

Collection of Bad Checks

By Bradley S. Dornish, Esq.

The expressions “bouncing a check” or “writing a bad check” are popular in today’s society. The question arises though: what do they really mean and what can you do if someone issues you a bad check? In Pennsylvania, bouncing a check occurs when a person “...issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.” PA. STAT. ANN. tit. 18, §4105(a)(1) (Purdon 1998). A violation of that law can occur even if the “drawee” (the bank where the person writing the check has his account) is not located in Pennsylvania. The “issuer” (the person writing the check) is presumed to know that the check would “bounce” if either the account on which the check was drawn did not exist or if the check is returned “for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within ten days after receiving notice of that refusal.” See sections (b)(1)(I) and (ii) of §4105. A check marked “NSF,” that is not sufficient funds, also raises a presumption that the issuer lacked the funds to cover the check, under section 4105 (b)(2) of the law.

Therefore, if someone gives you a bad check, the first thing to do is demand in writing that they make payment on the check. To do this, you must send a demand letter by registered or certified mail, “to the address printed on the check, or if none, to the issuer’s last known address.” If the money owed is not received by you within the ten days, you may bring a Complaint at the district justice’s office.

Like a landlord tenant complaint, you can’t just go to any district justice or magistrate. If the bad check was mailed to you, you can go to the district justice in whose district you received the mail. If you picked the check up from your tenant, you have to go to the district justice in whose district the check was written or the district where the person writing the check lives, which you assume is also where the check was written.

You have to call the district justice you are filing with to find out when an Assistant District Attorney is scheduled to be in that district justice’s office to accept criminal complaints. This day is different for each magistrate and sometimes changes from week to week even for the same district justice, so you will need to call ahead. The good news is that there are no initial costs or attorneys fees to you involved in filing the criminal complaint. The

district attorney's office takes care of everything. The best news is that if the issuer of the check is convicted under this law their sentence includes reimbursement to you for the face amounts of the check(s) and interest at the legal rate of six percent from the date that the check was dishonored. So, this can be a fast and inexpensive way to get the money which you are owed.

Finally, the use of a criminal complaint is a very strong incentive for most people to pay you. They don't want to have a criminal record, be arrested or fingerprinted, so they offer to pay you as soon as they realize the trouble they can get into for not paying you. District Attorneys and District Justices often help you by explaining how they can pay now or pay later and get a criminal record, too.

Generally, I'd always prefer a bad check to no check at all, because its not a crime to not pay, only to write a bad check. However, if you take post dated checks or even get someone to write a check they admit is bad and you promise not to cash it until it is made good at some later time, you can lose the protection of this statute, since if you the recipient know the check isn't good or the person writing the check believes they will be able to make it good before you deposit it they didn't have criminal "intent."

So, don't strong-arm a tenant into giving you a check you know is bad, but when you do get a bad check, don't despair. Remember, most of the time a bad check is better than no check!