

Guidelines for Filing Hot Check and Similar Sight Order Cases

The Check Division of the Dallas County District Attorney's office will accept for investigation complaints alleging that a person committed **Theft** or **Theft of Service** by issuing a check or similar Sight Order which the issuer's bank refused to honor. A letter will be mailed to the issuer of the check or similar Sight Order requesting that he/she make restitution through our office. If restitution is not received, criminal charges may be filed against the issuer of the check or similar Sight Order **only as defined below**:

Hot Check Filing Guidelines and Instructions

1. The check must have been exchanged for property or service which was provided **at the same time the check was issued. The check cannot be:**

- A. Payment on an open or billed account.
- B. Payment on an outstanding debt or loan.
- C. Payment for payroll.
- D. A replacement, held, or post-dated check.

2. The check must have been presented **by the person who signed the check, in person, and in Dallas County.**

The check cannot have been:

- A. Received through the mail.
- B. Passed by another party on behalf of the issuer.
- C. Accepted by an unknown employee, courier, or delivery person.
- D. Pre-signed by the issuer.
- E. A third-party check (not written to the receiver).

3. The check must have been presented to the issuer's bank within **thirty (30)** days of the date it was issued. Stamping on the check must show that payment was refused because:

- A. The issuer did not have sufficient funds on deposit with the bank to pay the check when it was issued ("Non-Sufficient Funds" or "NSF").
- B. The issuer did not have an account with the bank when the check was issued ("Account Closed" or "No Account Found").
- C. Stop Payment.

4. If the check was for payment of service and the transaction was suspended (stop payment) by the issuer, please complete the **Stop Payment form** and present it with the affidavit and other documents. This will provide us with additional information so that a complete investigation can be conducted.

5. The issuer of the check must have been sent **written notification via certified mail** that payment was refused by the issuer's bank. The issuer must have failed to pay the holder of the check **in full** within ten (10) working days of receiving the written notification.

Note: Notification is **not required** when the issuer **did not have an account** with the bank when the check was issued. The notification (demand letter) must contain the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay

creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

6. The Check Division complaint form must contain adequate information to identify and locate the person who physically received the check from the issuer. It must also contain adequate information to identify the issuer of the check. **i.e., the check writer's true date of birth and a verifiable state driver's license or identification number.**

NOTE: The Check Division will not obtain this information for you.

Special Instructions for Sight Order case filings:

Legislation became effective in September of 2013 that included provisions for prosecuting "Similar Sight Orders" in addition to returned checks.

TPC 1.07 (46-a) "Sight Order" means a written or electronic instruction to pay money that is authorized by the person giving the instruction and that is payable on demand or at a definite time by the person being instructed to pay. The term includes a check, an electronic debit, or an automatic bank draft.

1. Sight orders include electronic debit transactions and automatic bank drafts. If the transaction was an electronic debit please provide the transaction information including:

- A. Receipt of transaction,
- B. name of person on the account used for debit transaction; and,
- C. Confirmation from banking institution of insufficient funds or refusal of banking institution to make payment.

This information must be included with the Complaint Affidavit.

2. For automatic bank drafts in addition to information requested in item 1, also include the automatic bank draft authorization form used to setup automatic bank draft. This information must be included with the Complaint Affidavit.

3. The sight order must have been presented to the issuer's bank within **thirty (30)** days of the date of the transaction. Documentation from the recipient's bank must show that payment was refused because:

- A. The issuer did not have sufficient funds on deposit with the bank to pay the check or similar sight order when it was issued ("Non-Sufficient Funds" or "NSF"); or
- B. The issuer did not have an account with the bank when the sight order transaction was issued. ("Account Closed" or "No Account Found").

4. If the sight order transaction was for payment of service and the transaction was suspended (stop payment) by the issuer, please complete the **Stop Payment form** and present it with the affidavit and other documents. This will provide us with additional information so that a complete investigation can be conducted. **It is a defense to prosecution if payment on a sight order (automatic bank draft) is presented for payment before the authorized date(s).**

5. The issuer of the check/sight order must have been sent **written notification via certified mail** that payment was refused by the issuer's bank. The issuer must have failed to pay the holder of the check **in full** within ten (10) working days of receiving the written notification.

Note: Notification is **not required** when the issuer **did not have an account** with the bank when the check was issued. The notification letter (demand letter) must contain the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

6. The Check Division complaint form must contain adequate information to identify and locate the person who physically received the check or similar sight order from the issuer. It must also contain adequate information to identify the issuer of the check or similar sight order. **i.e., the issuer's true date of birth and a verifiable state driver's license or identification number.**
NOTE: The Check Division will not obtain this information for you.

INSTRUCTIONS FOR FILING A COMPLAINT WITH THE Dallas County CHECK DIVISION

1. Complete and notarize a separate D.A. Theft by Check / Issuance of a Bad Check form for **each check**.
2. Attach the **original check or certified copy from the bank**.
3. Enclose the invoice, sales slip, or detailed description of property or services stolen.
4. Enclose postal receipt showing that the issuer of the check was sent written notification **via certified mail** of the bank's refusal to honor the check
5. Deliver or mail the complaint(s) to:

**Dallas County District Attorney
Check Division
133 N. Riverfront Blvd. LB 19
Dallas, TX. 75207-4399**

SPECIAL INSTRUCTIONS AFTER FILING A COMPLAINT

Although the Check Division is **not** a collection agency, this office does collect restitution on behalf of the victims of check offenses. Payments are made through the Check Division in the form of **Money Orders** or **Cashier's Checks**. In order to assist in the collection of restitution and the filing of any criminal case the following special instructions **must be heeded**.

PLEASE:

1. **Do not accept any restitution from a check writer after submitting a written complaint.** Refer any check writer to our office regarding restitution.
2. **Do not promise to drop any criminal charges if restitution is paid.**
3. **Do not contact the Check Division regarding the arrest of the check writer.** The Dallas County Sheriff's Office maintains and executes all arrest warrants.
4. Contact the Check Division with any changes in regard to your address or telephone number. Remember, we can't pay you if we can't find you. You may do this by sending a letter to the check division or appearing personally to the office.