

# **ST. ANTHONY POLICE DEPARTMENT**

## **FRAUDULENT CHECK RENTAL PROPERTY THEFT PROSECUTION INFORMATIONAL BOOKLET**

**UPDATE: MAY 2010**



If a check is fraudulent, it will be returned by the bank with a specific category or classification stamped on it. The common categories are:

1. Account Closed or Closing – Closed by the bank or by the person named on the check.
2. No Account. – Account either never existed or has been closed a long period of time.
3. Insufficient or Non-Sufficient Funds (NSF) – The account does not have enough money in it to cover the check.
4. Forgery or Unauthorized signature.
5. Stop Payment – The account holder has requested the bank not to pay this check for some reason.

Checks from the first four categories may be prosecuted criminally. Due to the amount of time involved in drawing up a complaint and gathering information and the cost involved, the St. Anthony Police Department has set up a minimum of one-hundred dollars (\$100) on checks in the first four categories which we will process. The \$100 minimum can be obtained with one check or with multiple checks, from the same account, which add up to a total of \$100 or more. Multiple checks can come from more than one store, as long as they are written in the City of St. Anthony/Falcon Heights/Lauderdale. The police department will accept a report on forged checks under \$100 if a suspect is known.

Checks from the first three categories which total over \$500 in merchandise are considered felonies, as are forgeries over \$250. Felony thefts by check or forgeries are usually handled by the investigative division of the police department. In either case, please try to protect the check for fingerprinting by putting it in plastic as soon as possible. Also, be advised that in most felony cases we cannot prosecute unless your clerk can identify the passer.

The fifth category, “Stop Payment” checks are usually civil and not criminal. If you think you have a special circumstance which may make it a criminal matter, please feel free to call and check with us. We would be happy to check and make a determination for you and explain the reasons behind it.

The following checks which we would not recommend that you accept because we would not be able to prosecute are:

1. Do not accept postdated checks.
2. Do not accept third party checks. There is nothing we can do if these bounce, since the thinking is that the person giving you the check has no idea that it is not good. We cannot go after the account holder since it was not made out and signed in your presence and no identification was taken.
3. Do not accept checks in which either the party cashing or the bank is out of state. If the party or the bank is out-of-state, it is out of our jurisdiction to get the information necessary to prosecute.
4. Especially on joint party accounts, do not let one person sign the check and take the identification of the other. Make sure that you are getting the identification of the passer.
5. Never accept a check as payment for a check that has bounced. If the second check also bounces, you cannot file charges on either check. It is also not a good idea to take a partial payment on a check. As soon as any money is accepted, it is no longer a criminal matter. We would recommend that you accept only payments in full by either cash or money order.

At the time of acceptance, the clerk must make sure that the following information is recorded on the check. If it is printed, we recommend that it be circled. If it is not printed, it must be written on by the clerk.

1. Name of the party passing the check.
2. Address.
3. Telephone number.
4. Identification Number of one of the following:
  - a. Minnesota picture driver's license. Paper license with no pictures are not acceptable.
  - b. State of Minnesota picture ID. These are identical to the picture driver's license, only the color strip at the top is a different color.
  - c. Passport. This is allowable, however, if used; the date of birth must also be recorded on the check.
5. Initials of the clerk accepting the check must be on the check as verification that the party's physical characteristics were checked against the ID picture at the time of passing the check.

If the check is turned over to us for possible prosecution, we will check for the above information. If anything is missing, it will be grounds for us to return the check to you saying we are unable to prosecute. This is because the law now requires all of the above listed information to be recorded on the check for prosecution.

When we receive the check, we get a print-out of the full name, address, description, and date of birth from the State by using the driver's license number. If the number written on the check is incorrect, the state sends it back "Not on File." We are unable to prosecute a check unless we can obtain this information, so we would have to return the check to you. This makes it especially important to remember to check the driver's license number if it is pre-printed on the check. The clerks should check the number closely and not just circle it. You may want to have them rewrite the number even if it is pre-printed, just to make sure it is correct. Even one number off makes it impossible for us to prosecute.

It is very important to have your clerks verify that the address on the check is correct when accepting a check. The law states that this is the certification, by the passer, that this is the address at which he/she may be reached regarding his/her check. Therefore,

you are obligated, by law, to send the Notice of Dishonor to the address listed on the check.

The Notice of Dishonor must contain the information, including the penalties, from State Statute 332.50 and 609.535. These two statutes outline the civil and criminal penalties for passing a fraudulent check. A sample copy of a Notice of Dishonor is contained in the back section of this booklet. Your store is responsible for having forms made up for your own use, as we do not have an unlimited supply available. The Notice of Dishonor can be sent by regular mail, as the State no longer has the requirement of certified mail.

After the Notice of Dishonor has been sent to the address listed on the check, you are required, by law, to allow five (5) days for the person to respond to the notice. However, fifteen (15) days must elapse from the time of the mailing before it can be turned in for prosecution. We would prefer that checks you intend to prosecute be turned in to us as soon as possible after the fifteen days have elapsed. We will not accept checks for prosecution that are over sixty (60) days old, or rental property case over six (6) months old.

To submit a check for prosecution, the following items should be turned in to the police department:

1. The original check itself. No copies.
2. A St. Anthony Police Department Fraudulent Check Report Form, filled out entirely.
3. A copy of the Notice of Dishonor, accompanied by one of the following:
  - a. If your store policy is to send certified or registered notices, even though not required, attach the green signature card from the post office.
  - b. A notarized affidavit of mailing if the notice is sent regular mail.
  - c. A notarized affidavit of personal service. This is for those who personally serve the notice instead of mailing it.
4. If the check is a forgery, a Notice of Dishonor is not required, but an Affidavit of Forgery is (these can usually be secured from the bank on which the check was drawn).
5. Any other information which you feel is relevant and may help the investigation may be submitted.

The law also allows you to charge a service charge on any dishonored check.

If you submit a check from a party to use for prosecution, it may be taken out of the works by you at any time during the process. However, once the complaint has been signed at court and a court date is sent, the party **MUST** appear in court, whether he has made restitution or not. If they do make restitution, please advise them of the fact that you will give them a receipt showing they have made restitution, but they still have to appear in court and should bring the receipt with them. If they have any problem with this, advise them to contact the clerk of court.

PLEASE remember that once a complaint has been signed, the police department CANNOT pull the check out of the works any longer, as the court has the case at that point.

Copies of all forms used by the police department in prosecution of fraudulent checks are attached. If you have any questions, please do not hesitate to phone the police department.

NOTE: The complainant will be required to sign the complaint in the presence of a judge and will be required to testify in court at the trial.

## ST ANTHONY POLICE DEPARTMENT RENTAL PROPERTY THEFT POLICY

Rental property theft cases are often deemed to be civil by the city and county attorney's offices. The courts have shown a lack of interest in criminal prosecution as well, rarely allowing anything more than a small amount of restitution for cases prosecuted. This, coupled with the fact that the value of the rental property is somewhat obscure, the high cost of preparing and presenting these cases as criminal, and the civil remedies available to complainants of these type of offenses, have lead the St. Anthony Police Department to develop a general policy on accepting these types of cases for criminal prosecution.

Minnesota Statute requires complainants of this type of offense to send a certified letter, to the renter/lessee, demanding the return of the rented/leased property. Upon the expiration of five (5) business days, without the return of the property, the complainant will then have to complete the St. Anthony Conversion of Rental Property Form, and compile the paperwork listed at the bottom of the form. Upon completion of this, you may summon a police officer to take a report. However, before any criminal prosecution will take place, the following criteria will also be assessed:

- Evidence of deceit on the original rental/lease agreement.
- The amount of loss (over \$500).
- The amount of payments made (The more payments that are made, the greater the likelihood that the case will be deemed civil).
- The actual value of the loss.
- The "quality" of the identification taken at the time of the rental/lease agreement.
- The "quality" of identification taken at the time of delivery.
- The identifiability of the loss.
- The ability of the complainant to identify the suspect.
- The age of the case (not over six (6) months since default).
- Attempts to repossess the property by the complainant or his/her representative.

The St. Anthony Police Department will not proceed with the case unless obvious intent to commit a criminal offense can be established. This assessment may be done on a case by case basis, however, complainants should be able to judge the quality of their criminal case based on the aforementioned criteria.

All property (with serial numbers) reported as stolen are entered into the MINCIS/NCIC computer system. Therefore, it is extremely important to contact our department should you recover the property, so it can be removed from the computer.