

### **What does Georgia law require in the demand letter?**

The Official Code of Georgia sets forth the following requirements for a demand letter:

- The check number, date of issuance, check amount and the name of the bank.
- A demand for payment of the face value of the check. \$20.00 or 5% of the face value of the check (whichever is greater) may be added; this amount is inclusive of warrant or citation and certified/registered mail fees.
- A demand for payment of the check amount within 10 days of receipt of the letter.
- Notice that criminal action may be taken against the debtor by the Magistrate Court, District Attorney or Solicitor's Office if the amounts are not paid.

### **What documentation is needed to commence prosecution?**

Applicants need:

- A copy of the demand letter
- Proof of receipt of the demand letter or the unopened, returned envelope containing the demand letter
- The original check

### **Bad Check Time Table:**

- The check should be presented to the bank within 30 days from the date the check was written.
- The demand letter should be sent within 90 days from the date the check was written.
- The check should be presented to the Court within 6 months from the date the check was written.

<b>Present to the Bank</b>	<b>30 Days</b>
<b>Demand Letter Sent</b>	<b>90 Days</b>
<b>Application Made With the Court</b>	<b>6 Months</b>

These are general guidelines and staying within this timetable will help to ensure your case is heard in criminal court.

HOWEVER, if your case falls outside of the timetable, speak to a police detective or court investigator. They can advise you if your case may still be presented.



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# **DEPOSIT ACCOUNT FRAUD (BAD CHECK PROCEDURE)**



## **The Roswell Police Department**

**T. Edwin Williams  
Chief of Police**

39 Hill Street  
Roswell, Georgia 30075

# HOW TO PROCESS BAD CHECKS

What is a criminal bad check as defined by the Official Code of Georgia 16-9-20:

A person commits the offense of deposit account fraud when such person makes, draws, utters, executes, or delivers an instrument for the payment of money on any bank or other deposit in exchange for a present consideration or wages, knowing that it will not be honored by the bank.

For the purpose of this code section, it is prima-facia evidence that the accused knew that the instrument would not be honored if:

The accused had no account with the drawee (ACCOUNT CLOSED), or

Payment was refused by the drawee (the bank) for lack of funds upon presentation within 30 days of delivery (INSUFFICIENT FUNDS).

Present consideration means that one person provides a service or product and the check is given at that time in return for that product or service.

## YOU WILL NEED TO KNOW:

### Was the check received in Roswell?

If not, criminal action must be taken in the city or county where the check was received.

If the check was sent through the mail, it can be processed in the city or county where the receiver's mailbox is located.

### Was the check marked NSF or ACCOUNT CLOSED?

Make sure the check is stamped by the bank.

If the check is not run through the bank within 30 days from receipt, you may not be able to file a criminal case. You may, however, be able to file a civil suit in the county where the accused resides.

### Was the check payment in full for the product or services received?

If the check was a partial payment, a payment on a loan, a credit account or on an existing debt, it is considered an extension of credit, and not a present consideration.

Post dated checks or agreements to hold a check knowing the funds are not available at the time, are also not a present consideration.

These situations will usually not facilitate a criminal warrant. You may file a civil suit in the county where the accused resides.

### Can you give me an example of a present consideration?

If, for example, a company builds a deck on a customer's house and the customer pays in full at the time the service is performed, it is a present consideration. If the customer mails the company a check after the deck is built, it is not a present consideration.

### Do I need to send a demand letter?

If the check is marked INSUFFICIENT FUNDS (NSF), or UNCOLLECTED FUNDS, Georgia law requires that a demand letter meeting specified requirements be sent to the debtor by certified, registered or statutory overnight mail prior to commencing prosecution for bad checks.

If the check is marked ACCOUNT CLOSED, NOT FOUND or UNABLE TO LOCATE a demand letter is recommended but not required.

The demand letter must be sent to the individual who signed the check.

If the certified, registered or statutory overnight delivery is signed for, you must wait 10 days from the date the debtor received the letter to commence prosecution.

If the certified, registered or statutory overnight delivery is unclaimed, it must remain unopened. You must present it to the court just as you would if you received the green certified card.