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PROCEDURE FOR FILING A FELONY WORTHLESS CHECK

- 1. IMPORTANT: Completion of this packet does not guarantee that a felony charge will be accepted by the District Attorney's Office. The District Attorney's Office will review the information and circumstances to determine whether the charge will be pursued.**
- 2. A worthless check must be in the amount of \$ 2,500.00 or more to qualify as a felony worthless check. You may also file checks as a felony if someone writes you two or more checks totaling \$ 2,500.00 or more.**
- 3. You must send the person that wrote you the check(s) a certified letter demanding that they make payment to you within ten (10) days upon receipt of your letter. Your letter must be in the format of the sample letter attached to your packet. You can fill in the blanks of the sample letter or you can type the letter on your own letterhead filling in the blanks.**
- 4. Once you send the letter, you must wait the ten days that you have given them. If they sign for the letter, you will receive the "green card" back. There will be a date by the signature. This is the date from which you will give them ten days to pay you. If they do not sign for the letter, you will receive it back from the postal service marked "refused" or "unclaimed".**
- 5. Once the ten days has elapsed, you may file the case with the District Attorney's Office. You will need the following:**
 - a) The original check(s);
 - b) The completed and notarized Affidavit for Worthless Check(s);
 - c) The completed and notarized Voluntary Statement (must include a detailed account of what occurred); and
 - d) Any receipts and/or invoices showing what the payment was for.
 - e) The certified "Green Card" where the check writer signed for your letter or the entire sealed letter that was returned to you by the postal service marked "Unclaimed" or "Refused."
 - f) A copy of the demand letter that you sent.

If you do not have access to a notary public, you may complete the forms listed above and wait to sign them at our office. We will notarize the forms for you, but you must wait to sign them until you are in the presence of our notary.

MONTGOMERY COUNTY DISTRICT ATTORNEY'S OFFICE
AFFIDAVIT FOR WORTHLESS CHECK

SUSPECT (Person who SIGNED the check) IDENTIFICATION AND INFORMATION:

Name: _____

Address: _____

Phone: _() _____ Work: _() _____ Other: _() _____

Race: _____ Sex: M F D.O.B. ____/____/____

Height: _____ Weight: _____ Eyes: _____ Hair: _____

Driver's License Number: State: _____ Number: _____

Social Security Number: _____-_____-_____

Noticeable Physical Characteristics (scars, speech impediments, etc.) _____

Any additional identifiers (vehicle description, etc.) _____

COMPLAINANT (AFFIANT) INFORMATION:

Name: _____

Address: _____

Phone: () _____ Work: () _____ Other: () _____

Race: _____ Sex: M F D.O.B. ____/____/____

Height: _____ Weight: _____ Eyes: _____ Hair: _____

Driver's License Number: State: _____ Number: _____

Social Security Number: _____-_____-_____

Noticeable Physical Characteristics (scars, speech impediments, etc.) _____

Any additional identifiers (vehicle description, etc.) _____

COMPLAINANT (AFFIANT) INFORMATION:

Name of Person Bringing in the Check: (Person to contact): _____

Business Name: _____

Full Address: _____

Business Phone: _() _____

Home Address/Phone: _____

Can Affiant identify suspect? YES NO If Yes, how? _____

Name of Recipient (Person who accepted the check): _____

Address/Phone: _____

Can Recipient identify suspect? YES NO If Yes, how? _____

IMPORTANT: If charges are filed a trial occurs, the Recipient of the check must be able to positively identify the suspect as having passed the check.

WORTHLESS CHECK INFORMATION:

How many checks are being filed?: _____ Type of check(s): Personal _____ Business _____

If check is on a business account, Name of Business: _____

Does this involve a lease/contract agreement, payment on account or a loan payment? YES NO

Prior business relationship? Yes No If yes, give a brief history:

DESCRIBE IN DETAIL, why you received the check(s) (Merchandise, Service, etc.):

HAVE YOU SENT A CERTIFIED DEMAND LETTER TO THE PERSON WHO SIGNED THE CHECK? YES NO

WAS 10-DAY NOTICE GIVEN? YES NO

IF YES, HAVE YOU RECEIVED: THE UNCLAIMED LETTER THE GREEN CARD

Describe in detail all efforts made to contact and/or locate suspect:

Check #: _____ Amount: _____ Date on check: _____

Date received: _____ Date Deposited: _____ Date Bank Returned: _____

Reason check was returned: _____

- 1. What County was check passed in? _____
- 2. Was check deposited within 30 days? YES NO If NO, When? _____
- 3. Was check POST DATED? YES NO
- 4. Did you agree to HOLD check? YES NO If YES, Why? _____
- 5. Has PARTIAL PAYMENT been received? YES NO If YES, How much? _____
- 6. Was check given in exchange for a returned check? YES NO

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5. Has **PARTIAL PAYMENT** been received? YES NO If YES, How much? _____
6. Was check given in **exchange** for a returned check? YES NO

The undersigned Affiant, who being by me duly sworn on oath makes the following statement:

I, _____, (Print Name) believe that the individual herein described as the person signing the worthless check, did commit the offense of Felony Theft by Check in the amount of \$2,500.00 (\$1,500.00 if prior to 09-01-15) or more and said check was received in Montgomery County, Texas. The following information is known to me personally as the employee of the below described business in that such business regularly requires that every passer of a check produce valid identification and such information is routinely placed on the foregoing check by the recipient (employee of the business).

I understand that:

- 1) This affidavit and other evidence will be reviewed by the District Attorney's Office before the charge of Theft by Check is accepted. Completion of this packet does not guarantee that charges will be accepted by the District Attorney's Office.
- 2) If the D.A.'s Office believes that charges of Theft by Check cannot be proved beyond a reasonable doubt, the case will be refused and the original documents returned to me.
- 3) The D.A.'s Office cannot guarantee that restitution will be paid.
- 4) I will cooperate fully in the prosecution of the case including but not limited to testifying in court if necessary.
- 5) I agree not to accept restitution on this/these check(s) directly from the maker and I agree furthermore that, in the event restitution is accepted directly from the maker, I will be responsible for paying the full amount of the Processing Fee due to the D.A.'s Office.

Where, the Affiant swears that he has good reason to believe and does believe that the above information is true and correct to the best of his/her knowledge.

Affiant (SIGNATURE MUST BE NOTARIZED)

SUBSCRIBED AND SWORN to before me by the said Affiant on this the ____ day of _____, 20____.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

The following items MUST be attached/submitted with this affidavit:

- ___ Original Check
- ___ Green Card of Unclaimed Letter
- ___ Copy of Demand Letter
- ___ Copies of all invoices, bills of sale, or work orders
- ___ Copies of any additional documentation regarding the submitted check(s)
- ___ Voluntary Statement

Demand Letter [Template]

Date _____

Name _____

Address _____

City _____ State _____ Zip _____

Dear _____,

Your check number _____, drawn on _____

_____ dated _____

Made payable to _____ in the amount of \$ _____

has been returned by the bank marked _____.

The total amount due is \$ _____ which includes a \$ _____ service charge.

“This is a demand for payment in full for a check or order not paid because of 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”.

