

COLLECTION OF HOT CHECKS THROUGH YOUR LOCAL JP OFFICE

If you think the local county attorney's office is the only place to take a hot check for criminal prosecution and assistance in collecting it, you are mistaken. The good news is that every justice of the peace in Texas has statutory authority to accept criminal misdemeanor complaints filed by victims of hot checks that are given in violation of Section 32.41 of the Texas Penal Code, entitled "Issuance of Bad Check." The JP's statutory power can really help you collect the money for which you were given a hot check if you know the right information. Here is how it all works at the JP court level.

Step by Step

1. Any check given for criminal prosecution if it is returned for insufficient funds or a closed or non-existent account. The passing of a bad check (hot check) for any purpose is a misdemeanor under the above criminal statute, regardless of the dollar amount of the check. A check that is returned for "stop-payment," however, is not a criminal offense under the statute.
2. When a check has been returned because of insufficient funds or a closed or non-existent account, first try to contact the check writer by phone or send him a friendly note just in case the returned check is a fluke or honest mistake by a resident or applicant who is likely to promptly make the check good if given a chance.
3. If the hot check writer comes in to pay you, and the check has been turned over to the JP court, have them check with/contact the court.
4. If giving a second chance to the hot check writer doesn't work, you need to send a written demand for payment to the check writer by certified mail, return receipt requested, or by regular mail, as long as you fill out an affidavit of services by mail.

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."

In order to maximize the chances of payment if you send notice by certified mail, you should also send the notice by regular mail (although it is not legally necessary) since so many people refuse to pick up certified mail. You should fill out the "Affidavit of Service by Mail" if you send a copy by regular mail to show that you have provided the notice in multiple ways. You should retain a copy of the notice and the certified mail green card when it is returned by the mail carrier (or the envelope if it is returned by the U.S. Postal Service, unclaimed). Note that when the U.S. Postal Service attempts delivery of certified mail, it is deemed as delivered for all legal purposes—in other words, attempted delivery of certified mail satisfies any notice obligations under the statute.

5. When you get the green card or the unclaimed certified mail letter back from the U.S. Postal Service, you then need to take the original of the returned check, a copy of

- your demand letter, and the green card (or unclaimed demand letter) to the local JP office and tell the clerk that you want to file a criminal complaint for issuance of a bad check. Similarly, if you sent notice by regular mail, you will want to take a copy of the notice, the affidavit and the original of the returned check when you go to the local JP office to file the criminal complaint.
6. The JP clerk then will have you fill out and sign an “IBC” criminal complaint form. (IBC stands for “Issuance of Bad Check.”) The person filing the criminal complaint does not have to pay any fees.
 7. The JP clerk will then prepare and mail a criminal citation to the check writer, stating that the check writer has 30 days to come to the JP office and plead “guilty,” or “not guilty,” or “nolo contendere” and that if the check writer doesn’t do one of those things by the deadline in the citation, an arrest warrant will be issued.
 8. If the hot check writer shows up in court and pleads guilty or nolo contendere and produces evidence that the hot check has been paid in full, nearly all JPs will reduce the fine substantially, but the JPs will still make the check writer pay all court costs.
 9. If the hot check writer shows up and pleads guilty or nolo contendere without proof of payment in full, the JP will impose a fine on the check writer and order him to pay the fine and court costs. If the hot check writer pleads not guilty, then they will proceed to court.
 10. If the hot check writer fails to show up as required in the citation, the court at the end of the designated waiting period in the citation will issue a warrant for the check writer’s arrest. The JP’s office does not send the constable out to apprehend the check writer. However, the arrest warrant is promptly entered into the statewide Department of Public Safety data bank system. Then, whenever the check writer is stopped for a traffic violation, arrested for another suspected crime or tries to renew his driver’s license, the law enforcement officers will learn of the outstanding arrest warrant and can escort the check writer to jail on the spot.