO office must be notified immediately at 701-797-2413. Payment of such check is not a factor in the SAO’s decision about whether to proceed with prosecution.

[NOTE: The above policy is intended to reflect, among other things, the requirements found in North Dakota Century Code 6-08. If for any reason there are conflicts between this policy and the referenced statutes, the requirements of the statutes will prevail.]

Jayme Tenneson, Griggs County State’s Attorney

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Robert S. Hook Sheriff
Wayne Oien Road Supt
Rick Cushman Coroner
Dennis Kubischta Veterans Service Officer
Patricia Lorenzen Dir of Tax Equalization
Robert S. Hook DES Coordinator

December 2015

RE: Notice of ID Requirement for Checks

To Whom it May Concern:

To assist law enforcement's efforts, the Griggs County State's Attorney's Office requests that area merchants verify photographic identification (ID) of anyone submitting a check for payment to that merchant. It further requests the merchant to write certain ID information on the check. These steps provide a measure of protection for everyone that both writes and accepts checks, and assists our office with the prosecution of "bad checks".

Please extend your cooperation to Griggs County merchants when they ask for your ID. Thank you.

Sincerely,

Jayme Tenneson
Griggs County State's Attorney
PO Box 541
Coopertown, ND 58425
T: 701-797-2413
F: 701-797-2412
jayme.tenneson@griggscountynd.gov

NOTICE OF DISHONORED CHECK

Date _____

Name of Issuer _____

Street Address _____

City, State, ZIP _____

You are according to law notified that a check dated _____, 20____, drawn on the
_____ Bank of _____

in the amount of \$_____ has been refused because of (non-sufficient funds) **or** (the
drawer does not have an account). Within ten days from the receipt of this notice, you must pay or tender
to (Holder or Agent or Representative) sufficient moneys to pay such instrument in full and any collection
fees or cost not in excess of forty dollars.

STATE OF NORTH DAKOTA)
COUNTY OF GRIGGS)§
)

AFFIDAVIT OF SERVICE
BY MAIL

_____, being first duly sworn on oath, deposes and states that he/she is of legal age and that on (date) _____, 20____, he/she served the attached **Notice of Dishonor**, by placing a true and correct copy thereof securely enclosed in an envelope addressed as follows:

and depositing the same, with postage prepaid, in the United States mails at _____, North Dakota.

(signature)

Subscribed and sworn to before me this ____ day of _____, _____.

Notary Public
Griggs County, North Dakota

(SEAL)

STATE OF NORTH DAKOTA
COURT
COUNTY OF GRIGGS
DISTRICT

IN DISTRICT
SOUTHEAST JUDICIAL

AFFIDAVIT REGARDING CHECK OFFENSE

_____, being first duly sworn deposes and says:

[¶ 1] That on the ____ day of _____, 20____, One (1) check written in the amount of \$ _____ was received.

[¶ 2] That such check was made payable to _____.

[¶ 3] That the check was apparently signed by _____.

[¶ 4] That the address of the check-writer, as it appeared on the check was:

[¶ 5] That my financial institution notified me on the ____ day of _____, 20____, that the above referenced check, when presented for payment, was returned for _____.

[¶ 6] Therefore, this affiant has personal knowledge of the matters set out herin and this affiant has reasonable grounds to believe an offense has been committed and that _____ was the person who committed such offense.

[¶ 7] That no payment has been received and said check has not been made good by this ____ day of _____, 20____.

[¶ 8] That \$ _____ was charged to my/our banking institution for the check.

(check made payable to this person/business)

(Address of person/business to whom the check was made payable)

(Address of person/business to whom the check was made payable)

Signature (of person or advocate for business)

Subscribed and sworn to before me this ____ day of _____, 20____.

(SEAL)

Notary Public
_____ County, State of North Dakota