

What civil remedies are available if the District Attorney's office declines to prosecute?

A written notice of a bad check should be sent to the payor by certified mail. *California Civil Code* Section 1719 requires specific language be included in the notice. The payor has thirty (30) days to respond to the notice, after which time the payee can file suit and include a request for treble damages. The Ventura Superior Court's Self-Help Legal Access Centers have sample notice forms for NSF and stop payment checks, which can be easily used by filling in the blanks.

What happens if the certified letter is returned by the post office unclaimed?

The court generally considers a certified letter that was returned unclaimed because the addressee refused to sign for it, the same as if the intended recipient accepted it.

What can I do if the payor refuses to pay after receiving the notice?

You can file suit in the Small Claims Court for up to \$10,000. The District Attorney's office has a Small Claims Advisor who can answer questions about procedures and can assist with the necessary forms. The telephone number of the Small Claims Advisor is (805) 654-5054. The filing fee for Small Claims Court is based on the amount sued for. You can check the courts website at www.ventura.courts.ca.gov for current filing fees based on the claim amount.

You can sue for the amount of the check, bank charges for the bounced check and any other resulting damage including court costs. In addition, the payee can request treble damages of at least \$100, but not more than \$1,500, if a notice of bad check was first sent to the payor by certified mail.

What do I need when I go to court for the trial on the case?

The returned check, along with a copy of the demand notice you sent to the check writer at his/her last known address, and a signed certified mail receipt showing delivery or attempted delivery if it was refused. You should also bring any documents from the bank showing the amount that was charged to your account for the bounced check and any other charges you incurred as a result. It is often wise to bring notes of your conversations with the check writer and copies of any correspondence you may have sent or received regarding your effort to collect. Remember that total damages in the Small Claims Court are limited to \$10,000. If you wish to recover damages in excess of \$10,000 you will need to file the case in Superior Court, and the services of a lawyer are advisable.

The Civil and Small Claims Divisions of the Ventura Superior Court are located in Room 210 on the second floor in the Hall of Justice Ventura Location. Office hours are 8 a.m. to 3 p.m., Monday through Friday.

Civil Unit: 805.289.8525

Civil Webpage: www.ventura.courts.ca.gov/civil.html



Superior Court of California

County of Ventura
Hall of Justice
800 S. Victoria Avenue
Ventura, California 93009
(805) 289.8900

BAD CHECKS

What If I Write One? What If I Receive One?



**Our Court is here for
the People we serve**

BAD CHECKS: What if I write one? What if I receive one?

What if I Write a Bad Check?

Writing a bad check with intent to defraud is a crime. It is against the law to knowingly write a check on a closed account or for an amount which the check writer knows cannot be covered by funds in the account or by overdraft protection. Writing a bad check can also result in a civil lawsuit and civil penalties of three times the amount of the check up to \$1,500.



What do I do when I become aware that I have written a bad check?

If the check was not honored by the bank for insufficient funds, you can immediately deposit enough money in your account to cover the amount of the check plus additional bank fees. Ask the payee (the person to whom you wrote the check) to resubmit the check to the bank for payment. If your check was returned by the bank because you closed your account, you can issue a new check on your new account or pay the amount of the check in cash, certified/bank check or money order to the payee.

Can a bank or payee charge me for issuing a bad check?

Yes. Both the bank and the payee can charge a fee not to exceed \$25 for the first bounced check and \$35 for each subsequent bounced check.

What happens if the bank makes a mistake?

If a bank has returned your check in error, it must honor the check if resubmitted and, if requested, must advise the payee in writing of its mistake. You may also request that the bank reimburse you for any fees or costs you have incurred due to the bank's mistake. You should keep a copy of the bank's letter acknowledging its error since you may need to forward it to credit reporting agencies that monitor your credit and payment of debts.



What if I Receive a Bad Check?

The first step, if possible, is to immediately contact the payor (check writer) and explain that the check bounced. If the payor says there are now sufficient funds or a mistake was made by the bank, the original check can be resubmitted to the bank for payment. You can also request the payor pay you in cash or money order instead of another check.

If the resubmitted check bounces, what do I do next?

The office of the District Attorney has an NSF (non-sufficient funds) Check Restitution/ Prosecution Unit where merchants can submit an official complaint form with the original NSF check if the check is for \$25 or more. Complaint forms can be obtained from the District Attorney's office or at www.vcdistrictattorney.com/publications or local law enforcement agencies, local chambers of commerce and some banks. The District Attorney's office will evaluate each case to determine if a felony has been committed. The District Attorney's NSF Unit # is (805) 662-1720.

Felony cases will be referred directly to police agencies for investigation and then to the District Attorney's office for prosecution. In other cases, prosecution may be deferred while restitution is sought. The District Attorney's Office will send a letter to the bad-check writer requesting full restitution and a \$25 service charge for the NSF check. If no response is received, a second letter will be sent repeating the first request, but adding an additional requirement that the payor attend a special class.

What happens if the check writer still refuses to pay?

The District Attorney's office will evaluate the case to determine if criminal prosecution is appropriate. If not, the merchant will be referred to the Small Claims Advisor for assistance in filing a civil suit against the check writer.