

November 16, 2010

Hot Checks: Poor Bookkeeping is No Defense in New Mexico

Though it can be a pain, failure to balance your checkbook can be significantly more painful in New Mexico. Under New Mexico's Worthless Check Act, a bounced check over \$25 may be charged as a felony.

Business establishments may report individuals who write bad checks to the District Attorney who will prosecute the matter. It is a serious crime in New Mexico to write a check without enough funds or credit in your account. This is particularly true of late with a new focus on property crime in Albuquerque. The possible penalties for even inadvertent NSF checks (hot checks) can be severe.

The penalty for writing a NSF check for over \$1 but less than \$25 is a fine up to \$100 and up to thirty days in jail or both. The penalty for writing a NSF check for over \$25 is a fine up to \$1,000 and imprisonment of not less than one year and up to three years in the Department of Corrections. The penalties are intentionally severe with the Worthless Check Act's stated purpose to "remedy the evil of giving bad checks".

The defense to these charges is rather limited. Defenses to these types of cases are limited to such things as a stolen check book or identity theft. Failure to balance the checkbook is not a defense.

District Attorneys and prosecutors in the State of New Mexico work closely with small businesses in the community to prosecute check fraud. Once a person is on notice that they are being prosecuted for a worthless check it is important to immediately address the charges. Though there are few defenses, there are several possible early resolutions to the charges.

These include diversion programs, pre-indictment resolutions, pre-prosecution probation, and other possible resolutions to avoid jail time. In some cases, depending on the circumstances, it may be possible to avoid felony charges altogether. In many others, it is possible to eventually clean up your criminal with a resolution that results in an eventual dismissal.

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Diversion Programs offer a very good alternative for those charged. The Diversion program is an alternative for the District Attorney to prosecuting a worthless check case. The essence of Diversion is restitution. In short, the person gets to work out a payment plan and the case will be dismissed by the District Attorney.

Where Diversion is not an option, there may be other options to keep a conviction off a person's criminal record. In all these cases, it is critical to address the problem early. Ignoring the problem, like ignoring the checkbook balance, is not a solution. The further the case moves along, the fewer the options available for resolution.

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