

Topic: Bad Checks
 Question by: Rebecca Longfellow
 Jurisdiction: Indiana
 Date: December 18, 2013

Jurisdiction	Question(s)
	<p>I am wondering what statutes / office policies you have in place for dealing with bad checks. More specifically, when your office is contacted by the bank after a business entity filing is approved and filed, what do you do? Clearly the filing fee, as required by statute, has not been tendered. The question becomes what next.</p> <p>Do you take the filing down and make the customer file again (thus changing the effective date and control)? Do you give the customer an opportunity to pay for the filing? Do you do nothing?</p>
Manitoba	
Corporations Canada	
Alabama	
Alaska	
Arizona	
Arkansas	
California	
Colorado	
Connecticut	
Delaware	
District of Columbia	<p>We have CFO's Office who handles the bad checks for us. Our processing bank will inform CFO about the bad check – they in turn will send customer the letter requesting the good payment. They charge \$65 processing fee for bad checks.</p> <p>If they get no response from the customer they will reach out to my office so that filing will be canceled.</p> <p>Our statute allows us to cancel the filing for nonpayment.</p>
Florida	
Georgia	

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Hawaii	<p>When we receive notice from the bank on a bad check, we:</p> <ol style="list-style-type: none"> 1) Send 1 or 2 memos, depending on response. 2) If check is not made good, we enter “bounced check” flag in our system. We will not accept any filing under this entity till the bad check is made good. 3) After 2 or more years, the entity is involuntarily dissolved, cancelled, terminated or revoked by our office.
Idaho	
Illinois	
Indiana	
Iowa	
Kansas	<p>The Kansas Secretary of State’s office sends a letter of notice to the customer that their check was returned for insufficient funds, and that they must provide our office with the correct filing fee within 14 days. If we have not received the funds within that time, we rescind the filing. If the submitted filing was a new business, then we change the status from “active” to “rescinded”. If the filing was an amendment our office returns the entity to the status it held prior to the bad filing and rescind the amendment.</p>
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	
Michigan	See additional comments below
Minnesota	
Mississippi	
Missouri	

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Montana	<p>In Montana, our current policy in case of Dishonored Payments is: Customers who provide a bad payment will receive a notice from Fiscal stating the check is bad and they have only 15 days to send in a legitimate payment, or else have their document unfiled. After the 15 days, if payment is not received, the document will be unfiled and a letter to that fact will be sent to the customer along with a copy of Fiscal's letter.</p>
Nebraska	
Nevada	
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	<p>Ohio sends a notice to the customer that they must provide the filing fee within 30 days or we will cancel the filing. We give them time to re-submit a check, but if they do not provide money the we file a cancellation by the Secretary of State and the filing is no longer active. If this filing submitted was a new business, then we change the status from "active" to "cancelled" and if the filing was a subsequent filing to an existing business then we return the data to the information prior to the bad filing and cancel just that specific filing. For example, if a corporation filed an amendment to change the corporate name, but payment was not received then we cancel the amendment and return the name to the prior business name.</p>
Oklahoma	
Oregon	<p>Oregon is much like Ohio. We have a law that allows us to "unfile" a document within a year if it doesn't meet the filing requirements, including fee.</p>

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Pennsylvania	<p>Pennsylvania is much like Ohio.</p> <p>The statute permits revocation of a filing if the fee is not paid in the manner and within the time prescribed by regulation of the department. (See 15 Pa.C.S. § 154. Enforcement and collection.)</p> <p>The regulations of the department spell out the procedure used:</p> <p>19 Pa. Code § 3.104. Returned checks; effect on filing.</p> <p>(a) An entity which issues a check not honored by the institution on which it is drawn will be charged an additional \$20 processing fee.</p> <p>(b) The Department will prepare and transmit to the entity an invoice showing the amount or balance due the Department for fees and charges incurred.</p> <p>(c) The invoice of the Department prepared and transmitted under subsection (b) will include the filing fee, the fee specified in §3.24(a) (relating to invoicing fee) and the fee specified in subsection (a).</p> <p>(d) If an invoice transmitted under this section is not paid within 30 days after mailing in the manner set forth in § 3.102 (relating to method of payment), the Department will prepare and file with itself a Form DS: 3.104 (Statement of Unpaid Fee), whereupon filings to which the fee relates become void.</p> <p>(e) Under section 154(b) of the code (relating to enforcement and collection), if an invoice transmitted under this section is not paid within 60 days after mailing in the manner provided by §3.102, the debtor shall pay to the Commonwealth, in addition to the principal amount of the invoice and interest thereon, liquidated damages in the amount of \$500.</p>
Rhode Island	
South Carolina	
South Dakota	
Tennessee	
Texas	
Utah	<p>Utah gives them 30 days to provide certified funds (cash, money order, etc). We also charge them the bad check fee. If the 30 days passes, we invalidate the filing and send it to State Office of Collections.</p>
Vermont	

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Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	

Additional comments:

Daniel Kleinberger wrote:

Void ab initio or just going forward?

If retroactive, creates wonderful agency law issues (an agent who purports to act for a non-existent principal is personally liable on a contract) and entity law issues (depending on what the relevant statute might say, the “owners” might be personally liable as partners).

MICHIGAN:

In Michigan we do have a signed Policy Statement regarding Dishonored Checks, it provides the following:

Section 1060(7) of the Business Corporation Act, section 1101(5) of the Michigan Limited Liability Company Act, and section 48(7) of the Uniform Partnership Act provide that when fees or penalties are paid by check and the check is dishonored, the fee is considered unpaid and the filing of all related documents will be rescinded. The Nonprofit Corporation Act, Michigan Uniform Limited

Partnership Act, and Trademark and Service Mark Act are silent regarding dishonored checks. MCL 600.2952 provides for processing fee to be assessed for dishonored checks.

When a filing is rescinded for an unpaid fee a processing fee will be assessed and Notice of Action will be sent to the resident agent of a profit corporation, limited liability company or foreign limited liability partnership or to the principle office address of a domestic limited liability partnership. When articles or certificate of authority are rescinded, the OUT date will be the original "filed" date and the OUT WHY will be "rescinded". When a limited liability partnership registration is rescinded the expiration date will be the same as the original "filed" date and the status will be "expired".

If fees or penalties for a nonprofit corporation, limited partnership, or trademark or service mark are paid by check and the check is dishonored the fee is unpaid. A letter will be sent to the resident agent of a nonprofit corporation or limited partnership or to the owner of a trademark or service mark requesting payment of the related fees or penalties and the processing fee. Payments, including payments submitted with documents and annual reports, will be applied first to the oldest unpaid fees or penalties.

Full text of email:

All,

I am wondering what statutes / office policies you have in place for dealing with bad checks. More specifically, when your office is contacted by the bank after a business entity filing is approved and filed, what do you do? Clearly the filing fee, as required by statute, has not been tendered. The question becomes what next.

Do you take the filing down and make the customer file again (thus changing the effective date and control)? Do you give the customer an opportunity to pay for the filing? Do you do nothing?

Any input is very much appreciated!

Rebecca Longfellow
Director of Business Services Division
Indiana Secretary of State Connie Lawson
302 W. Washington Street Rm. E-018
Indianapolis, IN 46204
rlongfellow@sos.in.gov
317.232.6583
Follow us on Twitter: @SecretaryLawson
Like us on Facebook: Secretary of State Connie Lawson