



The State of Colorado

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RE: Dishonored Checks

Dear:

This letter responds to your letter asking for guidance concerning dishonored checks. I offer some general comments. However, this area is not entirely clear and you are also advised to seek legal advice on these matters.

According to the dishonored check law, § 13-21-109, C.R.S., a collection agency may accept payment of the face amount of the check, the posted or contracted return check charge, and collection costs at any time. There is no time limitation contained in § 13-21-109(1)(b) for recovery of these amounts.

As an alternative, or if the amounts above remain unpaid, a collection agency may seek treble damages. Treble damages may only be awarded by a court. A prerequisite to the lawsuit is the delivery of a notice to the checkwriter. The notice may be by personal service or by certified mail, return receipt requested as described in § 13-21-109(3). If certified mail is used, the checkwriter must pay the amounts of § 13-21-109(1)(b) within 15 days after the letter is mailed. Delivery of a certified letter is presumed unless the letter is returned "undeliverable." If the addressee fails to claim the certified mail or refuses it, the presumption of service still exists. "Undeliverable" would include situations where the addressee is unknown.

Once the fifteen day period has expired there is no statutory requirement that the collection accept a belated payment of the amounts of § 13-21-109(1)(b). However, it is quite possible that a judge may find it unreasonable to reject late payments under § 13-21-109(1)(b). Factors considered might include whether the late payment was payment in full and the number of days the payment was late. Fifteen days after mailing of the certified mail leaves the checkwriter little time to receive and pay the notice, much less search records or challenge the amount.

Restraint in this area may be the safest practical solution.

After the expiration of the 15 day period, the collection agency may not demand additional money for such things as filing fees and service of process costs except in the filing a lawsuit for treble damages. Costs and attorney fees can only be recovered in a treble damages suit pursuant to § 13-21-109(4)(g). No collection agency may assert that the checkwriter has liability for any treble damages amounts (including costs and attorney fees) unless a judgment has been entered. Section 13-21-109(5). There is no intermediate step after the expiration of the 15 day period when the collection agency can demand an amount greater than the face amount, posted charge, and collection costs but less than treble damages.

The question arises as to whether the collection agency may settle for less than treble damages after the filing and service of a lawsuit. Settlement once a lawsuit has been filed is probably permitted. However, I must stress that the settlement cannot be in the form of a demand that certain money is owed. Such sums are owed only after judicial determination.

Other difficult questions arise such as how the 30 day validation period coincides with the 15 day certified mail period. To avoid problems, collection agencies are advised to send validation notices first on all dishonored check collections. After the 30 day period has expired, collection agencies may then send the 15 day check notice. In this way a collection agency may avoid charges that it violated the validation notice provisions.

This letter reflects my opinion only. However, I hope it has been useful to you.

Sincerely,

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