

WORTHLESS CHECKS

Pursuant to section 832.05, Florida Statutes, it is a crime to obtain and pay for any goods, services, or other things of value (including rent) with a check when there are insufficient funds in the bank account of the person writing the check (called the "maker"). It is a misdemeanor if the amount of the check is less than \$150.00; if the check is for \$150.00 or more, the crime becomes a felony. The fact that the maker pays the check after it is dishonored by the bank is not a defense to, or grounds for dismissal of, a criminal charge filed against the maker of a worthless check.

There are two general exceptions to the above law. First, if the person receiving the check (called the "payee") knows, has been expressly notified, or has reason to believe that the maker does not have sufficient funds in his or her account to cover the check, then the passing of that check (which subsequent turns out to be worthless) is *not* a crime. Please be aware that the fact that a person has passed a worthless check before does not, standing alone, legally constitute a "reason to believe" that such person does not have sufficient funds in his or her account to cover a subsequent check.

A second exception is the post-dated check, which is actually a variation of the first exception. If someone passes a post-dated check, that alone is a sufficient "reason to believe" that the maker does not have sufficient funds in his or her account to cover the check. Thus, if a post-dated check turns out to be worthless, *no crime has been committed*.

There is much confusion about giving certain notices to the maker of a worthless check. Section 832.07, Florida Statutes, states that in a *criminal prosecution* for passing a worthless check, it is "prima facie evidence of intent to defraud or knowledge of insufficient funds" in the maker's bank account if the maker fails to pay for the check, plus a service charge, within 15 days after receiving written notification from the payee of the fact the check was returned by the bank as unpaid. A copy of the notice required by section 832.07 is included with this chapter. (Such notice is included with the notice required by section 68.065, Florida Statutes, which is discussed below.)

However, according to section 832.07, the failure to pay for the worthless

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check within 15 days of receiving a worthless check notice *only* results in a benefit for the State Attorney's Office in a criminal prosecution by creating "prima facie evidence of intent." The *intent* to commit a crime is almost always an element that must be proven in by the State Attorney's Office, and giving the maker of a worthless check a 15-day notice helps create evidence of such intent with respect to the passing of a worthless check.

Although assisting the State Attorney's Office with their prosecution of someone who passes a worthless check, there is another statutory remedy in section 68.065, Florida Statutes, that merits one's attention. That section states that if the maker of a bad check fails to pay for the check (plus a service charge) within 30 days of receiving a particular notice, the payee of the worthless check may sue the maker and collect *three times* the amount of the check as damages *plus* the original amount of the check plus the maker is liable for the payee's court costs and reasonable attorney's fees. In other words, a worthless check in the amount of \$750.00 becomes a civil claim for \$3,000.00 plus court costs and reasonable attorney's fees. A copy of the notice required by section 68.065 is included with this chapter. Clearly, section 68.065 provides the landlord (and any other vendor for that matter) with a valuable tool to collect on worthless checks.

Landlords should keep in mind that when he or she receives notice from the bank that a check has been returned as unpaid, the person who passed the check *has not paid rent!* If the landlord has not yet given the tenant a 3-Day Notice for that month's rent, such notice should be issued immediately upon learning that the tenant has passed a worthless check. It is the practice of attorney Daniel G. Drake to issue the 3-Day Notice by itself, and then issue the worthless check notices *after* the time set forth in the 3-Day Notice has expired. This helps prevent a tenant raising a defense such as, "I received a 3-Day Notice, a 15-Day Notice, and a 30-Day Notice all at the same time and I didn't know what to do." Let your 3-Day Notices fully mature before sending out worthless check notices and that circumstance won't occur. If the tenant previously received a 3-Day Notice and then paid his or her rent with a worthless check, the landlord *does not* have to issue a new 3-Day Notice; instead, the landlord may send out a worthless check notice and immediately begin eviction proceedings.

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THIS NOTICE MUST BE SENT TO THE CHECK WRITER BY CERTIFIED OR REGISTERED MAIL, EVIDENCED BY RETURN RECEIPT! ALSO, YOU MUST CALCULATE THE SERVICE CHARGE AS SET FORTH IN THE SECOND PARAGRAPH OF EACH NOTICE, ADD IT TO THE AMOUNT OF THE CHECK, AND FILL IN THE "TOTAL AMOUNT DUE" LINE AT THE END OF THE SECOND PARAGRAPH OF EACH SECTION.

APARTMENT COMMUNITY LETTERHEAD

TENANT'S NAME AND ADDRESS

Dear _____:

CRIMINAL NOTICE:

Pursuant to section 832.07, Florida Statutes, you are hereby notified that your check number _____ in the face amount of \$ _____ issued by you on _____ [insert date check was received] drawn upon _____ [insert name of bank] and payable to _____ [insert name of landlord/apartment community] has been dishonored.

Pursuant to Florida law, you have 15 days from receipt of this notice to tender payment of the full amount of such check plus a service charge of \$25 if the face value does not exceed \$50, \$30 if the face value exceeds \$50 but does not exceed \$300, \$40 if the face value exceeds \$300, or an amount of up to 5 percent of the face amount of the check, whichever is greater, the total amount due being \$ _____ [insert amount of check *plus* the proper service charge]. Unless this amount is paid in full within 15 days from receipt of this notice, _____ [insert name of landlord/apartment community] may turn over the dishonored check and all other available information relating to this incident to the state attorney for criminal prosecution. You may be additionally liable in a civil action for triple the amount of the check, but in no case less than \$50, together with the amount of the check, a service charge, court costs, reasonable attorney's fees, and incurred bank fees, as provided in Section 68.065, Florida Statutes.

CIVIL NOTICE:

Pursuant to section 68.065, Florida Statutes, you are hereby notified that your check number _____ in the face amount of \$ _____ issued by you on _____ [insert date check was received] drawn upon _____ [insert name of bank] and payable to _____ [insert name of landlord/apartment community] has been dishonored.

Pursuant to Florida law, you have 30 days from receipt of this notice to tender payment of the full amount of the check, plus a service charge of \$25.00 if the face value of the check does not exceed \$50.00, \$30.00 if the face value exceeds \$50.00 but does not exceed \$300.00, \$40.00 if the face value exceeds \$300.00, or an amount equal to 5% of the face amount of the check, whichever is greater. The total amount due is \$ _____ [insert amount of check *plus* the proper service charge]. Unless the above amount is paid in full within thirty (30) days from receipt of this notice, we may file a civil action against you for three times the amount of the check, but in no case less than \$50.00, in addition to the face value of the check, plus the service charge, any court costs, reasonable attorney's fees, and all bank fees incurred by _____ [name of landlord/apartment community] in

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taking such action.

Please govern yourself accordingly.

Sincerely,

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Post Office Box 2327, Brandon, Florida 33509-2327 (813) 662-1536

(COMMUNITY'S LETTERHEAD)

(Date)

Resident's name
Street Address
Apartment No.
City, State, Zip

Dear Resident:

As of the date of this letter, at least two of your personal checks to _____ (community name) have been returned unpaid by your bank. Because of such, we will be unable to accept any personal checks from you in the future. According to the terms of Paragraph ____ of your lease, all future rent and other charges related to your apartment (water, cable, etc.) must be paid by cashier's check, certified check, or money order. If future payment is made by personal check, we will have to return the personal check to you, which may result in late fees or other charges. Thank you for your understanding.

Sincerely,

(Signature and title)

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(COMMUNITY'S LETTERHEAD)

January 31, 2002

**MR. AND MRS. ABC
1234 ABC ROAD, APARTMENT 201
TAMPA, FLORIDA 33600**

Dear Mr. and Mrs. ABC:

As of the date of this letter, at least two of your personal checks to **HAPPY PLACES APARTMENTS** have been returned unpaid by your bank. Because of such, we will be unable to accept any personal checks from you in the future. According to the terms of Paragraph **2(A)** of your lease, all future rent and other charges related to your apartment (water, cable, etc.) must be paid by cashier's check, certified check, or money order. If future payment is made by personal check, we will have to return the personal check to you, which may result in late fees or other charges. Thank you for your understanding.

Sincerely,

**Jennifer Good Girl
Assistant Manager Happy Places Apartments**

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