

DEBT COLLECTION DEFAULT JUDGMENT OUTLINE OF ISSUES

REPORTER: JUDITH FOX

The following is an outline of the issues that will be discussed and participants can expect to find in the first drafting meeting.

Section 101. Short title

The Committee was charged with drafting “a uniform or model act or rule applicable to debt collection efforts by third party debt collectors or buyers based on default judgments.”

Statute or Court Rule: the study committee had recommended that the committee create both a statute and a court rule.

Section 102: Definitions

- (a) Third party debt collector
- (b) Third party debt buyer
- (c) Debtor
- (d) Creditor
- (e) License
- (f) Consumer debt
- (g) Unsecured debt
- (h) Secured debt

Section 103: Scope of the Act

- (a) which debts: the committee will need to determine the scope of the act including the following issues:
 - (1) consumer debts v. all debts
 - (2) secured, unsecured or all debts
 - (3) Any date specifications (ie. Debts purchased before or after a certain date)
- (b) which creditors/collectors:
- (c) default judgments or all judgments

Section 104: Administrative and Procedural

- (a) Notice: should there be additional notices provided to consumer
 - (1) Statement of rights
 - (2) Explanation of process
 - (3) Opt in to loss mitigation
 - (4) Issuer of Notice

- (5) Any special notices (ex. Washington State's special notices for medical debt)
- (b) Timing of the requirements at filing or only upon request for a default judgment
- (c) Statute of limitations Declaration:

Section 105: Substantive Provisions

- (a) Timing: in initial pleading or in motion for default
- (b) Requirements to Prove the Debt

(1) Affidavits

(A) Required from whom (Original Creditor/Subsequent Creditors/ buyers/sellers)

(B) Contents of

- i. original creditor
- ii. balance (charge off)
- iii. amount and date of last payment
- iv. interest rate
- v. chain of ownership
- vi. collection charges
- vi. attorneys fees
- vii. medical debts:
 - I. date or dates of service
 - II. principal balance
 - III. amount of payments received (including from insurance)
 - IV. any adjustments (including insurance negotiations)
 - V. whether patient was eligible for charity payment

(2) Documents Required

(A) Original statements

(B) Contracts

(C) Documents memorializing the assignment of debt

(D) Document memorializing the sale or purchase of debt

- (c) Procedures for Filing Default Motion: (any special procedures or notices required)

(d) Mediation: should a pre-judgment loss mitigation program be required

Section 106: Prohibitions or Penalties