

# CUSTER COUNTY ATTORNEY

1010 Main Street  
Miles City, Montana 59301

PHONE: (406) 874-3310  
FAX: (406) 874-3450

The following information should be read carefully and shared with each employee in your business. The information is provided as our effort to reduce the number of bad checks in Custer County. Remember that prevention is your best protection.

## PREVENTION/PROTECTION

### 1. Obtain Accurate Information:

- a. Full name, street address, phone number
- b. Driver's license number or social security number and date of birth
- c. See a valid driver's license or a picture ID.
- d. Witness the signing of the check and write your initials on the check.

Note: The County Attorney *cannot* obtain arrest warrants from the courts unless the writer's birth date and driver's license/social security number are on the check.

### 2. Never Accept:

- a. Post-dated checks
- b. Two-party checks
- c. Checks not signed in your presence
- d. Checks to be held until later
- e. Checks given as restitution for bad checks
- f. C.O.D.s

### 3. Use Caution When Accepting the Following:

- a. Out of State checks
- b. Checks having no or low digit check numbers
- c. Counter checks
- d. Checks in excess of the amount of purchase

## PROSECUTION AND STEPS TO FOLLOW

### 1. The County Attorney's Office *cannot* prosecute bad checks that have been or are construed as:

- a. Post-dated
- b. Two-party checks
- c. Stop payment checks
- d. Checks with no identification
- e. Checks that were taken by people who cannot identify the person signing the check
- f. Checks that are over the statute of limitations date (more than one year old)
- g. Checks where partial payment has been accepted
- h. C.O.D.s

2. When a check is returned marked "FORGERY" or "IRREGULAR SIGNATURE":
  - a. These checks should immediately be taken to either the Miles City Police Department if you received the check **within** the city limits or to the Custer County Sheriff's Office if you received the check **outside** the city limits.
3. When a check is returned for "NSF" or "ACCOUNT CLOSED":
  - a. Send a written five (5) days notice by certified mail, restricted delivery, or return receipt to the check writer to establish evidence of the writer's intent to defraud you. *USE FORM "A" TO DO THIS STEP.*
  - b. If restitution is not received by you within five (5) days, fill out FORM "B", and proof of certified mailing, and we will attempt to collect restitution from the check writer by mailing him/her a 10-day demand letter. After 10 business days with no response, a summons or warrant is issued for the check writer's arrest based on your complaint (misdemeanor, felony, or felony common scheme).

### RESTITUTION

1. If a check writer desires to make restitution on a bad check after the check has been turned over to the County Attorney's Office:
  - a. **RESTITUTION MUST BE MADE DIRECTLY TO THE COUNTY ATTORNEY'S OFFICE.** Once checks have been turned over to this office for collection/prosecution the merchant *MUST NOT* accept any monies from the check writer toward the total amount owing; the check writer should be directed to contact this office for inquires or restitution purposes.
  - b. Restitution, if collected, will be sent to the appropriate businesses on a monthly basis.
  - c. In addition to the amount of the check, the check writer must pay a fee to help offset administrative, judicial, and prosecutor's costs and must pay the certified mailing fee to reimburse the merchant. If a check writer agrees to pay the bad check and fees owing in full, then the County Attorney's Office will send the business the restitution. The administrative fee does not reduce the restitution you will receive.

Bad checks are an expensive and time-consuming problem for both the merchants/businesses and law enforcement agencies of this community. We hope this policy directive will reduce the number of bad checks received, as well as reduce the "hassle and frustration" you may have experienced in the past.

We are all concerned with the number and dollar amount of bad checks being issued in Custer County. A large part of these can be avoided by taking the necessary precautions and educating your employees in the policies listed above.

Sincerely,  
WYATT A. GLADE  
CUSTER COUNTY ATTORNEY

FIVE-DAY NOTICE

Date \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dear \_\_\_\_\_,

Pursuant to Section 45-6-316 of the Montana Code Annotated, you are hereby notified that the undersigned holds a check in the amount of \$ \_\_\_\_\_ drawn on the \_\_\_\_\_ (Bank), payable to \_\_\_\_\_, dated \_\_\_\_\_ and signed by \_\_\_\_\_.

This check has not been paid by the financial institution on which it was drawn and has been returned with the notation \_\_\_\_\_.

Section 45-6-316 of the Montana Code Annotated provides:

1. A person commits the offense of issuing a bad check when the person issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.
2. If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the offender knew that it would not be paid by the depository.
3. A person convicted of issuing a bad check shall be fined not to exceed \$1,500 or be imprisoned in the county jail for any term not to exceed 6 months or both. If the offender has engaged in issuing bad checks that are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds \$1,500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years or both.

As provided in Section 45-6-316 of the Montana Code Annotated, you are hereby given five (5) days from the receipt of this letter in which to make this check good. If you fail to do so, the matter will be turned over to the Custer County Attorney's Office for prosecution.

Please immediately contact:

\_\_\_\_\_ (Name of individual or business)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (Phone #)

**BAD CHECK INFORMATION SHEET AND COMPLAINT**

1. Business or individual to whom check is payable:  
NAME: \_\_\_\_\_ MANAGER: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_

2. Individual accepting the check:  
NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_

3. Can person accepting check identify check writer? YES \_\_\_\_ NO \_\_\_\_

4. Did person accepting check look at picture ID? YES \_\_\_\_ NO \_\_\_\_

5. Identification of individual passing the check:  
NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_  
SEX: \_\_\_\_\_ RACE: \_\_\_\_\_ HAIR: \_\_\_\_\_ EYES: \_\_\_\_\_ DOB: \_\_\_\_\_  
AGE: \_\_\_\_\_ DRIVER'S LICENSE: \_\_\_\_\_ SS#: \_\_\_\_\_  
OTHER IDENTIFYING CHARACTERISTICS (TATOOS, SCARS, ETC.): \_\_\_\_\_

6. Check Information:  
DATE CHECK(S) ISSUED: \_\_\_\_\_  
CHECK NUMBER(S): \_\_\_\_\_  
  
CHECK AMOUNT(S): \_\_\_\_\_  
BANK: \_\_\_\_\_  
ACCOUNT NUMBER: \_\_\_\_\_  
REASON CHECK(S) RETURNED: \_\_\_\_\_

7. Has 5-day demand letter (Form A) been sent Certified Mail? YES \_\_\_\_ NO \_\_\_\_  
Cost of mailing Certified Letter \$ \_\_\_\_\_

8. Was the check post-dated? YES \_\_\_\_ NO \_\_\_\_

9. Was the check agreed to be held until a later date? YES \_\_\_\_ NO \_\_\_\_

10. Have any payments been accepted toward THIS bad check? YES \_\_\_\_ NO \_\_\_\_

**PLEASE READ CAREFULLY!!!**

This check was accepted with the understanding that it was good. The check was not post-dated. The payee was not asked and did not agree to hold the check until a later date. The check writer did not state or imply that the check would not be honored at the bank. The check is not a two-party check.

I understand that criminal charges may be filed as a result of my signing this complaint and that the check writer named above may be arrested. **I FURTHER AGREE NOT TO ACCEPT PAYMENT ONCE THE CHECK HAS BEEN GIVEN TO THE CUSTER COUNTY ATTORNEY'S OFFICE FOR PROSECUTION.** I swear the above facts are true and correct.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_