



EDDY COUNTY STATE'S ATTORNEY

NSF PACKET

(Updated: 4/1/2024)

DISCLAIMER: This Guide and Policy of the Eddy County State's Attorney are intended to reflect, among other things, the requirements found in North Dakota Century Code Chapter 6-08. If for any reason there are conflicts between this policy and the referenced statutes, the requirements of the statutes will prevail.

**EDDY COUNTY STATE'S ATTORNEY
POLICY ON CRIMINAL PROSECUTION OF
INSUFFICIENT FUNDS AND CLOSED ACCOUNT CHECKS**

The Eddy County State's Attorney will consider prosecution on insufficient fund (NSF) and closed account (also known as "no account") checks under North Dakota Century Code Chapter 6-08 only when all of the following criteria are met.

ID REQUIRED:

The holder must review a photo ID (drivers' license preferred of the check writer). The holder must **write on the check** the ID number **and** date of birth shown on the ID. In the case of a non-driver photo ID, the holder must write the ID issue date. It will not be sufficient for the holder merely to ask if everything on the check is correct. It will not be sufficient for the holder merely to review a social security card and report social security numbers on the face of the check as if a ND driver's license number. NOTE: The State's Attorney will verify the ID number of the check writer written on the check; if the ID number reported by the holder is not valid, the State's Attorney will not prosecute the offense.

TEN DAY WRITTEN NOTICE OF DISHONORED CHECK:

Before submitting checks to the State's Attorney for prosecution the holder, or their agents, must prepare a written Notice of Dishonored Check for each check to the check writer. If the check is drawn on a business account, notice must still be served on the check writer, not the business. The notice must, among other things, give the check writer **ten (10)** days from receipt of the notice to pay the check. The holder must serve that notice upon the check writer. A copy of this Notice is included in this guide.

PROOF OF SERVICE OF TEN DAY NOTICE:

It is sufficient to serve the Ten Day Written Notice by mail. The holder must also obtain proof of such service. For the purpose of this policy, proof of service by mail may be made by obtaining a return receipt (certified mail) or by preparing an affidavit of mailing signed by the individual making the mailing, a copy of which form is included in this guide.

PREPARING AFFIDAVIT OF INSUFFICIENT FUNDS OR NO ACCOUNT CHECKS/FILING WITH STATE'S ATTORNEY:

The person who actually accepted the check, whether that is the holder or the holder's employee (no exceptions), must complete an Affidavit of Insufficient Funds or No Account Checks, a copy of which form is included in this guide.

STATUTE OF LIMITATIONS:

In general, prosecution for all bad checks must be filed with the court by the State's Attorney within **one hundred twenty (120)** days after dishonor by the drawee. Therefore, it is the policy of the State's Attorney that the holder or their agent must submit all NSF or Closed Account checks to the State's Attorney no more than **ninety (90)** days after dishonor. That time frame will allow the State's Attorney time to review the facts, prepare the necessary papers and timely file any necessary documents with the court.

EXCLUSIONS:

Our office cannot prosecute Hold or Post Dated Checks under the bad check statutes. **This is State Law.** A Post Dated Check is one on which the date on the check was for a time later than when the check was received by the business or individual. A Hold Check is one where the person receiving the check agrees not to deposit or cash it for any period of time no matter how minimal the delay. The making of a postdated check knowingly received as such, or a check issued under an agreement with the payee that the check not be presented for payment for a specified time, is not a violation of state statute and cannot be prosecuted by the State's Attorney. The State's Attorney cannot prosecute two-party checks and refer-to-maker checks because they are neither insufficient funds nor closed account checks. The holder should present to local law enforcement for investigation, checks that are returned as forgeries. The holder should also present to local law enforcement checks that are returned with a "stop payment" stamp, if the holder feels that payment was stopped to intentionally defraud the holder. If the check is excluded under this section, the holder may be able to pursue remedies through civil means such as small claims court.

MINIMUM DOLLAR AMOUNT:

Checks returned for insufficient funds or as closed account checks that are written for **\$10.00** or less will not be prosecuted. However, if the holder wants to proceed with the required paperwork, they may send the checks to the State's Attorney and we will hold them until the statute of limitations of 120 days has passed. If our office receives checks to aggregate a total of **at least \$10.01**, we will proceed with prosecution. All of the aggregated checks must meet the standard requirements for check prosecution. Once a Criminal Complaint has been filed, we will not accept checks to add to it.

QUALIFICATIONS:

The check must be presented for payment within **fourteen (14)** days of the date the check was received and must have a bank stamp of NSF or Account Closed on it. Checks that have been presented for payment twice (not required by statute), being NSF on the first presentation and account closed on the second are considered to be NSF. The status of the account is determined when the check is first presented for payment.

JURISDICTION:

The State's Attorney will only accept checks that are written in Eddy County and passed by persons living in North Dakota or a border state. The State's Attorney will not accept checks issued by people living in Canada. Furthermore, the State's Attorney reserves the right to decline prosecution of any insufficient funds or closed account check where the bank or depository upon which the check is drawn is located in another state or country as a reasonable exercise of prosecutorial discretion in allocating limited prosecutorial resources.

NOTIFICATION OF PAYMENT RECEIVED:

If a holder directly receives payment of the insufficient funds or closed account check after the check has been turned over for prosecution, then the State's Attorney must be notified immediately at (701) 404-9650. Payment of such check is not a factor in the State's Attorney decision about whether to proceed with prosecution. Once a check has been turned over to our office for prosecution, we will NOT dismiss or return the check if the check writer pays restitution. **This office is a prosecution office, not a collection agency.** Once the Criminal Complaint is filed, the check writer must appear in court. If restitution is paid to you, please issue a receipt for the amount of restitution that they can bring to Court showing the amount of restitution paid.

PROSECUTION CHECKLIST

The holder must file the following documents with the State's Attorney before we will consider prosecution:

- Affidavit of Insufficient Funds or No Account**
(See Attached Form 1.)
- The Original Check (Stapled to the Affidavit of Insufficient Funds or No Account)**
- A Copy of the Ten Day Notice**
(See Attached Form 2.)
- Proof of Service of the Ten Day Notice**
(See Attached Form 3.)

Please deliver and/or mail all the required documents and forms to our office at:

Eddy County State's Attorney
524 Central Avenue
New Rockford, ND 58356

DEFINITIONS

As used in this Guide, unless the context otherwise provides:

- "Account" means any account at a bank or depository from which an instrument could legally be paid.
- "Dishonor" is synonymous with "nonpayment".
- "Drawee" means the person or organization, typically a bank, from which the check was drawn.
- "Drawer" means the person who writes/ signs a check.
- "Holder" means the person who accepted a check and who intends to submit that check to the State's Attorney for prosecution.
- "Instrument" means any check, draft, electronic funds transfer authorization, or order for the payment of money.
- "Issues" means draws, utters, electronically authorizes, or delivers.

PENALTIES

N.D.C.C. § 6-08-16, provides that a person who issues a check or draft without sufficient funds or credit is guilty of the following:

An **Infraction** if the amount of insufficient funds or credit is not more than \$100.00. Infractions are punishable by a maximum fine of \$1,000.00.

A **Class B Misdemeanor** if the amount of insufficient funds or credit is more than \$100.00, but not more than \$500.00, or if the individual has plead guilty or been found guilty of a violation of N.D.C.C. Ch. 6-08 within three (3) years of issuing said insufficient funds check, draft, or order. Class B Misdemeanors are punishable by up to thirty (30) days in jail and/or a \$1,500.00 fine, or both.

A **Class A Misdemeanor** if the amount of insufficient funds or credit is more than \$500.00, but not more than \$1,000.00, or if the individual has plead guilty or been found guilty of two (2) violations of N.D.C.C. Ch. 6-08 within three (3) years of issuing said insufficient funds check, draft, or order. Class A Misdemeanors are punishable by up to three-hundred sixty (360) days in jail and/or a \$3,000.00 fine, or both.

A **Class C Felony** if the amount of insufficient funds or credit is more than \$1,000.00 or if the individual has plead guilty or been found guilty of three (3) violations of N.D.C.C. Ch. 6-08 within five (5) years of issuing said insufficient funds check, draft, or order. Class C Felonies are punishable by up to five (5) years' imprisonment and/or a \$10,000.00 fine, or both.

In addition to the criminal penalty, the person is liable for collection fees or costs not in excess of forty dollars (\$40.00) which are recoverable by the holder of the check, draft, electronic funds transfer authorization, or order or by the holder's agent or representative.

North Dakota further orders **Fines** of the greater of ten dollars (\$10.00) or twenty-five percent (25%) of the amount of insufficient funds or credit. For example, a NSF check of \$15.00 is an Infraction, with a fine of up to \$1,000.00, and a fee of \$10.00 (the greater of \$10.00 or 25% x \$15.00 = \$3.75); an NSF check of \$1,300.00, however, is a Class C Felony, with a fine of up to \$10,000.00, a sentence of up to five (5) years' imprisonment, and a fee of \$325.00 (the greater of \$10.00 or 25% x \$1,300.00 = \$325.00).

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF EDDY

SOUTHEAST JUDICIAL DISTRICT

State of North Dakota,)
 Plaintiff,)
)
 -vs-)
)
 _____,)
 Defendant (*Check Writer*).)

**AFFIDAVIT OF INSUFFICIENT FUNDS
 OR CLOSED ACCOUNT CHECKS**
 (Form 1)

1. I, _____, being first duly sworn on oath, depose and state
(Printed Name of Person Who Accepted Check)
 that I accepted a check from the Defendant, _____, which was
(Printed Name of Person Who Wrote Check)
 drawn at _____.
(Name of Financial Institution (i.e. Wells Fargo, Bank Forward, etc.))

2. This check was returned by the bank because the drawer either did not have sufficient funds or did not have an account with said bank.

3. I swear that I made no agreement with the drawer to hold the check, that I did not agree to accept the check as a post-dated check, and that my knowledge of the drawer is as follows
(Affiant must initial one option):

_____ I know the drawer on a significant and personal basis, such that I did not need to request his/her ID as I could without question, identify the drawer as the person who signed said check.

_____ I looked at the drawer's photo ID, wrote the drawer's ID number on the check, and wrote the drawer's date of birth on the check to verify his/her identity.

4. I understand that filing false written statements with the State's Attorney is a Class A Misdemeanor punishable by up to 360 days' incarceration and a fine of \$3,000.00, and/or losing the services of the State's Attorney's Office for prosecution of NSF/ No Account checks.

5. The above and foregoing information and true and correct to the best of my knowledge.

Dated this _____ day of _____ 20____.

Affiant's Signature

Company: _____

Address: _____

City, State: _____

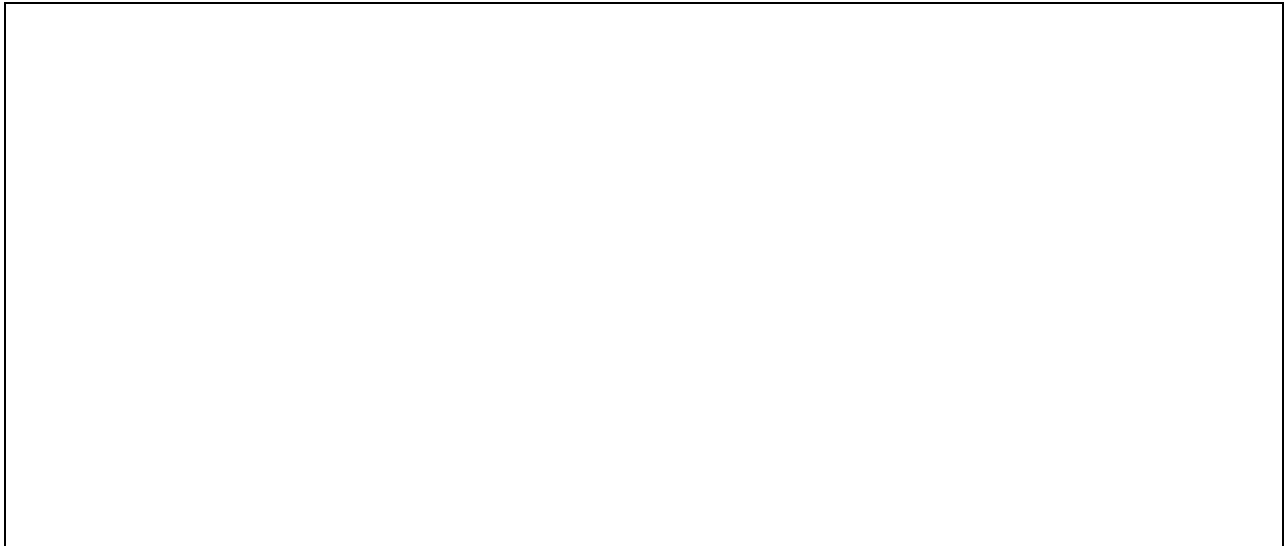
Phone No. (____) _____ - _____

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF EDDY)

Subscribed and sworn to before me this _____ day of _____ 20____.

Notary Public
Eddy County, North Dakota

ATTACH ORIGINAL CHECK WITH STAPLE HERE



Ten Day Notice of Dishonored Check
(Form 2)

Date of Notice: _____

Name of Issuer (Check Writer): _____
(Printed Name of Person Who Wrote Check)

Street Address: _____

City, State, and Zip Code: _____

You are according to law notified that a check dated on the _____ day of _____ 20____, drawn on _____ of _____
(Name of Financial Institution (i.e. Wells Fargo, Bank Forward, etc.))
_____ in the amount of \$_____ has been returned
(Location of Bank (i.e. New Rockford, ND))
unpaid with the notation the payment has been refused because of nonsufficient funds.
Because of this, the Holder was assessed fees in the amount of \$_____ which must also be paid.

Within ten (10) days from the receipt of this notice, you must pay or tender to the Holder, at the address listed below, sufficient moneys to pay such instrument in full and any collection fees or costs listed herein (which may not be in excess of forty dollars).

Name of Holder: _____
(Printed Name of Person/ Business Who Check Was Written To)

Street Address: _____

City, State, and Zip Code: _____

Affidavit of Service by Mail
(Form 3)

I, _____, being first duly sworn on oath, depose and state
(Printed Name of Person Who Mailed Notice)
that I am eighteen (18) years of age or older, and that I have served the attached "Ten
Day Notice of Dishonored Check" on the _____ day of _____ 20____, by
placing a true and correct copy of said Notice securely enclosed in an envelope,
addressed as follows:

(Printed Name of Person Whom Notice Was Mailed To)

(Street/ Mailing Address)

(City, State, and Zip Code)

and depositing the same, with postage prepaid, with the United States Postal Service at
_____, North Dakota.
(City Where Letter Mailed)

Signature

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF EDDY)

Subscribed and sworn to before me this _____ day of _____ 20_____.

Notary Public
Eddy County, North Dakota