

**Collection of NSF Checks
And
Stop Payment Checks**

1. If a person issues a check intending it shall not be paid, that person is guilty if issuing a dishonored check, which is a crime under Minnesota Law (Minnesota Statute 609.535).
 - a. If you receive an NSF check or a stop payment on a check, you can complain to the county attorney who may or may not choose to prosecute.
 - b. The criminal penalties for issuing a bad check do not apply to post-dated checks.
 - c. Before seeking criminal prosecution, you need to forward a “Notice of Demand for Payment of Dishonored Check” that meets various statutory requirements. This form will be mailed to the address on the check, will describe the amount of the check, who signed the check, and the name of the bank. The form contains a demand for payment of the check and if the check is not paid in full within five days after mailing the notice, you may refer the matter to proper authorities for prosecution.
 - d. The requirements of the notice and demand for payment of dishonored checks are very stringent and require various provisions of Minnesota law to be described. You can purchase a form to use from most business form providers that contain the required statutory provisions.
2. You may also charge a service charge of up to \$20.00, or actual costs of collection not to exceed \$30.00, on dishonored checks, even if you do not send out the Notice and Demand for Payment of Dishonored Check. However, you do have to post notice of the service charge conspicuously on your premise. Only one service charge can be charged for each dishonored check.
3. If you send out the statutory Notice and Demand for Payment of Dishonored Checks, you also can recover a civil penalty of up to \$100.00 of the value of the check, whichever is greater, if your customer does not pay you within 30 days following mailing of the notice of dishonor. You also can get interest and in some circumstances, attorney’s fees. However you must send out the statutory notice which specifically describes your rights under Minnesota Statutes, including Statute 332.50 (Civil liability for issuance of worthless checks) and Statute 609.535 (Criminal liability for dishonored checks).
4. As well as pursuing criminal remedies, you may sue to recover the amount of the check in conciliation court. If you gave the statutory Notice and Demand for Payment of Dishonored Check, you can also request recovery of the civil penalty plus interest.
 - a. The court administrator will assist in preparing the required paperwork to begin a conciliation lawsuit.
 - b. The filing fee for conciliation court matter varies depending on the county, but ranges from \$15.00 to a high of \$35.00
 - c. The conciliation court limits are \$7,500.00 or \$4,000.00 if the claim involves a consumer credit transaction. Generally speaking, consumer credit

transactions involve sales of personal property or loans to purchase personal property that are primarily for personal, family or household purposes.

- d. The court administrator will assist you in preparing the conciliation court claim and has required forms for the statement of claims and summons. In the claim, you will need to allege that the defendant owes you money and describe briefly the facts. The claim needs to be notarized.
- e. The court administrator prepares a summons and sets a trial date, which is not less than ten days of the date the summons is mailed.
- f. The general rule is that you must sue the defendant in the county where the defendant lives. However, suits in conciliation court to recover dishonored checks can be brought in the county where the check was dishonored.
- g. At the trial, you can represent yourself or have an attorney represent you. A corporation or other company can be represented by an officer or partner, or the company can appoint an employee to appear on its behalf.
- h. At the trial, the court hears testimony of the parties, their witnesses, and considers exhibits offered by the parties. You will need to offer the dishonored check as an exhibit and testify that the check was returned for non-sufficient funds or that the defendant stopped payment. The defendant can raise any defenses he might have.
- i. If you lose in conciliation court, you may remove that case to District Court. A number of documents will have to be filed with the court within twelve days after the court administrator mailed the order for judgment. You will likely need to consult with an attorney as to the mechanism for appealing or removing to District Court.
- j. Even if you have a judgment in conciliation court, often times the hardest part of the process is to actually collect the judgment. You may need the assistance of an attorney or sheriff to garnish wages and levy on bank accounts.