

D R A F T  
FOR DISCUSSION ONLY

# Debt Collection Default Judgments Act

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Uniform Law Commission

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February 26, 2021 Video Committee Meeting



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February 17, 2021

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# Debt Collection Default Judgments Act

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1 **Debt Collection Default Judgments Act**

2 **Prefatory Note**

3 **History of the Act**

4 The collection of judgments in judicial proceedings has raised concerns across the  
5 country. Numerous studies report that default judgments are entered in more than half of all debt  
6 collection actions. A 2016 study of debt collection practices by the Consumer Financial  
7 Protection Bureau reported that 60 to 90 percent of judicial debt collection result in a default  
8 judgment. (Consumer Fin. Prot. Bureau, Study of Third-Party Debt Collection Operations (2016)  
9 at a18). The Pew Trust that 70 % of all debt collection judgments were default judgments. (*How*  
10 *Debt Collectors Are Transforming The Business Of State Courts*, Pew Charitable Trusts (May 6,  
11 2020) at 45-80). Default judgment are even more common when the debtor resides in a largely  
12 minority neighborhood. (Lisa Stifler and Leslie Parrish, *Debt Collection and Debt Buying: The*  
13 *State of Lending in America & its Impact on U.S. Households*, Ctr. For Responsible Lending  
14 (2014)).  
15

16 The Conference of Chief Justices and the Conference of State Court Administrators  
17 became concerned with the number of default judgments in debt collection matters. In 2018, it  
18 adopted a resolution in support of additional rules for default judgments in debt collection cases.  
19 The resolution specifically called for more documentation to demonstrate a debt collectors legal  
20 entitlement to the debt and amount claimed. The Committee on Scope and Program looked into  
21 the issue further and concluded in a June 20, 2019 report that “changes in debt collection have  
22 created a need for regulations that protect both courts and consumers.”  
23

24 In 2019, the Uniform Law Commission created a study committee to investigate the need  
25 for an act that would provide additional guidance for courts in debt collection matters The study  
26 committee met on December 12, 2019 and again on March 19, 2010. In June 2020, the study  
27 committee recommended the constitution of a drafting committee to create a uniform act, the  
28 scope of which would be the regulation of default judgments in consumer debt collection matter.  
29

30 **Background and Summary of the Act**

31 [to be filled in]  
32  
33

1 **Debt Collection Default Judgments Act**

2 **Section 1. Title**

3 This [act] may be cited as the [Uniform/Model] Debt Collection Default Judgment Act.

4 **Section 2. Definitions.**

5 In this [act]:

6 (1) “Creditor” means any person who extends credit creating a debt or to whom the debt  
7 is owed. The term creditor does not include a person to the extent that such person received an  
8 assignment or transfer of a debt in default solely to facilitate collection of the debt for another.

9 (2) “Charge off” means the act of a creditor that treats a loss because payment is unlikely.

10 (3) “Charge off balance” means the amount of the debt at the time the debt was charged  
11 off by the original credit.

12 (4) “Consumer” means an individual obligated or allegedly obligated to pay any debt.

13 (5) “Consumer debts” means a debt that is incurred by an individual primarily for  
14 personal, family or household purposes.

15 (6) “Debt” means an obligation or alleged obligation to pay money arising out of a  
16 transaction in which money, property, insurance or services are the subject of the transaction.

17 (7) “Debt Collector” means the same as “debt collector” as defined by the Fair Debt  
18 Collection Practices Act, 15 U.S.C. §§1692-1692p [or applicable state law].

19 (8) “Debt Conciliation conference” means the process of the debt collector or debt buyer  
20 and the consumer meeting [with a third party neutral] to attempt to resolve a proceeding subject  
21 to this [act].

22 (9) “Debt Buyer” means a person or entity that regularly engages in the business of  
23 purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself,

1 hires a third party for collection, or hires an attorney at law for collection litigation.

2 (10) “Debtor” means a person who owes an obligation to pay money arising out of a  
3 transaction in which money, property, insurance or services are the subject of the transaction.

4 (11) “Electronic” means relating to technology having electrical, digital, magnetic,  
5 wireless, optical, electromagnetic, or similar capabilities.

6 **Reporter’s Note**

7  
8 This portion was deleted because, at this point, we have not included the requirement for  
9 a license in the information the debt collector should provide. This is common in these statutes.  
10 We have not had an opportunity to discuss this.

11  
12 (12) “Original consumer debt” means the amount of the consumer debt the debtor owed,  
13 or alleged to owed, to the original creditor, consisting of principal, interest, fees and other  
14 charges.

15 (13) “Person” means an individual, estate, business or nonprofit, public corporation, or  
16 other legal entity. [The term does not include a government or governmental subdivision, agency  
17 or instrumentality.]

18 (14) “Principal” means the unpaid balance of funds borrowed, the credit utilized, the  
19 sales price of goods or services obtained, or the capital sum of any other debt or obligation  
20 arising from a consumer transaction by the original creditor.

21 (15) “Record” means information that is inscribed on a tangible medium or that is stored  
22 in an electronic or other medium and is retrievable in perceivable form.

23 (16) “Secured debt” means any debt that is secured by tangible or intangible personal  
24 property.

25 (17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
26 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of

1 the United States.

2 (18) “Unsecured debt” means any debt that is not collateralized by the debtor’s personal or  
3 real property other than the interest of the debt buyer or debt collector in the account chattel  
4 payment, payment intangible or a promissory note that creates the debt subject to the debt  
5 collection proceedings. An unsecured debt includes a debt that represents the deficiency  
6 remaining in a previously secured debt.

7 **Comment**  
8

9 1. The definition of “debt collector” includes attorney who regularly collect consumer  
10 debts specified by the U.S. Supreme Court in *Heintz v. Jenkins*, 514 U.S. 291 (1995).  
11

12 2. The definition of “conciliation conference” requires at least one “in-person” meeting or  
13 other communication between the parties [and a third-party neutral individual]. The alternative  
14 requirements of either an “in-person” meeting. This requirement contemplates that the  
15 conference may be by telephone, video conference or other electronic means so long as all  
16 parties [and the neutral individual] are able to simultaneously hear or communicate with one  
17 another.  
18

19 3. To avoid any conflicts between state and federal law, the definitions of “consumer,”  
20 “creditor,” “debt,” and “debt collector” are all derived from the Fair Debt Collection Practices  
21 Act. 15 U.S.C. §§1692-1692p.  
22

23 **Section 3. Scope**

24 This Act applies to a proceeding to obtain a judgment for the collection of an unsecured  
25 consumer debt purchased by or assigned to debt buyers or debt collector after default.

26 **Reporter’s Note**  
27

28 This was the consensus of those who responded to the poll. Concerns raised at by the a  
29 few responders that the scope was too narrow and that it would be difficulty of court personnel to  
30 know when, and if, the act applies. One dissenter believed it was too broad and believed that the  
31 study group meant to should exclude debt collectors. This reporter does not believe that to be the  
32 case and refers readers to the report (what page). There was overwhelming agreement that  
33 mortgage debt not be included. There was less consensus on whether to include deficiency  
34 judgments or obligations secured by personal property. This draft is restricted to unsecured debt,  
35 which would include deficiency judgments that, once the security is sold, are no longer secured  
36 debt. The decision was made to include this debt because, according to recent studies, this debt  
37 has become a growing portion of the debt buying marketplace (The Structure and Practice of the

1 Debt Buying Industry, Federal Trade Commission (January 2013)).

2

3

**Section 4: Requirements for Complaint**

4

(a) In any action filed by a debt buyer or debt collection to collect an unsecured consumer debt, the plaintiff shall include an affidavit, signed by a person with personal knowledge setting forth the following:

7

(1) that the plaintiff is a debt buyer or debt collector;

8

(2) the nature of the debt;

9

(3) the applicable statute of limitations and facts sufficient to demonstrate that the debt is within the limitation period.

11

(4) the name and address of the charge-off creditor, including the name by which the consumer would recognize the creditor;

13

(5) the amount of the debt at charge off;

14

(6) the amount and rate of interest, any fees and charges that the original creditor imposed, for which the debt buyer or collector requests award of a judgment;

16

(7) the amount and rate of interest, any fees and any charges that the debt buyer or any previous owner of the debt imposed, for which the debt buyer or debt collector requests award of a judgment;

19

(8) the attorney fees and costs the debt buyer or debt collector seeks, if the debt buyer or debt collector is entitled to and requests the award attorney fees and costs; and

21

(9) any other fee, cost, or charge the debt buyer seeks to recover;

22

(10) the current amount of the debt including principal, interest and any fees;

23

(11) the date and amount of the last payment made on the debt;

24

(12) at least the last four digits of the original account number;



1 (13) [if a licensed is required by the state for debt buyers or debt collectors]that  
2 the debt buyer possesses a valid state license to engage in this activity.

3 (b) The complaint and any other pleadings that contain personally identifiable personal  
4 information regarding the consumer shall be filed under seal.

### 5 **Section 5. Service of Process**

6 In addition to any other requirements of the Rules of Civil Procedure, before alternative  
7 methods of service may be used for the summons and complaint, the debt buyer or debt collector  
8 must certify that it made two prior, unsuccessful attempts at personal service.

### 9 **Reporter's Note**

10 Most who responded to the survey supported this provision. At the same time, most  
11 committee members who responded did not. The response rate overall was low, so this  
12 provision bears discussion. It was left as is because effective service has long been suspected as  
13 being one of the cause for high default rates.

14  
15 *Legislative Note: This provision may be enacted as either a statute or a court rule*

### 16 **Section 6. Requirement of Notice to Consumer**

17 (a) No later than 14 days after the commencement of the action, the court shall send a  
18 Notice of Rights to the consumer.

19 (b) The debt buyer or debt collector shall provide the court with an envelope addressed to  
20 the consumer at the service address with proper postage affixed and a copy of the notice.

21 (c) The notice shall inform the consumer:

22 (1) that the consumer is being sued on a debt;

23 (2) how to respond to the lawsuit;

24 (3) the name, address, and telephone number of each lawyer-referral service, and  
25 legal-aid agency serving the consumer's geographic;

26 (4) that the consumer cannot be jailed for failing to pay a debt;

1 (5) the right to participate in a debt conciliation conference

2 **Reporter’s Note**

3 The majority of committee members and observers who responded indicated a desire to  
4 include a notice to the consumer with the complaint. There was an even split between those who  
5 thought the notice should be a court rule and those who believed it should be a statute.

6  
7 **Section 7. Form of the Notice**

8 A notice in substantially the same form as this optional notice satisfies section 5(c) of this  
9 Act:

10 **Notice of Filing of Debt Collection Action**

11 [name and address of court]

12 [name and address of consumer]

13 A lawsuit has been filed against you claiming you owe money for an unpaid consumer  
14 debt.

15 You should respond to the lawsuit by filing an “answer” no later than [] days after you  
16 receive this notice [or by appearing on the [] day of [], at [] am/pm].

17 If you do not respond to the lawsuit, the court may enter a money judgment against you.  
18 Once entered, a judgment is good and can be used against you for [fill in proper number] years,  
19 and your personal property and money, [including a portion of your paycheck or bank accounts]  
20 may be taken from you.

21 You may wish to contact an attorney. If you cannot afford a lawyer, you may seek  
22 assistance from [list of free legal services available in the geographic area].

23 You cannot be arrested or sent to jail for owing a debt.

24 You have the right to participate in a debt conciliation conference with the plaintiff to  
25 attempt to resolve this lawsuit. Return this form to the court within 30 days to request a

1 conference.

2 \_\_\_\_\_ Yes, I would like to participate in a debt conciliation conference

3 Name: \_\_\_\_\_

4 Telephone: \_\_\_\_\_

5 Email: \_\_\_\_\_

6 **Reporter's Note**

7 There is work to be done on this form.

8 **[Optional]**

9 **Section 8. Participation in a Debt Conciliation Conference**

10 (a) If a consumer, not later than 30 days after the sending of a notice under Section 7,  
11 makes a request for a conciliation conference shall schedule a conference in accordance with its  
12 rules [and appoint a neutral individual to conduct the meeting].

13 (b) If the court schedules a conference under subsection (a), the debt collector or debt  
14 buyer shall attend and participate in compliance with court rules and any scheduling or other  
15 order made by the court [or neutral individual]. Failure to comply with this subsection includes  
16 failure:

17 (1) without good cause to timely attend a conference;

18 (2) without good cause to provide, before a scheduled conference, documents and  
19 information required by agency rules [or reasonably requested by the neutral individual];

20 (3) to designate a person with authority to reach a settlement agreement;

21 **Reporter's Note**

22

23 The debt conciliation process has been taken largely from the foreclosure facilitation  
24 processes of the Uniform Home Foreclosure Procedures Act. That act anticipates the use of a  
25 third-party neutral. I have included that use of a third party neutral in brackets to allow states to  
26 determine whether or not to require a neutral. Those committee members who responded to the

1 survey split evenly on whether or not to include the conciliation procedure. The observers who  
2 responded were opposed. It is included as an optional provision pending further discussion.

3  
4 **Section 9. Debt Conciliation Procedure**

5 (a) A debt buyer or debt collector shall provide the consumer with the following  
6 information at least 14 days prior to the debt conciliation conference:

7 (1) documentation of its right to collect the debt as set out in section 12; and

8 (2) the documentation required by section 12.

9 (b) A debt buyer or debt collector may not charge a consumer a fee or costs for  
10 participating in a debt conciliation conference. [The court agency may charge a fee or assess  
11 costs for the use of a third party neutral in the process to either or both parties].

12 (c) A consumer that participates in debt conciliation conference shall provide reasonably  
13 available financial and other information to enable the debt buyer or debt collector to evaluate  
14 any loss- mitigation option.

15 (d) This [act] does not impose a duty on a debt buyer or debt collector to provide a  
16 specific loss-mitigation option.

17 (e) A consumer may be accompanied at a debt conciliation conference by an attorney or  
18 bona fide debt counselor, who may participate in the conference.

19 (f) Personal financial information exchanged during a debt conciliation conference is  
20 confidential and not subject to disclosure under [state freedom-of-information act or sunshine  
21 law]. [The neutral individual is not required to respond to a discovery request in a court  
22 proceeding to the extent the request seeks personal financial information or privileged  
23 information exchanged during foreclosure resolution.]

24 (g) The conciliation conference is subject to the [Uniform Mediation Act][laws of this  
25 state regarding the mediation process and which establish a privilege of confidentiality for

1 mediators and mediation participants.]

2 **Reporter’s Note**

3 We should discuss whether or not we want these conferences should or should be  
4 governed by the mediation rules. This was a very big issue with foreclosure mediation because  
5 the vast number of litigants will be prose. It was felt that the facilitators should be allowed to  
6 advise the litigants on basis rights such as exempt income, something the mediators felt was not  
7 permitted under the rules.

8  
9 *Legislative Note: Most states have adopted statutes or court rules addressing freedom of*  
10 *information, and open-government or ‘sunshine’ matters, and discovery during litigation. In*  
11 *adopting this act, the states should consider whether the requirements of this section regarding*  
12 *those matters are compatible with existing state statutes or rules, and make changes if*  
13 *appropriate.*

14  
15 **Section 10. Restrictions on Judgment During Debt Conciliation**

16 (a) a debt buyer or debt collector may not file a default or dispositive motion in a legal  
17 action to collect a debt, unless:

18 (1) the notice under Section 6 has been sent;

19 (2) the consumer, not later than 30 days after the notice is sent, requests a debt  
20 conciliation conference;

21 (3) the debt buyer or debt collector [or third party neutral] notifies the creditor  
22 that:

23 (A) the parties that participated in the conference required by Section 303  
24 have reached an impasse; or

25 (B) the consumer has failed to participate in the debt conciliation  
26 conference, provide required information after a reasonable opportunity to do so, or materially  
27 comply with an agency rule or order; or

28 (4) the court renders an order permitting the debt buyer or debt collector to  
29 proceed.

1           **Section 11. Requirement for Obtaining a Default Judgment**

2           (a) Any request for default judgment filed by a debt buyer or debt collector for the  
3 collection of a consumer debt, shall include:

4                   (1) original account level documentation of the original debt including

5                           (A) the name of the Creditor at the time of Charge-off, including the name  
6 under which the Creditor did business with the Consumer, and

7                           (B) Any of the following:

8                                   (i) A document signed by the consumer evidencing the opening of  
9 the account which forms the basis of the debt;

10                                   (ii) Original Account level documentation of the account reflecting  
11 a purchase, payment, or actual use of the account.

12                           (C) a copy of the charge-off statement that includes the last four digits of  
13 account number at the time of charge-off;

14                           (D) the amount due, including any interest and fees at charge off;

15                           (E) the current amount due, including any interest or fees and how this  
16 amount was calculated;

17                           (F) the date and amount of the last payment.

18                   (2) A chronological list of all prior owners of the debt and the date of the transfer  
19 beginning at the date of charge off.

20                   (3) A certified or otherwise authenticated bill of sale evidencing the transfer of  
21 ownership of the debt at the time of transfer and to each successive owner from the original  
22 creditor to the plaintiff. Each document evidencing the debt must include a specific reference to  
23 the debt being collected on.

1 (4) If the debt is a medical debt, a statement as to what, if any portion of the debt  
2 has been submitted by the original creditor or the debt buyer or collector to insurance and  
3 whether any payment was received from insurance.

4 (b) Upon receipt of a motion for a default judgment, the court shall send to the defendant  
5 a notice stating that:

6 (1) If a response to the motion is not received by [date response is required under  
7 local rules of procedure] a judgment may be entered against the defendant.

8 (2) If a judgment is entered against the defendant, it will remain in effect until at  
9 least [specify the limitation period for enforcement of a judgment under the law of the State] in  
10 the amount of the alleged debt plus judgment interest of [specify amount of interest on judgment  
11 provided by law of the State].

12 (3) Following entry of a judgment, the plaintiff may [initiate proceedings to] sell  
13 real estate and personal property owned by you, attach your bank accounts, or garnish your  
14 wages[, except for [specify limitations provided by law of the State]].

15 (4) If you cannot afford an attorney to assist you in responding to this motion,  
16 please contact [provide name and address of the local legal services agency].

17 (5) [Regardless of whether you previously availed yourself of the opportunity for  
18 a conciliation conference,] you or your legal representative may contact counsel for the plaintiff  
19 to discuss settlement options that may be more favorable to you than the consequences of entry  
20 of a default judgment.

21 **Reporter's Note**  
22

23 The requirements listed in section 402 are those listed in the consent judgment between  
24 the Consumer Financial Protection Bureau v Encore Capital Group, Midland Funding LLC,  
25 Midland Credit Management, Inc., and Asset Acceptance Capital Corp, Case No. 20CV1750-  
26 GPC-KSC, US. Dist. Court, Oct. 15. 2020. The majority of both the committee members and

1 observers supported requirements for the default judgment.

2  
3 **Section 12. Sanctions**

4 A judgment obtained in violation of this act is void [voidable].

5 **Reporter’s Note**

6 There was no clear consensus on whether this provision, thus both options are presented.

7 **Section 13. Effective Date**

8 The effective date of this statute is

9 **Section 14. Uniform Application and Construction**

10 In applying and construing this uniform act, consideration must be given to the need to  
11 promote uniformity of the law with respect to its subject matter among states that enact it.

12 **Section 15. Relation to Electronic Signatures in Global and National Commerce Act**

13 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National  
14 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section  
15 39 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the  
16 notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

17 **Comment**

18  
19 In 2000, Congress enacted the “Electronic Signatures in Global and National Commerce  
20 Act”, 106 PUB.L.NO. 229, 114 Stat. 464, 15 U.S.C. § 7001 et seq. (popularly known as “E-  
21 Sign”). E-Sign largely tracks the Uniform Electronic Transactions Act (UETA). Section 102 of  
22 E-Sign, entitled “Exemption to preemption,” provides in pertinent part that: (a) A State statute,  
23 regulation, or other rule of law may modify, limit, or supersede the provisions of section 101  
24 with respect to State law only if such statute, regulation, or rule of law-- (1) constitutes an  
25 enactment or adoption of the Uniform Electronic Transactions Act as approved and  
26 recommended for enactment in all the States by the National Conference of Commissioners on  
27 Uniform State Laws in 1999” [with certain exceptions] or (2)(A) specifies the alternative  
28 procedures or requirements for the use or acceptance (or both) of electronic records or electronic  
29 signatures to establish the legal effect, validity, or enforceability of contracts or other records, if  
30 [they meet certain criteria] and (B) if enacted or adopted after the date of the enactment of this  
31 Act, makes specific reference to this Act. 15 U.S.C. § 7002(a). The inclusion of this section is  
32 necessary to comply with the requirement that the act “make[] specific reference to this Act”



1 pursuant to 15 U.S.C. § 7002(a)(2)(B) if the uniform or model act contains a provision  
2 authorizing electronic records or signatures in place of writings or written signatures.