

Comments from CAWA Attorney, Steve Marmaduke  
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Dealing with “bounced” checks can be very frustrating.

A person issuing and delivering a check which is dishonored may violate Penal Code Section 476a, but only if the delivery of the check is done with the knowledge that it will be dishonored, or as part of a fraudulent scheme to obtain goods or services without payment. Thus, it is not a crime when a check simply “bounces.” Further, it is unlikely that a law enforcement agency will take action when a dishonored check is reported to them. Nonetheless, it would be appropriate to file a police report if you believe a check was tendered to you with fraudulent intent.

The Civil Code sets for the remedies for recovery of a dishonored check.

A person who passes a check that is dishonored for insufficient funds is liable to the payee in the amount of the check plus a service charge not to exceed \$25 for the first check and \$35 for each subsequent check that is dishonored for insufficient funds.

The liability of the check writer, however, may be triple the amount of the check if written demand is made for payment. The written demand should be mailed by certified mail, advise the check writer that the demand is made pursuant to Civil Code Section 1719, state the amount of the check and the amount of the service charge. The person who wrote the check shall have 30 days to make payment of the check, the service charge and the cost of the certified mailing. If payment is not made in 30 days, the person issuing the check becomes liable in the amount of three (3) times the amount of the check in an amount not less than \$100 and not more than \$1,500.

Small claims court is the easiest, quickest and least expensive venue for seeking a judgement on an insufficient check. But, in the end, the small claims court merely issues a judgment, and does not assure collection of the judgment.

CAWA’s role in these matters is probably best limited to one of educating its member regarding the process to be followed to collect a check dishonored for insufficient funds. Perhaps this could be an article in the newsletter.