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## Making Bad Checks Better

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Bad checks (checks written on accounts with insufficient funds) have always been a problem for association clients. In today's economy, the problem is no doubt worse. Owners are often just buying time, postponing the inevitable, or truly acting with malice. Sometimes "running the check back through" doesn't work. While associations can pass along an NSF check fee to the owner, it's not enough to change behavior for some of them. The cost is not enough of a disincentive. What is an association to do? How can you "make bad checks better?"

Arizona law provides an interesting civil remedy (as opposed to contacting the County Attorney from criminal action in some cases) for bad check writers. And, it may actually get the association paid and change behavior because it provides a lot of incentive—double damages! The statute is a stand-alone statute, not found in community association law. Briefly, A.R.S. §12-671 provides that a person "with intent to defraud" who makes a check to another person on a bank or other depository knowing at the time of making the check that he/she does not have sufficient funds in the account is liable to the holder of the check for twice the amount of the check, or \$50.00, whichever is greater. The statute also provides that the maker of the check is liable for costs and reasonable attorneys' fees.

The beauty of the statute is that it goes on to give a mechanism for showing prima facie evidence of the check writer's "intent to defraud". If a letter/notice is sent to the maker of the check by certified mail notifying the maker of the specific check that had insufficient funds, and the maker of the check fails to pay the check (make it good) within 12 days of receipt of the notice of nonpayment, the intent to defraud is established. This is a powerful tool, especially when the letter also references the statute and the potential penalties. Recently, a homeowner that had written a check for several thousand dollars to a client saw the light after receiving such a notice. The prospect of being sued for double that amount created a major incentive.

We send these letters relatively often, and language could be added to a standard demand letter. If the letter alone does not do the trick, the owner (or other maker of the check) can be sued in the appropriate court, depending on the size of the check. Moreover, this claim can be added as an additional count in a standard

lawsuit for unpaid assessments. If the letter did not result in payment, seeing the count in the lawsuit demanding a judgment for the balance of the account and double the amount of the unpaid check can be powerful.

If you need any assistance with this please contact our collection department.

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