

STATE LAWS ESTABLISHING REQUIREMENTS FOR DEBT COLLECTION PROCEEDINGS AND AWARD OF DEFAULT JUDGMENTS

SUMMARY

California: The Fair Debt Buying Practices Act, Civil Code §§ 1788.58 & 1788.60, establishes pleading requirements for consumer debt collection actions and evidentiary requirements in consumer default judgment motions applicable to debt buyers. The Private Student Loan Collection Reform Act, Civil Code §§ 1788.201, 1788.202, 1788.205 - 1788.207 establishes similar requirements applicable to private education lenders and private education loan collectors.

Colorado: The Fair Debt Collection Practices Act at § 5-16-111 establishes pleading requirements for consumer debt collection actions and evidentiary requirements in consumer default judgment motions applicable collection agencies and their agents other than original creditors.

Connecticut: General Stat. §§ 36a-800 & 36a-813 establishes evidentiary requirements for consumer debt collection complaints and default judgment motions that apply collection agencies that purchase debts of consumers. The requirements do not apply to persons not primarily engaged in collection of consumer debts; loan servicers that provide accounting, record keeping, data processing other services in addition to the collection of delinquent debts; and banks their affiliates.

Indiana: Indiana Code §§ 24-5-15.5-2, 24-5-15.5-3 & 24-5-15.5-5 establishes requirements for initial pleadings and evidentiary requirements for consumer debt collection proceedings filed by debt buyers other than debt buyers that acquire a portfolio that predominantly consists of debt that has not been charged off. Trial Rule 9.2; Small Claims rule 2(B) requires a copy of any written instrument, if one exists, and an affidavit of debt in all debt collection matters.

Maryland: The Courts and Judicial Proceedings Code § 5-1203 establishes evidentiary requirements for consumer debt collection actions applicable only to debt buyers and collectors acting on behalf of debt buyers. District Court Rule 3-306 establishes pleading and evidentiary requirements for a demand for money judgment for and a default motion for collection of a consumer debt if the plaintiff is not the original creditor or a financial institution subject to regulation by the Federal Financial Institutions Examination Council asserting a claim does not include a demand or request for attorney's fees or interest on the charge-off balance in excess six percent per annum.

Maine: The Fair Debt Collection Practices Act, Maine Rev. Stat. §§ 11002, 11013, 11019 & 11020, establishes pleading and evidentiary requirements for consumer debt collection actions applicable to debt buyers other than regulated financial institutions.

Massachusetts: Civil Procedure Rule 8.1 establishes pleading and evidentiary requirements for consumer debt collection actions applicable only to amounts due under revolving credit agreements

Minnesota: Civil Procedure Rule for judgments at § 548.101 establishes evidentiary and notice requirements to obtain a default judgment for an assigned consumer debt.

Nevada: Rev. Stat. §§ 9A.160 & 9A.165 establishes pleading and evidentiary requirements for proceedings brought to collect a credit card debt owed to a purchaser of the debt, including to obtain a default judgment.

New York: NY Civil Practice and Law Rule 306-d requires the court clerk at the time of filing of a complaint regarding a consumer credit transaction to mail a notice to the defendant advising that a default judgment may be entered if the a response is not filed and providing information regarding the availability of legal assistance. A default judgment cannot be entered if the notice is returned undelivered. Rule 3016-j requires specific information for all consumer debt collection filings; 3215 requires information for all default judgment, with enhanced requirements for debt buyers.

New Mexico: NM Rules of Civil Procedure for Metropolitan and Magistrate Courts 3-201 and 3-401 establish pleading and evidentiary to enforce a consumer debt by a person other than the original creditor, including the use of a standard form for the filing of the complaint.

North Carolina: NC Gen. Stat. §§ 58-70-15, 58-70-90, 58-70.145 and 58-17-150 establish evidentiary requirements for a cause of action for the collection of a consumer debt and a motion for a default judgment applicable to debt buyers.

Oregon: OR Rev. Stat. § 646.639 establishes pleading requirements for a debt buyer to initiate an action to collect a purchased debt.

Texas: TX 392.307 Sets out statute of limitation notices required; Justice Court rule 508.1, 508.2 & 508.3 set out pleading rules for all debt collection cases, and special rules for default judgments.

Washington: WA Rev. Code §§ 19.16.100 & 19-260 establishes evidentiary requirements for a debt buyer to file a complaint or a default judgment motion.

Vermont: VT Rule 55 of Civil Procedure established evidentiary requirements to initial a proceeding to collect and obtain a default judgment for collection of a credit card debt.

CALIFORNIA

CALIFORNIA CIVIL CODE FAIR DEBT BUYING PRACTICES ACT

§ 1788.15. Judicial proceedings where service of process defective; venue

(a) No debt collector shall collect or attempt to collect a consumer debt by means of judicial proceedings when the debt collector knows that service of process, where essential to jurisdiction over the debtor or his property, has not been legally effected.

(b) No debt collector shall collect or attempt to collect a consumer debt, other than one reduced to judgment, by means of judicial proceedings in a county other than the county in which the debtor has incurred the consumer debt or the county in which the debtor resides at the time such proceedings are instituted, or resided at the time the debt was incurred.

§ 1788.50. Definitions; application of title

(a) As used in this title:

(1) “Debt buyer” means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires

a third party for collection, or hires an attorney-at-law for collection litigation. "Debt buyer" does not mean a person or entity that acquires a charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off.

(2) "Charged-off consumer debt" means a consumer debt that has been removed from a creditor's books as an asset and treated as a loss or expense.

(b) The acquisition by a check services company of the right to collect on a paper or electronic check instrument, including an Automated Clearing House item, that has been returned unpaid to a merchant does not constitute a purchase of delinquent consumer debt under this title.

(c) Terms defined in Title 1.6C (commencing with Section 1788) shall apply to this title.

(d) This title shall apply to debt buyers with respect to all consumer debt sold or resold on or after January 1, 2014.

§ 1788.52. Information or documents required for debt buyer to attempt to collect debt

(a) A debt buyer shall not make any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer possesses the following information:

(1) That the debt buyer is the sole owner of the debt at issue or has authority to assert the rights of all owners of the debt.

(2) The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees.

(3) The date of default or the date of the last payment.

(4) The name and an address of the charge-off creditor at the time of charge off, and the charge-off creditor's account number associated with the debt. The charge-off creditor's name and address shall be in sufficient form so as to reasonably identify the charge-off creditor.

(5) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt. If the debt was sold prior to January 1, 2014, the name and last known address of the debtor as they appeared in the debt owner's records on December 31, 2013, shall be sufficient.

(6) The names and addresses of all persons or entities that purchased the debt after charge off, including the debt buyer making the written statement. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser.

(7) The California license number of the debt buyer.

(b) A debt buyer shall not make any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer has access to a copy of a contract or other document evidencing the debtor's agreement to the debt. If the claim is based on debt for which no signed contract or agreement exists, the

debt buyer shall have access to a copy of a document provided to the debtor while the account was active, demonstrating that the debt was incurred by the debtor. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, or balance transfer shall be deemed sufficient to satisfy this requirement.

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**CA Civ. Sec. 1788.52 Information or documents required for debt buyer to attempt to collect debt
(California Code (2022 Edition))**

§ 1788.58. Actions brought by debt buyer; contents of complaint; requirements In an action brought by a debt buyer on a consumer debt:

(a) The complaint shall allege all of the following:

- (1) That the plaintiff is a debt buyer.
- (2) The nature of the underlying debt and the consumer transaction or transactions from which it is derived, in a short and plain statement.
- (3) That the debt buyer is the sole owner of the debt at issue, or has authority to assert the rights of all owners of the debt.
- (4) The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees.
- (5) The date of default or the date of the last payment.
- (6) The name and an address of the charge-off creditor at the time of charge off and the charge-off creditor's account number associated with the debt. The charge-off creditor's name and address shall be in sufficient form so as to reasonably identify the charge-off creditor.
- (7) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt. If the debt was sold prior to January 1, 2014, the debtor's name and last known address as they appeared in the debt owner's records on December 31, 2013, shall be sufficient.
- (8) The names and addresses of all persons or entities that purchased the debt after charge off, including the plaintiff debt buyer. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser.
- (9) That the debt buyer has complied with Section 1788.52.

(b) A copy of the contract or other document described in subdivision (b) of Section 1788.52 shall be attached to the complaint.

(c) The requirements of this title shall not be deemed to require the disclosure in public records of personal, financial, or medical information, the confidentiality of which is protected by any state or federal law.

§ 1788.60. Default or other judgment; submissions to establish facts alleged in complaint; dismissal of action

(a) In an action initiated by a debt buyer, no default or other judgment may be entered against a debtor unless business records, authenticated through a sworn declaration, are submitted by the debt buyer to the court to establish the facts required to be alleged by paragraphs (3) to (8), inclusive, of subdivision (a) of Section 1788.58.

(b) No default or other judgment may be entered against a debtor unless a copy of the contract or other document described in subdivision (b) of Section 1788.52, authenticated through a sworn declaration, has been submitted by the debt buyer to the court.

(c) In any action on a consumer debt, if a debt buyer plaintiff seeks a default judgment and has not complied with the requirements of this title, the court shall not enter a default judgment for the plaintiff and may, in its discretion, dismiss the action.

(d) Except as provided in this title, this section is not intended to modify or otherwise amend the procedures established in Section 585 of the Code of Civil Procedure.

Cal. Civ. Code § 1788.60 (West)

§ 1788.61. Motion to set aside default or default judgment entered on or after Jan. 1, 2010; time for bringing motion; notice of motion; other remedies; cases of identity theft or mistaken identity

(a) (1) Notwithstanding Section 473.5 of the Code of Civil Procedure, if service of a summons has not resulted in actual notice to a person in time to defend an action brought by a debt buyer and a default or default judgment has been entered against the person in the action, the person may serve and file a notice of motion and motion to set aside the default or default judgment and for leave to defend the action.

(2) Except as provided in paragraph (3), the notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of:

(A) Six years after entry of the default or default judgment against the person.

(B) One hundred eighty days of the first actual notice of the action.

(3) (A) Notwithstanding paragraph (2), in the case of identity theft or mistaken identity, the notice of motion shall be served and filed within a reasonable time, but in no event exceeding 180 days of the first actual notice of the action.

(B)(i) In the case of identity theft, the person alleging that he or she is a victim of identity theft shall provide the court with either a copy of a Federal Trade Commission Identity Theft Victim's Complaint and Affidavit or a copy of a police report filed by the person alleging that he or she is the victim of an identity theft crime, including, but not limited to, a violation of Section 530.5 of the Penal Code, for the specific debt associated with the judgment.

(ii) In the case of mistaken identity, the moving party shall provide relevant information or documentation to support the claim that he or she is not the party named in the judgment or is not the person who incurred or owes the debt.

(b) A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by Section 1005 of the Code of Civil Procedure, and it shall be accompanied by an affidavit stating under oath that the person's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The person shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action. Either party may introduce, and the court may consider, evidence in support of its motion or opposition, including evidence relating to the process server who appears on the proof of service of the summons and complaint.

(c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that the person's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, the court may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action. If the validity of the judgment is not challenged, the court may select an appropriate remedy other than setting aside the default or default judgment.

(d) This section shall apply to a default or default judgment entered on or after January 1, 2010, except in the case of identity theft or mistaken identity, in which case this section shall apply regardless of the date of the default or default judgment. (e) This section shall not limit the equitable authority of the court or other available remedies under law.

PRIVATE STUDENT LOAN COLLECTION REFORM ACT

§ 1788.201. Definitions

For purposes of this title, the following definitions apply:

(a) "Borrower" or "student loan borrower" means a person who has received or agreed to pay a private education loan.

(b) "Consumer report" and "consumer reporting agency" shall each have the same meaning that these terms have under the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).

(c) (1) "Cosigner" means any individual who is liable for the obligation of another without compensation, regardless of how the individual is designated in the contract or instrument with respect to that obligation, including an obligation under a private education loan extended to consolidate a borrower's preexisting private education loans, and shall include any person whose signature is requested as a condition to grant credit or to forbear on collection.

(2) "Cosigner" does not include a spouse of an individual described in paragraph (1), the signature of whom is needed to perfect the security interest in a loan.

(d) "Creditor" means any of the following:

(1) The original creditor, where ownership of a private education loan has not been sold, assigned, or transferred.

(2) The person or entity that owned the private education loan at the time the private education loan defaulted, even if that person or entity did not originate the private education loan, and where such a private education loan has not subsequently been sold, transferred, or assigned.

(3) A person or entity that purchased a defaulted private education loan, whether it collects the private education loan itself or hires a third party for collection, or hires an attorney for collection litigation.

(e) "Debtor" means a borrower, cosigner, or other person that owes or is alleged to owe an unpaid amount on a private education loan.

(f) (1) "Exempt entity" means an entity that meets both of the following requirements:

(A) It is a depository institution as defined in Section 1420 of the Financial Code.

(B) It, together with its affiliates, will be, in the aggregate, a plaintiff in 35 or fewer private student loan collection actions in the current calendar year. Private education loans assigned to a third party for the purposes of collection shall count towards the numerical limit set forth in this subparagraph.

(2) For purposes of this subdivision, an entity is an "affiliate" of another specified entity if it directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other specified entity.

(g) "Original creditor" means the private education lender identified in a promissory note, loan agreement, or loan contract entered into with a student loan borrower or cosigner.

(h) "Private education lender" means either of the following:

(1) Any person or entity engaged in the business of securing, making, or extending private education loans.

(2) Any holder of a private education loan.

(i) "Private education loan" means an extension of credit that meets all of the following conditions:

(1) Is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C. Sec. 1070 et seq.).

(2) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends.

(3) Does not include open-end credit or any loan that is secured by real property or a dwelling.

(4) Does not include an extension of credit in which the covered educational institution is the original creditor if either:

(A) The term of the extension of credit is 90 days or less.

(B) An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

(j) "Private education loan collection action" means any suit, arbitration, or other legal proceeding in which a claim is asserted to collect a private education loan.

(k) "Private education loan collector" means a person, other than a private education lender, collecting or attempting to collect on a defaulted private education loan.

CA Civ. Sec. 1788.201 Definitions (California Code (2022 Edition))

§ 1788.202. Written communication with debtor

(a) A private education lender or a private education loan collector shall not make any written statement to a debtor in an attempt to collect a private education loan unless the private education lender or private education loan collector possesses the following information:

- (1) The name of the owner of the private education loan.
- (2) The creditor's name at the time of default, if applicable.
- (3) The creditor's account number used to identify the private education loan at the time of default, if the original creditor used an account number to identify the private education loan at the time of default.
- (4) The amount due at default.
- (5) An itemization of interest, if any, that has accrued on the private education loan.
- (6) An itemization of fees, if any, claimed to be owed on the private education loan and whether those fees were imposed by the original creditor or any subsequent owners of the private education loan.
- (7) The date that the private education loan was incurred.
- (8) The date of the first partial payment or the first day that a payment was missed, whichever is earlier, that precipitated default.
- (9) The date and amount of the last payment, if applicable.
- (10) Any payments, settlement, or financial remuneration of any kind paid to the creditor by a guarantor, surety, or other party not obligated on the loan as compensation under a separate contract that provides coverage for financial losses incurred as a result of default, if applicable.
- (11) The names of all persons or entities that owned the private education loan after the time of default, if applicable, and the date of each sale or transfer.
- (12) A copy of the self-certification form and any other "needs analysis" conducted by the original creditor prior to origination of the loan.

(13) Documentation establishing that the creditor is the owner of the specific individual private education loan at issue. If the private education loan was assigned more than once, the creditor shall possess each assignment or other writing evidencing the transfer of ownership of the specific individual private education loan to establish an unbroken chain of ownership, beginning with the original creditor to the first subsequent creditor and each additional creditor. Each assignment or other writing evidencing transfer of ownership or the right to collect shall contain the original creditor's account number (redacted for security purposes to show only the last four digits) of the private education loan purchased or otherwise assigned, the date of purchase and assignment, and shall clearly show the borrower's correct name associated with the original account number. The assignment or other writing attached shall be that by which the creditor or other assignee acquired the private education loan, not a document prepared for litigation.

(14) A copy of all pages of the contract, application, or other documents evidencing the debtor's liability for the private education loan, stating all terms and conditions applicable to the private education loan.

(15) A list of all collection attempts made in the last 12 months, including date and time of all calls and written communications.

(16) A statement as to whether the creditor is willing to renegotiate the terms of the private student loan.

(17) Copies of all written settlement communications made in the last 12 months, or, in the alternative, a statement that the creditor has not attempted to settle or otherwise renegotiate the debt prior to suit.

(18) A statement as to whether the private education loan is eligible for an income-based repayment plan.

(b) (1) In addition to any other information required under applicable federal or state law, a private education lender or private education loan collector shall provide the information set forth in subdivision (a) in the first written collection communication with a debtor after the first of either of the following:

(A) Default and acceleration.

(B) A period of 12 consecutive months of default.

(2) A private education lender or private education loan collector shall provide the information set forth in subdivision (a) to the debtor upon the debtor's request if both of the following are true:

(A) An event described in subparagraph (A) or (B) of paragraph (1) has occurred.

(B) The debtor has not requested or received the information set forth in subdivision (a) within the previous 12 months.

CA Civ. Sec. 1788.202 Written communication with debtor (California Code (2022 Edition))

§ 1788.205. Action to collect a private education loan

In an action brought by a private education lender or private education loan collector to collect a private education loan:

(a) The complaint shall allege all of the following:

- (1) The information required by paragraphs (1) to (11), inclusive, of subdivision (a) of Section 1788.202.
- (2) That the applicable statute of limitations has not expired.
- (3) That the plaintiff has complied with Section 1788.202.

(b) Copies of the documents required by paragraphs (12) to (14), inclusive, of subdivision (a) of Section 1788.202 shall be attached to the complaint.

(c) The requirements of this title shall not be deemed to require the disclosure in public records of personal, financial, or medical information, the confidentiality of which is protected by any state or federal law.

(d) This section does not apply to a plaintiff that attaches to the complaint a declaration or affidavit pursuant to Section 2015.5 of the Code of Civil Procedure that is signed by a natural person and states all of the following:

- (1) That the plaintiff is an exempt entity.
- (2) The category in subdivision (a) of Section 1420 of the Financial Code under which the plaintiff falls.
- (3) The name and title of the signer.
- (4) That the signer has been authorized by the entity to make the affidavit or declaration.

CA Civ. Sec. 1788.205 Action to collect a private education loan (California Code (2022 Edition))

§ 1788.206. Documentation in action on private education loan

(a) In an action initiated by a private education lender or private education loan collector, no default or other judgment may be entered against a defendant unless documents are submitted by the plaintiff to the court to establish the facts required to be alleged by paragraphs (1) and (2) of subdivision (a) of Section 1788.205. The documents shall be properly authenticated and each shall be in a form that would be admissible as a business record under Section 1271 of the Evidence Code.

(b) In an action initiated by a private education lender or private education loan collector, no default or other judgment may be entered against a defendant unless copies of the documents described in subdivision (b) of Section 1788.205 have been submitted by the plaintiff to the court. These documents shall be properly authenticated and each shall be in a form that would be admissible as a business record under Section 1271 of the Evidence Code.

(c) In any action on a private education loan, if a plaintiff seeks a default judgment and has not complied with the requirements of this title, the court shall not enter a default judgment for the plaintiff and may, in its discretion, dismiss the action.

(d) Except as provided in this title, this section is not intended to modify or otherwise amend the procedures established in Section 585 of the Code of Civil Procedure.

(e) This section does not apply to a plaintiff that attaches to the complaint a declaration or affidavit pursuant to Section 2015.5 of the Code of Civil Procedure that is signed by a natural person and states all of the following:

- (1) That the plaintiff is an exempt entity.
- (2) The category in subdivision (a) of Section 1420 of the Financial Code under which the plaintiff falls.
- (3) The name and title of the signer.
- (4) That the signer has been authorized by the entity to make the affidavit or declaration.

CA Civ. Sec. 1788.206 Documentation in action on private education loan (California Code (2022 Edition))

§ 1788.207. Notice of motion and motion to set aside the default or default judgment

Notwithstanding Section 473.5 of the Code of Civil Procedure, if service of a summons has not resulted in actual notice to a person in time to defend an action brought by a private education lender or a private education loan collector and a default or default judgment has been entered against the person in the action, the person may serve and file a notice of motion and motion to set aside the default or default judgment and for leave to defend the action utilizing the procedures set forth in Section 1788.61.

CA Civ. Sec. 1788.207 Notice of motion and motion to set aside the default or default judgment (California Code (2022 Edition))

COLORADO

2018 COLORADO REVISED STATUTES

TITLE 5 - CONSUMER CREDIT CODE DEBT MANAGEMENT ARTICLE 16 - COLORADO FAIR DEBT COLLECTION PRACTICES ACT

§ 5-16-103. Definitions

As used in this article 16, unless the context otherwise requires:

- (1) "Administrator" means the administrator of the "Uniform Consumer Credit Code", articles 1 to 9 of this title 5, whose office is created in the department of law in section 5-6-103.
- (2) Repealed.
- (3) (a) "Collection agency" means any:

(I) Person who engages in a business the principal purpose of which is the collection of debts;
or

(II) Person who:

(A) Regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another;

(B) Takes assignment of debts for collection purposes;

(C) Directly or indirectly solicits for collection debts owed or due or asserted to be owed or due another;

(D) Collects debt for the department of personnel, but only for the purposes specified in subsection (3)(d) of this section;

(b) "Collection agency" does not include:

(I) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(II) Any person while acting as a collection agency for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a collection agency does so only for creditors to whom it is so related or affiliated and if the principal business of the person is not the collection of debts;

(III) Any officer or employee of the United States or any state to the extent that collecting or attempting to collect any debt is in the performance of the officer's or employee's official duties, except as otherwise provided in subsection (9) of this section;

(IV) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(V) Any debt-management services provider operating in compliance with or exempt from the "Uniform Debt-Management Services Act", part 2 of article 19 of this title 5;

(VI) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that:

(A) The activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(B) The activity concerns a debt that was extended by the person;

(C) The activity concerns a debt that was not in default at the time it was obtained by the person; or

(D) The activity concerns a debt obtained by the person as a secured party in a commercial credit transaction involving the creditor;

(VII) Any person whose principal business is the making of loans or the servicing of debt not in default and who acts as a loan correspondent, or seller and servicer for the owner, or

holder of a debt which is secured by a deed of trust on real property whether or not the debt is also secured by an interest in personal property;

(VIII) A limited gaming or racing licensee acting pursuant to article 33 of title 44.

(c) Notwithstanding the provisions of subsection (3)(b)(VI) of this section, "collection agency" includes any person who, in the process of collecting his or her own debts, uses another name which would indicate that a third person is collecting or attempting to collect such debts.

(d) For the purposes of section 5-16-108(1)(f), "collection agency" includes any person engaged in any business the principal purpose of which is the enforcement of security interests. For purposes of sections 5-16-104, 5-16-105, 5-16-106, 5-16-107, 5-16-108, and 5-16-109 only, "collection agency" includes a debt collector for the department of personnel.

(e) Notwithstanding subsection (3)(b) of this section, "collection agency" includes any person who engages in any of the following activities; except that the person shall be exempt from provisions of this article 16 that concern licensing and licensees:

(I) Is an attorney-at-law and regularly engages in the collection or attempted collection of debts in this state;

(II) Is a person located outside this state whose collection activities are limited to collecting debts not incurred in this state from consumers located in this state and whose collection activities are conducted by means of interstate communications, including telephone, mail, or facsimile transmission, and who is located in another state that regulates and licenses collection agencies but does not require Colorado collection agencies to obtain a license to collect debts in their state if the agencies' collection activities are limited in the same manner.

(4) "Communication" means conveying information regarding a debt in written or oral form, directly or indirectly, to any person through any medium.

(5) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

(6) (a) "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(b) "Consumer reporting agency" shall not include any business entity that provides check verification or check guarantee services only.

(c) "Consumer reporting agency" shall include any persons defined in 15 U.S.C. sec. 1681a(f) or section 5-18-103(4).

(7) "Creditor" means any person who offers or extends credit creating a debt or to which a debt is owed, but "creditor" does not include any person to the extent the person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of the debt for another.

(8) (a) "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not the obligation has been reduced to judgment.

(b) "Debt" does not include a debt for business, investment, commercial, or agricultural purposes or a debt incurred by a business.

(8.5) "Debt buyer" means a person who engages in the business of purchasing delinquent or defaulted debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney for litigation in order to collect the debt. Debt buyers are collection agencies for the purposes of this article 16.

(9) "Debt collector" means any person employed or engaged by a collection agency to perform the collection of debts owed or due or asserted to be owed or due to another, and includes any person employed by the department of personnel, or any division of that department, when collecting debts due to the state on behalf of another state agency.

(10) "Location information" means a consumer's place of abode and his or her telephone number at such place or his or her place of employment.

(11) "Person" means a natural person, firm, corporation, limited liability company, or partnership.

(12) "Principal" means any individual having a position of responsibility in a collection agency, including but not limited to any manager, director, officer, partner, owner, or shareholder owning ten percent or more of the stock.

(13) "Solicitor" means any person employed or engaged by a collection agency who solicits or attempts to solicit debts for collection by the person or any other person.

(14) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of them.

Colo. Rev. Stat. § 5-16-103 Definitions (Colorado Revised Statutes (2021 Edition))

§ 5-16-111. Legal actions by collection agencies

Universal Citation: CO Rev Stat § 5-16-111 (2018)

(1) Any debt collector or collection agency who brings any legal action on a debt against any consumer shall:

(a) In the case of an action to enforce an interest in real property securing the consumer's obligation, bring the action only in a judicial district or similar legal entity in which the real property is located; or

(b) In the case of an action not described in subsection (1)(a) of this section, bring the action only in the judicial district or similar legal entity in which:

(I) The consumer signed the contract sued upon;

(II) The consumer resides at the commencement of the action; or

(III) The action may be brought pursuant to article 13 or 13.5 of title 26, section 14-14-104, or article 4 or 6 of title 19, if the action is by a private collection agency acting on behalf of a delegate child support enforcement unit.

(2) A debt collector or collection agency who brings a legal action on a debt owned by a debt buyer shall attach the following materials to the complaint or form:

(a) (I) A copy of the contract, account-holder agreement, or other writing from the original creditor or the consumer evidencing the consumer's agreement to the original debt;

(II) In the case of a medical debt, a copy of a redacted itemization of charges incurred;

(III) If a signed writing evidencing the original debt does not exist, a copy of the document provided to the consumer while the account was active, demonstrating that the debt was incurred by the consumer; or, for a credit card debt, the most recent monthly statement recording a purchase transaction, payment, or balance transfer; or

(iv) If a claim is based on an electronic transaction for which a signed writing evidencing the original debt never existed, a copy of the records created during the transaction evidencing the consumer's agreement to the debt and recording the date and terms of the transaction and information provided by the consumer during the transaction; and

(b) A copy of the assignment or other writing establishing that the debt buyer is the owner of the debt. If the debt was assigned more than once, each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership, beginning with the original creditor to the first debt buyer and each subsequent sale.

(3) Prior to entry of a default judgment against a consumer in a legal action on a debt owned by a debt buyer, the plaintiff shall file with the court evidence that satisfies the requirements of rules 803(6) and 902(11) of the Colorado rules of evidence or is otherwise authorized by law or rule that establishes the amount and nature of the debt and include:

(a) The original account number at charge-off;

(b) The original creditor at charge-off;

(c) The amount due at charge-off or, if the balance has not been charged off, an itemization of the amount claimed to be owed, including the principal, interest, fees, and other charges or reductions from payment made or other credits;

(d) An itemization of post charge-off additions, if any;

(e) (I) The date of the last payment, if applicable; or

(II) The date of the last transaction; and

(f) If the account is not a revolving credit account, the date the debt was incurred.

(4) In the absence of evidence required by subsections (2)(a) or (2)(b) and (3) of this section, an affidavit does not satisfy the requirements of these subsections.

CONNECTICUT

§ 36a-800. (Formerly Sec. 42-127). Consumer collection agency. Definitions

As used in this section and sections 36a-801 to 36a-814, inclusive, unless the context otherwise requires:

* * *

(3) "Consumer collection agency" means any person (A) engaged as a third party in the business of collecting or receiving payment for others on any account, bill or other indebtedness from a consumer debtor, (B) engaged in the business of debt buying, or (C) engaged in the business of collecting or receiving tax payments, including, but not limited to, property tax and federal income tax payments, from a property tax debtor or federal income tax debtor on behalf of a municipality or the United States Department of the Treasury, including, but not limited to, any person who, by any device, subterfuge or pretense, makes a pretended purchase or takes a pretended assignment of accounts from any other person, municipality or taxing authority of such indebtedness for the purpose of evading the provisions of this section and sections 36a-801 to 36a-814, inclusive. "Consumer collection agency" includes persons who furnish collection systems carrying a name which simulates the name of a consumer collection agency and who supply forms or form letters to be used by the creditor, even though such forms direct the consumer debtor, property tax debtor or federal income tax debtor to make payments directly to the creditor rather than to such fictitious agency. "Consumer collection agency" further includes any person who, in attempting to collect or in collecting such person's own accounts or claims from a consumer debtor, uses a fictitious name or any name other than such person's own name which would indicate to the consumer debtor that a third person is collecting or attempting to collect such account or claim. "Consumer collection agency" does not include (i) an individual employed on the staff of a licensed consumer collection agency, or by a creditor who is exempt from licensing, when attempting to collect on behalf of such consumer collection agency, (ii) persons not primarily engaged in the collection of debts from consumer debtors who receive funds in escrow for subsequent distribution to others, including, but not limited to, real estate brokers and lenders holding funds of borrowers for payment of taxes or insurance, (iii) any public officer or a person acting under the order of any court, (iv) any member of the bar of this state, (v) a person who services loans or accounts for the owners thereof when the arrangement includes, in addition to requesting payment from delinquent consumer debtors, the providing of other services such as receipt of payment, accounting, record-keeping, data processing services and remitting, for loans or accounts which are current as well as those which are delinquent, (vi) a bank or out-of-state bank, as defined in section 36a-2, and (vii) a subsidiary or affiliate of a bank or out-of-state bank, provided such affiliate or subsidiary is not primarily engaged in the business of purchasing and collecting upon delinquent debt, other than delinquent debt secured by real property. Any person not included in the definition contained in this subdivision is, for purposes of sections 36a-645 to 36a-647, inclusive, a "creditor", as defined in section 36a-645;

(4) "Consumer debtor" means any natural person, not an organization, who has incurred indebtedness or owes a debt for personal, family or household purposes, including current or past due child support, who has incurred indebtedness or owes a debt to a municipality due to a levy by such municipality of a property tax or who has incurred indebtedness or owes a debt to the United States Department of the Treasury

under the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time;

* * *

(6) "Creditor" means a person, including, but not limited to, a municipality or the United States Department of the Treasury, that retains, hires, or engages the services of a consumer collection agency;

(7) "Debt buying" means collecting or receiving payment on any account, bill or other indebtedness from a consumer debtor for such person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired;

Conn. Gen. Stat. 36a-800 (Formerly Sec. 42-127). Consumer collection agency. Definitions (General Statutes of Connecticut (2021 Edition))

§ 36a-813. Evidence in cause of action for purchased debt owed by consumer debtor

(a) In any cause of action initiated by a consumer collection agency that purchased debt from a creditor for liability on the debt owed by a consumer debtor, the consumer collection agency shall file with the court evidence in accordance with the rules of the Superior Court to establish the amount and nature of the debt prior to the court's entry of a judgment against the consumer debtor. Such evidence shall include a copy of the assignment or other documentation (1) establishing that the plaintiff is the owner of the debt, (2) containing the original or charge-off account number, if any, which can be partially redacted to protect the privacy of the consumer debtor, and the name associated with the debt, and (3) if the debt has been assigned more than once, the name, address and dates of ownership of each assignor, and a copy of each assignment or other documentation that establishes an unbroken chain of ownership of the debt by the plaintiff.

(b) In the case of a claim for default judgment the plaintiff shall file, in addition to the evidence required under the rules of the Superior Court, a sworn affidavit that lists the name, address and dates of ownership of each owner of the debt, from the charge-off creditor to the current owner. The plaintiff shall attach documentation to the affidavit that fully substantiates the amount of the debt. If the debt is a credit card debt subject to federal charge-off requirements, the following documents shall, subject to subsection (c) of this section, suffice to substantiate the debt:

(1) A copy of the most recent monthly statement recording a purchase transaction, service billed, last payment or balance transfer,

(2) a statement that reflects the charge-off balance,

(3) with respect to consumer debt purchased on or after October 1, 2016, an additional monthly account statement sent to the consumer debtor while the account was active, which shows the consumer debtor's name and address,

(4) such other statements, if any, required by the federal consumer financial protection bureau in its regulations, and

(5) post-charge-off itemization of the balance if the balance is different from the charge-off amount.

(c) Nothing in this section shall prevent the judicial authority or the rules of the Superior Court from requiring the submission of additional written documentation or the presence of the plaintiff, the authorized representative of the plaintiff or other affiants or counsel before the judicial authority prior to rendering judgment if it appears to the judicial authority that additional information or evidence is required in order to enter judgment.

(d) This section shall apply prospectively and shall not apply to any debt collection action commenced prior to October 1, 2016, or to debt purchased by a licensed mortgage lender pursuant to a recourse requirement.

(e) A consumer collection agency that purchased the debt shall indicate when any of the items produced pursuant to subsections (b) and (c) of this section have been redacted by either blacking out the text or otherwise indicating in writing on such document that text has been redacted.

(P.A. 16-65, S. 52; P.A. 17-236, S. 8.)...

Conn. Gen. Stat. 36a-813 Evidence in cause of action for purchased debt owed by consumer debtor (General Statutes of Connecticut (2021 Edition))

§ 36a-814. Initiation of cause of action for purchased debt prohibited when statute of limitations has expired. Limitations period not extended by payment or affirmation

(a) For the purposes of this section, "creditor" has the same meaning as in section 36a-645.

(b) No creditor or consumer collection agency that purchased debt shall initiate a cause of action to collect the debt owed by a consumer debtor when such creditor or consumer collection agency knows or reasonably should know that the applicable statute of limitations on such cause of action has expired.

(c) Notwithstanding any other provision of law, when the applicable statute of limitations on a cause of action to collect debt owed by a consumer has expired, any subsequent payment toward or oral or written affirmation of the debt owed by the consumer shall not extend the limitations period within which the creditor or consumer collection agency that purchased the debt may bring the cause of action.

INDIANA

§ 24-5-15.5-2. "Debt"

As used in this chapter, 'debt' has the meaning set forth in 15 U.S.C. 1692a(5) [i.e., "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment"].

§ 24-5-15.5-3. "Debt buyer"

(a) As used in this chapter, "debt buyer" means a person that is regularly engaged in the business of purchasing debt for collection purposes, regardless of whether the person:

- (1) collects the debt;
- (2) hires another person to collect the debt; or
- (3) hires an attorney for litigation connected to collection of the debt.

(b) The term does not include a person that acquires a debt incidental to the purchase of a portfolio that predominantly consists of debt that has not been charged off.

§ 24-5-15.5-5. Plaintiff debt buyer; initial pleading; required documentation

(a) If a debt buyer brings an action on a debt, or an arbitration proceeding requesting a judgment on a debt, the plaintiff debt buyer shall attach with the initial pleading the following:

(1) One (1) of the following:

- (A) If a signed contract or other writing evidencing the debtor's agreement to the debt exists, a copy of the contract or other writing.
- (B) If a signed contract or other writing evidencing the debtor's agreement to the debt does not exist, a copy of a document provided to the debtor while the account was active.

However, for a revolving credit account, a copy of a charge off statement or the most recent monthly statement recording a purchase transaction, a last payment, or a balance transfer is sufficient to satisfy this requirement.

(2) A chronological list of the:

- (A) names of all previous owners of the debt and date of each transfer of ownership of the debt, beginning with the name of the original charge off creditor; and
- (B) documentation, or a bill of sale, evidencing the assignment of the debt to the plaintiff debt buyer.

(b) An initial pleading described in subsection (a) is sufficient if the plaintiff debt buyer complies with subsection (a)(1) and (a)(2).

Ind. Code 24-5-15.5-5 Plaintiff debt buyer; initial pleading; required documentation (Indiana Code (2022 Edition))

Rule 9.2. Pleading and proof of written instruments

(A) When instrument or copy, or an Affidavit of Debt shall be filed. When any pleading allowed by these rules is founded on a written instrument, the original, or a copy thereof, shall be included in or filed with the pleading. Such instrument, whether copied in the pleadings or not, shall be taken as part of the record. Further,

- (1) if the claim:

- (a) arises out of a written contract, a copy shall be attached; however, the fact that a copy of such contract is not in the custody of the plaintiff shall not bar the filing of the claim; or
 - (b) is on an account, an Affidavit of Debt, in a form substantially similar to Appendix A-2 shall be attached;
- (2) in addition to the requirements set forth above in subsection (1), if the plaintiff is not the original creditor, and the claim arises from a debt that is primarily for personal, family, or household purposes, the plaintiff shall provide an Affidavit of Debt that shall have attached as one or more Exhibits which shall include:
- (a) a copy of the contract or other writing evidencing the original debt, which shall contain a signature of the defendant. If a claim is based on credit card or other debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the debt was incurred or the credit card was actually used shall be attached; and
 - (b) a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and
 - (c) a certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to the plaintiff.
 - (d) Subsection (2) does not apply to mortgage foreclosures.

AFFIDAVIT OF DEBT

Comes now affiant, and states:

I _____ am ☐ Plaintiff

(Name of Affiant)

OR

☐ a designated full-time employee of _____ (Plaintiff).

(Name of Plaintiff)

I am of adult age and am fully authorized by Plaintiff to make the following representations. I am familiar with the record keeping practices of Plaintiff. The following representations are true according to documents kept in the normal course of Plaintiff's business and/or my personal knowledge:

Plaintiff:

☐ is the original owner of this debt, and evidence of the debt, as required in Rules 9.2(A)(1), is attached as one or more Exhibits to this Affidavit.

OR

☐ has obtained this debt from _____ and the original owner of this debt was _____. Evidence of the debt, as required in Rule 9.2.(A)(2), is attached as one or more Exhibits to this Affidavit.

_____, Defendant, has an unpaid balance of \$_____ on account _____.

(Name of Defendant)
number or id only)

(last 4 digits of

That amount is due and owing to Plaintiff. This account was opened on _____. The last payment from Defendant was received on _____ in the amount of \$_____.

The type of account is:

☐ Credit card account (i.e. Visa, Mastercard, Department Store, etc.)

List the name of the Company/Store issuing credit card: _____

☐ Account for utilities (i.e. telephone, electric, sewer, etc.)

☐ Medical bill account (i.e. doctor, dentist, hospital, etc.)

☐ Account for services (i.e. attorney fees, mechanic fees, etc.)

☐ Judgment issued by a court (a copy of the judgment is required to be attached)

☐ Other: (Please explain) _____

—

—

This account balance includes:

☐ Late fees in the amount of \$_____ as of _____.

(Month, Day, Year)

☐ Other (Explain _____)

☐ Interest at a rate of _____% beginning on _____.

(Month, Day, Year)

Plaintiff:

☐ is seeking attorney's fees and additional evidence will be presented to the court prior to entry of judgment on attorney's fees.

OR

☐ is not seeking attorney's fees.

Plaintiff believes that defendant is not a minor or an incompetent individual.

If the defendant is an individual, plaintiff states and declares that:

☐ Defendant is not on active military service. Plaintiff's statement that Defendant is not on active military service is based upon the following facts:

_____.

OR

☐ Plaintiff is unable to determine whether or not Defendant is not on active military service.

("Active military service" includes fulltime duty in the military (including the National Guard and reserves) and, for members of the National Guard, service under a call to active service authorized by the President or Secretary of Defense. For further information, see the definition of "military service" in the Servicemembers Civil Relief Act, as amended, 50 U.S.C.A. Appx. § 521.)

I swear or affirm under the penalties of perjury that the foregoing representations are true.

Dated: _____ Signature of Affiant: _____

MAINE

ME Rev. Stat. Tit. 1: COURT PROCEDURE § 355. Affidavit of plaintiff as prima facie evidence; exception

In all actions brought on an itemized account annexed to the complaint, including an action brought in small claims court pursuant to Title 14, chapter 738, the affidavit of the plaintiff, made before a notary public using a seal, that the account on which the action is brought is a true statement of the indebtedness existing between the parties to the action with all proper credits given and that the prices or items charged therein are just and reasonable is prima facie evidence of the truth of the statement made in such affidavit and entitles the plaintiff to the judgment unless rebutted by competent and sufficient evidence. When the plaintiff is a corporation, the affidavit may be made by its president, vicepresident, secretary, treasurer or other person authorized by the corporation. If the plaintiff is a debt buyer within the meaning of the Maine Fair Debt Collection Practices Act, the affidavit must also conform to the requirements of Title 32, section 11019.

ME Rev. Stat. Tit. 32

MAINE FAIR DEBT COLLECTION PRACTICES ACT

§ 11002. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Communication. "Communication" means the conveyance or receipt of information regarding or facilitating the collection of a debt, directly or indirectly, to or from any person through any medium. 1-A. Collection action. "Collection action" means a lawsuit or arbitration proceeding initiated to collect a debt from a consumer.

1-B. Charge-off. "Charge-off" means the act of a creditor removing an account from its books as an asset and treating it as a loss or expense because payment is unlikely.

2. Conducting business in this State. "Conducting business in this State" means the collection or attempted collection of a debt due another by a debt collector located in this State; the solicitation of creditors in this State as clients and the collection or attempted collection of their debts by a debt collector, wherever located; or the collection or attempted collection of a debt from a consumer in this State by a debt collector, wherever located.

3. Consumer. "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

4. Creditor. "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but that term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of that debt for another.

5. Debt. "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services that are the subject of the transaction are primarily for personal, family or household purposes, whether or not the obligation has been reduced to judgment. "Debt" includes any obligation or alleged obligation for payment of child support owed to, or owed by, a resident of this State and any obligation or alleged obligation relating to a check returned

because of insufficient funds if a consumer is subject to an enforcement program operated by a private entity.

5-A. Debt buyer. "Debt buyer" means a person that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether the person collects the debt or hires a 3rd party, which may include an attorney-at-law, in order to collect the debt. "Debt buyer" does not include a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A or a person that acquires charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off. A debt buyer is considered a debt collector for all purposes under this chapter.

6. Debt collector. "Debt collector" means any person conducting business in this State, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. "Debt collector" includes persons who furnish collection systems carrying a name that simulates the name of a debt collector and who supply forms or form letters to be used by the creditor even though the forms direct the debtor to make payments directly to the creditor. Notwithstanding the exclusion provided by section 11003, subsection 7, "debt collector" includes any creditor who, in the process of collecting the creditor's own debts, uses any name other than the creditor's that would indicate that a 3rd person is collecting or attempting to collect these debts. "Debt collector" includes any attorney-at-law whose principal activities include collecting debts as an attorney on behalf of and in the name of clients, except that any such attorney licensed to practice law in this State is subject exclusively to subchapter 2 and any such attorney not licensed to practice law in this State is subject to this entire chapter. "Debt collector" also includes any person regularly engaged in the enforcement of security interests securing debts, including a repossession company and a residential real estate property preservation provider. "Debt collector" does not include any person who retrieves collateral when a consumer has voluntarily surrendered possession. A person is regularly engaged in the enforcement of security interests if that person enforced security interests more than 5 times in the previous calendar year. If a person does not meet these numerical standards for the previous calendar year, the numerical standards must be applied to the current calendar year.

7. Location information. "Location information" means a consumer's place of abode and his telephone number at that place or his place of employment.

8. Person. "Person" means any natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal entity.

8-A. Residential real estate property preservation provider. "Residential real estate property preservation provider" means a person who regularly provides residential real estate property preservation services. "Residential real estate property preservation provider" does not include a supervised financial organization, a supervised lender, a person licensed by the Plumbers' Examining Board, a person licensed by the Electricians' Examining Board, a person licensed by the Department of Professional and Financial Regulation under chapter 131, a person licensed by the Maine Fuel Board or a person licensed by the Real Estate Commission.

8-B. Residential real estate property preservation services. "Residential real estate property preservation services" means those services undertaken at the direction of a person holding or enforcing a mortgage on residential real estate that is in default or in which the property

is presumed abandoned in entering or arranging for entry into a building to perform the services of winterizing the residence, changing the door locks or removing unsecured items from the residence.

8-C. Resolved debt." Resolved debt" means a debt that has been paid, settled or discharged in bankruptcy.

9. Administrator. "Administrator" means the Superintendent of Consumer Credit Protection.

10. Supervised financial organization. "Supervised financial organization" has the same meaning as defined in Title 9-A, section 1-301, subsection 38-A.

§ 11013. Prohibited practices.

* * *

3. Unfair practices. A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The collection of any amount, including any interest, fee, charge or expense incidental to the principal obligation, unless the amount is expressly authorized by the agreement creating the debt or permitted by law;

* * *

9. Required information. A debt buyer may not collect or attempt to collect a debt unless the debt buyer possesses the following:

A. The name of the owner of the debt;

B. The original creditor's name at the time of the charge-off;

C. The original creditor's account number used to identify the debt at the time of the charge-off, if the original creditor used an account number to identify the debt at the time of charge-off;

D. The amount due at charge-off;

E. An itemization of interest and fees, if any, incurred after charge-off claimed to be owed and whether those were imposed by the original creditor or any subsequent owners of the debt;

F. If the debt is not from a revolving credit account, the date that the debt was incurred or the date of the last charge billed to the consumer's account for goods or services received. In the case of debt from a revolving credit account, the debt buyer must possess the date of the last extension of credit for the purchase of goods or services, for the lease of goods or as a loan of money;

G. The date and amount of the last payment, if applicable;

H. The names of all persons or entities that owned the debt after the time of the charge-off, if applicable, and the date of each sale or transfer;

I. Documentation establishing that the debt buyer is the owner of the specific debt at issue. If the debt was assigned more than once, the debt buyer must possess each assignment or other writing evidencing the transfer of ownership to establish an unbroken chain of ownership, beginning with the original creditor to the first debt buyer and each subsequent debt buyer; and

J. A copy of the contract, application or other documents evidencing the consumer's liability for the debt. If a signed writing evidencing the original debt does not exist, the debt buyer must possess a copy of a document provided to the consumer before charge-off demonstrating that the debt was incurred by the consumer or, for a revolving credit account, the most recent monthly statement recording the extension of credit for the purchase of goods or services, for the lease of goods or as a loan of money.

* * *

§ 11019. Collection action by debt buyer

1. Complaint; required allegations. A debt buyer may not initiate a collection action against a consumer unless the debt buyer alleges all of the following information in the complaint:

- A. The information described in section 11013, subsection 9, including that the debt buyer possesses the documentation described in section 11013, subsection 9;
- B. The basis for any interest and fees described in section 11013, subsection 9;
- C. The basis for the request for attorney's fees, if applicable;
- D. That the debt buyer is the current owner of the debt; and
- E. That the cause of action is filed within the applicable statute of limitations period.

2. Debt collection complaint; attachments. In a collection action initiated by a debt buyer, the debt buyer shall attach all of the following materials to the complaint:

A. A copy of the contract, application or other document evidencing the consumer's agreement to the debt. If a signed writing evidencing the original debt does not exist, the debt buyer shall attach a copy of a document provided to the consumer before charge-off demonstrating that the debt was incurred by the consumer or, for a revolving credit account, the most recent monthly statement recording the extension of credit for the purchase of goods or services, for the lease of goods or as a loan of money or the last payment or balance transfer; and

B. A copy of the bill of sale or other writing establishing that the debt buyer is the owner of the debt. If the debt was assigned more than once, the debt buyer shall attach each assignment or other writing evidencing the transfer of ownership to establish an unbroken chain of ownership, beginning with the original creditor to the first debt buyer and each subsequent debt buyer.

3. Requirements for judgment. Regardless of whether the consumer appears in the action, the court may not enter a judgment in favor of a debt buyer in a collection action against a consumer, including an action brought in small claims court pursuant to Title 14, chapter 738, unless the debt buyer files with the court:

A. A copy admissible under the Maine Rules of Evidence of the contract, application or other writing establishing the consumer's agreement to the debt and any contract interest or fees alleged to be owed. If a signed writing evidencing the original debt does not exist, the debt buyer must file a copy of a document provided to the consumer before charge-off demonstrating that the debt was incurred by the consumer or, for a revolving credit account, the most recent monthly statement recording the extension of credit for the purchase of goods or services, for the lease of goods or as a loan of money or the last payment or balance transfer;

B. Business records or other evidence admissible under the Maine Rules of Evidence to establish the amount due at charge-off;

C. A copy admissible under the Maine Rules of Evidence of each bill of sale or other writing establishing transfer of ownership of the debt from the original creditor to the debt buyer. If the debt was assigned more than once, the debt buyer must file each assignment or other writing evidencing the transfer of ownership to establish an unbroken chain of ownership, beginning with the original creditor to the first debt buyer and each subsequent debt buyer; and

D. Notwithstanding any other law, if attorney's fees are sought under contract, a copy admissible under the Maine Rules of Evidence of the contract evidencing entitlement to attorney's fees.

§ 11020. Collection action to collect credit card and student loan debts; additional requirements for collection action

1. Applicability. This section applies to any collection action against a consumer to collect a credit card or student loan debt initiated by a debt collector.

2. Commencement of collection action. A collection action may not be commenced in small claims court pursuant to Title 14, chapter 738. A collection action is commenced upon the filing or serving of a complaint that provides notice of the complaint in the same manner as other civil complaints and satisfies the requirements of this section.

3. Notice of complaint. In a collection action subject to this section, the debt collector shall attach to the front of the complaint a one-page form notice to the consumer as developed by the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection. The form notice must be written in language that is plain and readily understandable by the general public and, at a minimum, must contain the following:

A. A statement that failure to answer the complaint may result in entry of judgment in the amount demanded by the debt collector; and

B. A sample answer and an explanation that the consumer may fill out the form and return it to the court as the answer to the complaint. If the consumer returns the form to the court, the consumer does not need to file a more formal answer or responsive pleading.

4. Entry of judgment. A court may not enter judgment unless it specifically finds that all the requirements of this section and all other applicable requirements of this chapter are met, including, but

not limited to, whether the plaintiff has produced evidence that is admissible pursuant to the Maine Rules of Evidence on all required elements of its claim.

5. Default judgment. If the defendant has failed to plead or otherwise defend, the plaintiff may apply for entry of default and a default judgment. The judge overseeing the action is responsible for entering a default and a default judgment, not the clerk of the court. Regardless of whether the defendant appears in the action or the judgment is based on a proposed order concerning a settlement, the court may not enter judgment in favor of the plaintiff unless the court determines that all the requirements of this section and all other applicable requirements of this chapter are met, including, but not limited to, whether the plaintiff has produced evidence admissible pursuant to the Maine Rules of Evidence on all required elements of its claim.

6. Exclusion. This section does not apply to any collection action brought by a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A.

7. Rules. The Supreme Judicial Court may adopt rules necessary to implement the provisions of this section.

MARYLAND

Maryland Code, Courts and Judicial Proceedings § 5-1201

(a) In this subtitle the following words have the meanings indicated.

(b) “Charge-off” means the act of a creditor that treats an account receivable or any other debt as a loss or an expense because payment is unlikely.

(c) “Charge-off balance” means the amount due on the account or debt at the time of charge-off.

(d) “Collector” means a person collecting or attempting to collect an alleged debt arising out of a consumer transaction.

(e) “Consumer debt” means a secured or an unsecured debt that:

(1) Is for money owed or alleged to be owed; and

(2) Arises from a consumer transaction.

(f) (1) “Consumer debt collection action” means any judicial action or arbitration proceeding in which a claim is asserted to collect a consumer debt.

(2) “Consumer debt collection action” does not include an action brought under § 8-401 of the Real Property Article by a landlord or an attorney, a property manager, or an agent on behalf of a landlord.

(g) “Consumer transaction” means any transaction involving a person seeking or acquiring real or personal property, services, money, or credit for personal, family, or household purposes.

(h) “Creditor” means a person to whom a consumer debt is owed or alleged to be owed.

(i) (1) “Debt buyer” means a person that purchases or otherwise acquires consumer debt from an original creditor or from a subsequent owner of the debt.

(2) “Debt buyer” does not include:

(i) A check services company that acquires the right to collect on a paper or an electronic check instrument, including an automated clearing house item that has been returned unpaid to a merchant;

(ii) A business entity that, in the business entity's ordinary course of business, does not purchase or otherwise acquire consumer debt from an original creditor or from a subsequent owner of the debt and acquired the consumer debt:

1. As a direct result of the business entity being the successor in a merger with the original creditor of the debt; or

2. Because the business entity purchased or otherwise acquired the original creditor in whole;

(iii) A bank, credit union, or savings and loan association that acquired the consumer debt as a direct result of being the successor in a merger with another bank, credit union, or savings and loan association that had owned the consumer debt;

(iv) A mortgage servicer that is licensed under Title 11, Subtitle 5 of the Financial Institutions Article, unless the mortgage servicer or a collector acting on the mortgage servicer's behalf collects or attempts to collect a deficiency balance or deficiency judgment in any way related to or arising from a foreclosure or short sale of real property that secured the mortgage loan;

(v) A sales finance company or any other person that acquires consumer debt arising from a retail installment sale agreement if:

1. The sales finance company or other person acquired the debt before the first installment payment was due from the consumer; and

2. The retail installment sale agreement expressly stated that the consumer would be required to make the consumer's payments to that sales finance company or person;

(vi) A bank, credit union, or savings and loan association that acquired from another bank, credit union, or savings and loan association, in the ordinary course of business, all of a specific type of consumer debt owned by the other bank, credit union, or savings and loan association except for consumer debt that had been charged off; or

(vii) An attorney, a licensed debt collection agency, a property manager, or any other person that collects or attempts to collect consumer debt in an action under § 8-401 of the Real Property Article on behalf of an original creditor that is a residential rental property owner.

(j) “Debtor” means an individual who owes or is alleged to owe a consumer debt.

(k) (1) “Principal” means the unpaid balance of a debt or an obligation arising from a consumer transaction that is owed or alleged to be owed to the original creditor.

(2) “Principal” does not include interest, fees, or charges added to the debt or obligation by the original creditor or any subsequent owners of a consumer debt.

§ 5-1202

(a) A creditor or a collector may not initiate a consumer debt collection action after the expiration of the statute of limitations applicable to the consumer debt collection action.

(b) (1) Notwithstanding any other provision of law, any payment toward, written or oral affirmation of, or any other activity on the debt that occurs after the expiration of the statute of limitations applicable to the consumer debt collection action does not revive or extend the limitations period.

(2) This subsection may not be interpreted to affect the statute of limitations applicable to a cause of action arising from a separate written agreement or written payment plan entered into by the debtor and the creditor or collector before the expiration of the statute of limitations applicable to the consumer debt collection action.

§ 5-1203

(a) A debt buyer or a collector acting on behalf of a debt buyer may not initiate a consumer debt collection action unless the debt buyer or collector possesses all of the documents listed in subsection (b)(3) of this section.

(b) (1) This subsection applies to a consumer debt collection action, including a small claim action under § 4-405 of this article, that is maintained by a debt buyer or a collector acting on behalf of a debt buyer.

(2) In addition to any other requirement of law or rule, unless the action is resolved by judgment on affidavit, a court may not enter a judgment in favor of a debt buyer or a collector unless the debt buyer or collector introduces into evidence the documents specified in paragraph (3) of this subsection in accordance with the rules of evidence applicable to actions that are not small claims actions brought under § 4-405 of this article.

(3) A debt buyer or a collector on behalf of a debt buyer shall introduce the following evidence in a consumer debt collection action:

(i) Proof of the existence of the debt or account made by a certified or otherwise properly authenticated photocopy or original of at least one of the following:

1. A document signed by the debtor evidencing the debt or the opening of the account;

2. A bill or other record reflecting purchases, payments, or other actual use of a credit card or an account by the debtor; or

3. An electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or an account by the debtor;

(ii) If there was a document evidencing the terms and conditions to which the consumer debt was subject, a certified or otherwise properly authenticated photocopy of the original document applicable to the consumer debt unless:

1. The consumer debt is an unpaid balance due on a credit card;

2. The original creditor is or was a financial institution subject to regulation by the federal Financial Institutions Examination Council or a constituent federal agency of the Council; and

3. The claim does not include a demand or request for attorney's fees or interest on the charge-off balance;

(iii) Documentation indicating that the debt buyer or collector acting on behalf of the debt buyer owns the consumer debt, including:

1. A chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and

2. A certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to each successive owner, including the debt buyer or collector, with each bill of sale or other document that transferred ownership containing specific reference to the debt;

(iv) Documentation of the identification and nature of the debt or account, including:

1. The name of the original creditor;

2. The full name of the debtor as it appears on the original account;

3. The last four digits of the Social Security number of the debtor appearing on the original account, if known;

4. The last four digits of the original account number; and

5. The nature of the consumer transaction, such as utility expenses, credit card, consumer loan, retail installment sales agreement, service, or future services;

(v) If the claim is based on a future services contract, evidence that the debt buyer or collector is entitled to an award of damages under that contract;

(vi) If there has been a charge-off of the debt or account, documentation of:

1. The date of the charge-off;

2. The charge-off balance;

3. An itemization of any fees or charges claimed by the debt buyer or collector in addition to the charge-off balance;

4. An itemization of all payments received after the charge-off and other credits to which the debtor is entitled; and

5. The date of the last payment on the consumer debt or the last transaction giving rise to the consumer debt;

(vii) If there has been no charge-off of the debt or account:

1. An itemization of all money claimed by the debt buyer or collector that:

A. Includes principal, interest, finance charges, service charges, late fees, and other fees or charges added to the principal by the original creditor and, if applicable, by subsequent assignees of the consumer debt; and

B. Accounts for any reduction in the amount of the claim by virtue of any payment made or other credit to which the defendant is entitled;

2. A statement of the amount and date of the consumer transaction giving rise to the consumer debt or, in instances of multiple transactions, the amount and date of the last transaction; and

3. A statement of the amount and date of the last payment on the consumer debt; and

(viii) A list of all Maryland collection agency licenses that the debt buyer or collector currently holds and, as to each license:

1. The license number;

2. The name appearing on the license; and

3. The date of issue of the license.

§ 5-1204

This subtitle may not be construed to alter any licensing requirement under federal or Maryland law applicable to debt buyers or collectors.

RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS

Rule 3-306. Judgment on Affidavit

(a) Definitions. In this Rule the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(1) **Charge-Off.** Charge-off means the act of a creditor that treats an account receivable or other debt as a loss or expense because payment is unlikely.

(2) **Charge-Off Balance.** Charge-off balance means the amount due on the account or debt at the time of charge-off.

(3) Consumer Debt. Consumer debt means a secured or unsecured debt that is for money owed or alleged to be owed and arises from a consumer transaction.

(4) Consumer Transaction. Consumer transaction means a transaction involving an individual seeking or acquiring real or personal property, services, future services, money, or credit for personal, family, or household purposes.

(5) Original Creditor. Original creditor means the lender, provider, or other person to whom a consumer originally was alleged to owe money pursuant to a consumer transaction. Original creditor includes the Central Collection Unit, a unit within the State Department of Budget and Management.

(6) Original Consumer Debt. Original consumer debt means the total of the consumer debt alleged to be owed to the original creditor, consisting of principal, interest, fees, and any other charges.

(7) Principal. Principal means the unpaid balance of the funds borrowed, the credit utilized, the sales price of goods or services obtained, or the capital sum of any other debt or obligation arising from a consumer transaction, alleged to be owed to the original creditor. It does not include interest, fees, or charges added to the debt or obligation by the original creditor or any subsequent assignees of the consumer debt.

(8) Future Services. Future services means one or more services that will be delivered at a future time.

(9) Future Services Contract. Future services contract means an agreement that obligates a consumer to purchase a future service from a provider.

(10) Provider. Provider means any person who sells a service or future service to a consumer.

(b) Demand for Judgment by Affidavit. In an action for money damages a plaintiff may file a demand for judgment on affidavit at the time of filing the complaint commencing the action. The complaint shall be supported by an affidavit showing that the plaintiff is entitled to judgment as a matter of law in the amount claimed.

(c) Affidavit and Attachments--General Requirements. The affidavit shall:

- (1) be made on personal knowledge;
- (2) set forth such facts as would be admissible in evidence;
- (3) show affirmatively that the affiant is competent to testify to the matters stated in the affidavit; and;

(4) include or be accompanied by:

(A) supporting documents or statements containing sufficient detail as to liability and damages, including the precise amount of the claim and any interest claimed;

(B) if interest is claimed, an interest worksheet substantially in the form prescribed by the Chief Judge of the District Court;

(C) if attorneys' fees are claimed, sufficient proof evidencing that the plaintiff is entitled to an award of attorneys' fees and that the fees are reasonable; and

(D) if the claim is founded upon a note, security agreement, or other instrument, the original or a photocopy of the executed instrument, or a sworn or certified copy, unless the absence thereof is explained in the affidavit.

(d) If Claim Arises From Assigned Consumer Debt. If the claim arises from consumer debt and the plaintiff is not the original creditor, the affidavit also shall include or be accompanied by (i) the items listed in this section, and (ii) an Assigned Consumer Debt Checklist, substantially in the form prescribed by the Chief Judge of the District Court, listing the items and information supplied in or with the affidavit in conformance with this Rule. Each document that accompanies the affidavit shall be clearly numbered as an exhibit and referenced by number in the Checklist.

(1) Proof of the Existence of the Debt or Account. Proof of the existence of the debt or account shall be made by a certified or otherwise properly authenticated photocopy or original of at least one of the following:

(A) a document signed by the defendant evidencing the debt or the opening of the account;

(B) a bill or other record reflecting purchases, payments, or other actual use of a credit card or account by the defendant; or

(C) an electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or account by the defendant.

(2) Proof of Terms and Conditions.

(A) Except as provided in subsection (d)(2)(B) of this Rule, if there was a document evidencing the terms and conditions to which the consumer debt was subject, a certified or otherwise properly authenticated photocopy or original of the document actually applicable to the consumer debt at issue shall accompany the affidavit.

(B) Subsection (d)(2)(A) of this Rule does not apply if (i) the consumer debt is an unpaid balance due on a credit card; (ii) the original creditor is or was a financial institution subject to regulation by the Federal Financial Institutions Examination Council or a constituent federal agency of that Council; and (iii) the claim does not include a demand or request for attorneys' fees or interest on the charge-off balance in excess of the Maryland Constitutional rate of six percent per annum.

(3) Proof of Plaintiff's Ownership. The affidavit shall contain a statement that the plaintiff owns the consumer debt. It shall include or be accompanied by:

(A) a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and

(B) a certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to each successive owner, including the plaintiff.

(4) Identification and Nature of Debt or Account. The affidavit shall include the following information:

(A) the name of the original creditor;

(B) the full name of the defendant as it appears on the original account;

(C) the last four digits of the social security number for the defendant appearing on the original account, if known;

(D) the last four digits of the original account number; and

(E) the nature of the consumer transaction, such as utility, credit card, consumer loan, retail installment sales agreement, service, or future services.

(5) Future Services Contract Information. If the claim is based on a future services contract, the affidavit shall contain facts evidencing that the plaintiff currently is entitled to an award of damages under that contract.

(6) Account Charge-Off Information. If there has been a charge-off of the account, the affidavit shall contain the following information:

(A) the date of the charge-off;

(B) the charge-off balance;

(C) an itemization of any fees or charges claimed by the plaintiff in addition to the chargeoff balance;

(D) an itemization of all post-charge-off payments received and other credits to which the defendant is entitled; and

(E) the date of the last payment on the consumer debt or of the last transaction giving rise to the consumer debt.

(7) Information for Debts and Accounts Not Charged Off. If there has been no charge-off, the affidavit shall contain:

(A) an itemization of all money claimed by the plaintiff, (i) including principal, interest, finance charges, service charges, late fees, and any other fees or charges added to the principal by the original creditor and, if applicable, by subsequent assignees of the consumer debt and (ii) accounting for any reduction in the amount of the claim by virtue of any payment made or other credit to which the defendant is entitled;

(B) a statement of the amount and date of the consumer transaction giving rise to the consumer debt, or in instances of multiple transactions, the amount and date of the last transaction; and

(C) a statement of the amount and date of the last payment on the consumer debt.

(8) Licensing Information. The affidavit shall include a list of all Maryland collection agency licenses that the plaintiff currently holds and provide the following information as to each:

- (A) license number,
- (B) name appearing on the license, and
- (C) date of issue.

(e) Subsequent Proceedings.

(1) When Notice of Intention to Defend Filed. If the defendant files a timely notice of intention to defend pursuant to Rule 3-307, the plaintiff shall appear in court on the trial date prepared for a trial on the merits. If the defendant fails to appear in court on the trial date, the court may proceed as if the defendant failed to file a timely notice of intention to defend.

(2) When No Notice of Intention to Defend Filed.

(A) If the defendant fails to file a timely notice of intention to defend, the plaintiff need not appear in court on the trial date and the court may determine liability and damages on the basis of the complaint, affidavit, and supporting documents filed pursuant to this Rule. If the defendant fails to appear in court on the trial date and the court determines that the pleading and documentary evidence are sufficient to entitle the plaintiff to judgment, the court shall grant the demand for judgment on affidavit.

(B) If the court determines that the pleading and documentary evidence are insufficient to entitle the plaintiff to judgment on affidavit, the court may deny the demand for judgment on affidavit or may grant a continuance to permit the plaintiff to supplement the documentary evidence filed with the demand. If the defendant appears in court at the time set for trial and it is established to the court's satisfaction that the defendant may have a meritorious defense, the court shall deny the demand for judgment on affidavit. If the demand for judgment on affidavit is denied or the court grants a continuance pursuant to this section, the clerk shall set a new trial date and mail notice of the reassignment to the parties, unless the plaintiff is in court and requests the court to proceed with trial.

(f) Reduction in Amount of Damages. Before entry of judgment, the plaintiff shall inform the court of any reduction in the amount of the claim by virtue of any payment or other credit.

(g) Notice of Judgment on Affidavit. When a demand for judgment on affidavit is granted, the clerk shall mail notice of the judgment promptly after its entry to each party at the latest address stated in the pleadings. The notice shall inform (1) the plaintiff of the right to obtain a lien on real property pursuant to Rule 3-621, and (2) the defendant of the right to file a motion to vacate the judgment within 30 days after its entry pursuant to Rule 3-535(a). The clerk shall ensure that the docket or file reflects compliance with this section.

FORM DC-CV-106 (Rev. 1/2021) COMPLAINT FOR JUDGMENT ON ASSIGNED CONSUMER DEBT

Maryland has a standard District Court form implementing the requirements Rule 306(d) available at https://mdcourts.gov/sites/default/files/court-forms/dccv106_01.2021.pdf. The form includes a notice to the consumer about how to respond to a complaint and the consequences of failing to do so.

MASSACHUSETTS

RULES OF CIVIL PROCEDURE

RULE 8.1. Special Requirements for Certain Consumer Debts

(a) Definitions. As used in this rule, the following definitions shall apply:

(1) "Action" means a proceeding where the plaintiff seeks to collect a debt incurred pursuant to a revolving credit agreement.

(2) "Charge-off" means the treatment of a receivable balance as a loss or expense because payment is unlikely.

(3) "Debt" means any obligation or alleged obligation to pay money arising out of a transaction in which the money, personal property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes. Debt shall not include obligations to pay money arising out of a loan secured by real property.

(4) "Original creditor" means the person or entity first owed the debt.

(5) "Revolving credit agreement" means an agreement pursuant to which the consumer may purchase, at retail, goods or services or merchandise certificates on credit from time to time and under the terms of which a finance charge is to be computed in relation to the consumer's balance from time to time.

(b) Special requirements. In any action as defined in subdivision (a)(1) of this rule involving a debt as defined in (a)(3), the plaintiff shall file simultaneously with the complaint the affidavits, documentation, and certification provided for in subdivisions (c)-(f) of this rule. The affidavits, documentation, and certification shall be served on the defendant with the complaint.

(c) Affidavit regarding debt. An affidavit disclosing the following information with particularity:

(1) The name, position, and employer of the affiant;

(2) The name of the current owner of the debt;

(3) The name of the original creditor, including the name under which the original creditor did business with the defendant, if different;

(4) For debt arising from a credit card sponsored or co-sponsored by a retailer, the name of the sponsoring or co-sponsoring retailer;

(5) The last four digits of the account number(s) assigned by the original creditor;

(6) The amount and date of the defendant's last payment, if any, or a representation by the affiant that no payment has been made;

(7) The date of charge-off;

(8) The amount of the debt on the date of charge-off;

(9) For the portion of the debt incurred after the date of charge-off, an itemization of the debt (broken down by principal, interest, fees, or other charges) and the method of calculating such principal, interest, fees, or other charges;

(10) A chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the original creditor; and

(11) An attestation that the affiant personally reviewed records sufficient to establish the information requested in this subdivision (c).

(d) Affidavit providing documentation of debt. An affidavit with legible copies of the following documents:

(1) Documents establishing the existence, amount, and terms and conditions applicable to the debt, including:

(A) A document provided to the defendant before the date of charge-off demonstrating the defendant incurred the debt and the amount owed;

(B) Documents establishing the terms and conditions applicable to the debt;

(C) The written document, if any, signed by the defendant evidencing the defendant's agreement to the terms and conditions described in the documents in (d)(1)(B) or, if a signed copy of such document is not within the possession, custody, or control of the plaintiff, documents evidencing the defendant's acceptance of such terms and conditions (which may include the most recent monthly statement reflecting a purchase, payment, or balance transfer authorized by the defendant before the date of charge-off); and

(2) Each bill of sale, assignment, or other document evidencing the transfer of ownership of the debt, beginning with the original creditor. Such documentation must include a specific reference to the defendant or the defendant's account number.

(e) Affidavit regarding address verification. An affidavit stating that the defendant's residential address has been verified within three months prior to the commencement of the action by at least one of the following methods:

(1) Receipt of correspondence from the defendant with that return address or other verification from the defendant within the three-month period that such address is current;

(2) Certified mail receipt signed by the defendant with that address within the three-month period; or

(3) Sending a letter by first-class mail to that address for the defendant that has not been returned to sender by the postal service, and verifying the same address as current using a paid subscriber-based commercial online database and, if available, either a municipal record, such as a street list or tax records, or a state motor vehicle registry.

The affidavit shall describe the verification method(s) used and the date(s) of the verification. If any database or municipal or state record(s) used shows more than one address for the defendant during the last 12 months, the plaintiff shall state the basis for selecting the address(es) to be used for service. Documents reflecting such verification shall be attached.

(f) Statute of limitations certification. A certification from the plaintiff or counsel for the plaintiff stating:

- (1) Whether the terms and conditions applicable to the debt included a choice of law or limitations provision, and, if so, what such provision(s) stated;
- (2) The statute or other law establishing the limitations period, if any; and
- (3) That, based on reasonable inquiry, the applicable limitations period has not expired.

MINNESOTA

Minn. Stat. § 548.101. ASSIGNED CONSUMER DEBT DEFAULT JUDGMENTS

(a) A party entitled to a judgment by default in a conciliation court or district court action upon an assigned obligation arising out of any consumer debt that is primarily for personal, family, or household purposes and in default at the time of assignment shall apply to the court and submit, in addition to the request, application, or motion for judgment:

- (1) a copy of the written contract between the debtor and original creditor or, if no written contract exists, other admissible evidence establishing the terms of the account relationship between the debtor and the original creditor, including the moving party's entitlement to the amounts described in clause (4). If only the balance owed at the time the debt was charged off or first assigned is claimed to be owed, evidence may include a monthly or periodic billing statement;
- (2) admissible evidence establishing that the defendant owes the debt;
- (3) the last four numbers of the debtor's Social Security number, if known;
- (4) admissible evidence establishing that the amount claimed to be owed is accurate, including the balance owed at the time the debt was charged off or first assigned to another party by the original creditor and, if included in the request, application, or motion for judgment, a breakdown of any fees, interest, and charges added to that amount;
- (5) admissible evidence establishing a valid and complete chain of assignment of the debt from the original creditor to the party requesting judgment, including documentation or a bill of sale evidencing the assignment with evidence that the particular debt at issue was included in the assignment referenced in the documentation or bill of sale;
- (6) in district court cases, proof that a summons and complaint were properly served on the debtor and that the debtor did not serve a timely answer or, in conciliation court cases, proof that the party seeking the judgment or the party's attorney used reasonable efforts to provide the court administrator with the correct address for the debtor; and
- (7) in district court cases, proof that the party requesting the default judgment or the party's attorney mailed a notice of intent to apply for default judgment to the debtor. The notice must be mailed to the debtor at the debtor's last known address at least 14 days before the request, application, or motion for default, and must be substantially in the following form:...

Notice of Intent to Apply for Default Judgment	Case Type - Consumer Credit Contract
STATE OF MINNESOTA	DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT
..... Plaintiff,	NOTICE OF INTENT TO APPLY FOR DEFAULT JUDGMENT
vs.	
.....Defendant.	Court File No.
..... [Plaintiff] has sued you to collect the following consumer debt that you originally owed to [original creditor]:	
..... [original creditor]	
..... [last four digits of the debtor's account number]	
..... [amount of debt]	
..... [date of charge off or account closing date]	
..... [Plaintiff] served this lawsuit on you on [date]. Under Minnesota law, a lawsuit may be started against you even though it has not yet been filed in court and the court has no record of this lawsuit or this paperwork. You are in default because you did not serve a written Answer on time.	
..... [Plaintiff] will ask the Court to enter a judgment against you without any further court proceedings, unless you mail a written Answer or written response contesting the debt within 14 days from the date below. A judgment is a court order that you must pay a certain amount of money.	
Dated:	LAW FIRM, P.A.

	Attorney Name, ID#
	Address
	Phone

(b) If admissible, the same item of evidence or document may be provided to satisfy more than one requirement under paragraph (a), clauses (1) to (5). A court may permit the foundation for documents submitted under paragraph (a) to be established by an affidavit.

(c) Except in conciliation court cases or if a hearing is required under court rules, the court may either:

(1) hold a hearing before entry of a default judgment; or

(2) enter an administrative default judgment without a hearing if the court determines that the evidence submitted satisfies the requirements of paragraph (a).

Minn. Stat. 548.101 Assigned Consumer Debt Default Judgments (Minnesota Statutes (2022 Edition))

NEVADA

CHAPTER 97A: DEBT EVIDENCED BY CREDIT CARD

§ 97A.050. "Credit card" defined

"Credit card" means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, property, goods, services or anything else of value on credit.

§ 97A.100. 'Issuer' defined

"Issuer" means a financial institution, or an authorized agent of a financial institution, that issues a credit card."

§ 97A.160. Records required in action to collect debt: Establishment of liability and amount; authentication; retention

1. Notwithstanding the provisions of chapter 52 of NRS, in any action brought to collect a debt owed to an issuer:

(a) The issuer may establish that the cardholder is contractually liable for the debt owed by submitting the written application for a credit card account submitted to the issuer by the cardholder or evidence that the cardholder incurred charges on the account and made payments thereon.

(b) The amount owed may be established by photocopies of:

- (1) The periodic billing statements provided by the issuer; or
- (2) Information stored by the issuer on a computer, microfilm, microfiche or optical disc which indicate the amount of the debt owed.

2. The content of such records must be authenticated:

(a) Pursuant to the procedures set forth in NRS 52.450 to 52.480, inclusive; or (b) By the submission of a written affidavit sufficient to establish:

- (1) The affiant as the custodian of the written records offered as evidence;
- (2) That the written records offered as evidence were made in the ordinary course of the issuer's business; and
- (3) That the written records are true and correct copies of the records retained by the issuer.

3. The liability of a person other than the cardholder for the amount of any debt owed to an issuer may be established by evidence indicating that the person caused the charge to be incurred on the credit card account.

4. An issuer shall retain any record necessary to establish the existence and amount of any debt owed to the issuer for at least 24 months after the record is first published, issued or filed.

97A.165. Contents of complaint; limitations

1. In an action brought to collect a credit card debt owed to a purchaser of credit card debt:

(a) The complaint must include, without limitation:

- (1) The name of the issuer;
- (2) The last four digits of the account number originally assigned by the issuer;
- (3) All subsequent account numbers assigned to the credit card debt by all assignees of the credit card debt; and
- (4) The date of the default on the credit card debt.

(b) No judgment in favor of the purchaser of credit card debt, including, without limitation, a default judgment, may be entered unless:

- (1) The complaint includes the information required by paragraph (a) of subsection 1; and
- (2) The purchaser of credit card debt has satisfied the standards of proof set forth in subsections 1 and 2 of NRS 97A.160.

2. As used in this section, "purchaser of credit card debt" means a person, other than a financial institution, that purchases any outstanding credit card debt.

NEW YORK

CVP - Civil Practice Law and Rules

Article 3 - Jurisdiction and Service, Appearance and Choice of Court

306-D - Additional Mailing of Notice in an Action Arising Out of a Consumer Credit Transaction. Universal

Citation: NY CPLR § 306-D (2021)

§ 306-d. Additional mailing of notice in an action arising out of a consumer credit transaction.

(a) At the time of filing with the clerk of the proof of service of the summons and complaint in an action arising out of a consumer credit transaction, the plaintiff shall submit to the clerk a stamped, unsealed envelope addressed to the defendant together with a written notice in clear type of no less than twelve-point in size, in both English and Spanish, and containing the following language:

ADDITIONAL NOTICE OF LAWSUIT

(NAME OF COURT)

(COUNTY)

(STREET ADDRESS, ROOM NUMBER) (CITY,
STATE, ZIP CODE)

(NAME OF DEFENDANT) (ADDRESS
OF DEFENDANT)

Plaintiff:

Defendant:

Name of original creditor, unless same: Index
number:

Attention: a lawsuit has been filed against you claiming that you owe money for an unpaid consumer debt.

You may wish to contact an attorney.

You should respond to the lawsuit as soon as possible by filing an "answer" which may be done at the court clerk's office listed above.

If you do not respond to the lawsuit, the court may enter a money judgment against you. Once entered, a judgment is good and can be used against you for twenty years, and your personal property and money, including a portion of your paycheck and/or bank account, may be taken from you. Also, a judgment may affect your credit score and can affect your ability to rent a home, find a job, or take out a loan.

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

Additional information can be found at the New York state court system website.

Sources of information and assistance:

The court encourages you to inform yourself about your options as a defendant in this lawsuit. In addition to seeking assistance from a private attorney or legal aid office, there are free legal assistance computer programs that you can use online to help you represent yourself in this lawsuit.

For further information, or to locate a legal aid program near you, you may visit the LawHelpNY website or the New York state court system website, which has information for representing yourself and links to other resources at: _____.

(b) The face of the envelope shall be addressed to the defendant at the address at which process was served, and shall contain the defendant's name, address (including apartment number) and zip code. The face of the envelope also shall state the appropriate clerk's office as its return address.

(c) The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in subdivision (a) of this section. No default judgment based on the defendant's failure to answer shall be entered unless there has been compliance with this section, and at least twenty days have elapsed from the date of mailing by the clerk.

(d) The chief administrative judge shall issue a Spanish translation of the notice in subdivision (a) of this section and shall maintain and publish the URL address for the web page containing consumer resources for unrepresented litigants.

3016 (j) Consumer credit transactions. In an action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant, the contract or other written instrument on which the action is based shall be attached to the complaint, however, for the purposes of this section, if the account was a revolving credit account, the charge-off statement may be attached to the complaint instead of the contract or other written instrument, and the following information shall be set forth in the complaint:

(1) The name of the original creditor;

(2) The last four digits of the account number printed on the most recent monthly statement recording a purchase transaction, last payment or balance transfer;

(3) The date and amount of the last payment or, if no payment was made, a statement that the purchaser, borrower or debtor made no payment on the account;

(4) If the complaint contains a cause of action based on an account stated, the date on or about which the final statement of account was provided to the defendant;

(5) (A) Except as provided in subparagraph (B) of this paragraph, an itemization of the amount sought, by

(i) principal;

(ii) finance charge or charges;

(iii) fees imposed by the original creditor;

(iv) collection costs;

(v) attorney's fees;

(vi) interest; and

(vii) any other fees and charges.

(B) If the account was a revolving credit account, an itemization of the amount sought, by:

(i) the total amount of the debt due as of charge-off;

(ii) the total amount of interest accrued since charge-off;

(iii) the total amount of non-interest charges or fees accrued since charge-off; and

(iv) the total amount of payments and/or credits made on the debt since charge-off;

(6) The account balance printed on the most recent monthly statement recording a purchase transaction, last payment or balance transfer;

(7) (A) Whether the plaintiff is the original creditor.

(B) If the plaintiff is not the original creditor, the complaint shall also state

(i) the date on which the debt was sold or assigned to the plaintiff;

(ii) the name of each previous owner of the account from the original creditor to the plaintiff and the date on which the debt was assigned to that owner by the original creditor or subsequent owner; and

(iii) the amount due at the time of the sale or assignment of the debt 16 by the original creditor; Receipt of the additional notice by the defendant does not confer jurisdiction on the court in the absence of proper service of process.

Subdivision (f) of section 3215 of the civil practice law and rules, as amended by chapter 453 of the laws of 2006, is amended and a new subdivision (j) is added to read as follows:

(f) Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a 28 summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316 of this chapter, and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party, or where the state of New York is the plaintiff, by affidavit made by an attorney from the office of the attorney general who has or obtains knowledge of such facts through review of state records or otherwise. Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney. In an action arising out of a consumer credit transaction, if the plaintiff is not the original creditor, the applicant shall include:

(1) an affidavit by the original creditor of the facts constituting the debt, the default in payment, the sale or assignment of the debt, and the amount due at the time of sale or assignment;

(2) for each subsequent assignment or sale of the debt to another entity, an affidavit of sale of the debt by the debt seller, completed by the seller or assignor; and

(3) an affidavit of a witness of the plaintiff, which includes a chain of title of the debt, completed by the plaintiff or plaintiff's witness. The chief administrative judge shall issue form affidavits to satisfy the requirements of this subdivision for consumer credit transactions.

When jurisdiction is based on an attachment of property, the affidavit must state that an order of attachment granted in the action has been levied on the property of the defendant, describe the property and state its value. Proof of mailing the notice required by subdivision (g) of this section, where applicable, shall also be filed.

(j) Affidavit. A request for a default judgment entered by the clerk, 55 must be accompanied by an affidavit by the plaintiff or plaintiff's attorney stating that after reasonable inquiry, he or she has reason to believe that the statute of limitations has not expired. The chief administrative judge shall issue form affidavits to satisfy the requirements of this subdivision for consumer credit transactions.

NEW MEXICO

RULES OF PROCEDURE FOR METROPOLITAN AND MAGISTRATE COURTS

Rule 3-201 - Commencement of action * *

*

E. Consumer debt claims.

(1) Definition. The pleading of a party, acting in the ordinary course of business, whose cause of action is to collect a debt arising out of a transaction in which the money, property, insurance, or services, which are the subject of the original transaction, are primarily for personal, family, or household purposes, other than loans secured by real property, shall comply with Rules 3-201(E)(2) and 3-401(D) NMRA, and Form 4-226 NMRA.

(2) Copy to be served and filed. When any instrument of writing on which a consumer debt claim is founded is referred to or relied on in the pleadings, the original or a copy of the instrument shall be served with the pleading and filed with the court unless otherwise excused by the court on a showing of good cause.

Rule 3-401 - Parties; capacity * *

*

D. Consumer debt claims.

(1) Collection agencies may take assignments of claims in their own names as real parties in interest for the purpose of billing and collection and bringing suit in their own names; provided that no suit authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency appears by a licensed attorney-at-law; and further provided that the collection agency must plead specific facts in its initial pleading demonstrating that it is the real party in interest.

(2) In any consumer debt claim in which the party seeking relief alleges entitlement to enforce the debt but is not the original creditor, the party must file an affidavit establishing the chain of title or assignment of the debt from the original creditor to and including the party seeking relief. The affidavit must be based on personal knowledge, setting forth those facts as would be admissible in evidence, showing affirmatively that the affiant is competent to testify to the matters stated in the affidavit. An affidavit based on a review of the business records of the party or any other person or entity in the chain of title must establish from personal knowledge compliance with the requirements of Rule 11-803(6)(a)-(c) NMRA or demonstrate reliance on an attached certification complying with Rule 11-902(11) or (12) NMRA. The business records must be attached to the affidavit or certification.

FORM 4-226

4-226. Civil complaint provisions; consumer debt claims.

[For use with District Court Rule 1-009(J) NMRA, Magistrate Court Rule 2-201(E) NMRA, and Metropolitan Court Rule 3-201(E) NMRA]

In addition to the requirements set forth in the New Mexico Rules of Civil Procedure, a pleading asserting a claim subject to Rule 1-009(J) NMRA, Rule 2-201(E) NMRA, or Rule 3-201(E) NMRA shall include, at a minimum, the following provisions:

STATE OF NEW MEXICO

COUNTY OF _____

_____, JUDICIAL DISTRICT/MAGISTRATE COURT/METROPOLITAN COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

CIVIL COMPLAINT

(a) The full name and address of the Defendant is as follows:

(b) The last two (2) digits of the Defendant's social security number, contained in the original creditor's records are as follows: _____

(c) If the Plaintiff does not provide the social security number above, Plaintiff states, with specificity, that the basis on which it was determined that the named Defendant is the debtor on the debt is as follows: _____

[] The Plaintiff in this action IS the original creditor; OR

[] The Plaintiff IS NOT the original creditor and the name and address under which the original creditor did business with the Defendant is as follows:

The last four (4) digits of the Defendant's account number, used by the original creditor as of the date of default are as follows: _____

The balance due at the time of default is as follows: \$ _____

(a) The total amount of the debt claimed is \$ _____, itemized as follows:

Principal amount due: _____ Interest: _____

Other charges, fees, and expenses (specified individually): _____

The itemization of the amount of the debt claimed set forth above does not include attorney fees and court costs.

(b) The basis for each of the itemized charges, fees, or expenses is as follows:

The date of last payment made by Defendant is as follows: _____

Plaintiff states, consistent with Rule 1-011 NMRA, Rule 2-301 NMRA, or Rule 3-301 NMRA, that the applicable statute of limitations on this claim has not run.

The name and address of the current owner of this debt is as follows:

Plaintiff ☐ IS or ☐ IS NOT a collection agency. If the Plaintiff is a collection agency:

(a) the name and address of the collection agency is as follows:

(b) The New Mexico license number for the collection agency is as follows:

(c) The specific facts demonstrating that the collection agency is the real party in interest are as follows:

☐ The original or copy of any instrument of writing on which the action is founded IS attached as Exhibit A. See Rule 1-009(J)(2) NMRA, Rule 2-201(E)(2) NMRA, or Rule 3-201(E)(2) NMRA.

☐ The original or copy of any instrument of writing on which the action is founded IS NOT attached. The reason the instrument of writing is not attached is as follows:

☐ Plaintiff alleges entitlement to enforce the debt but is not the original creditor. Plaintiff has attached an affidavit showing the chain of title or assignment of the debt. See Rule 1-017(E)(2) NMRA, Rule 2-401(D)(2) NMRA, or Rule 3-401(D)(2) NMRA.

Plaintiff also seeks court costs and the following additional relief as specified:

WHEREFORE, Plaintiff demands judgment in the amount of \$_____, and costs [and attorney fees] and such further relief as the court deems proper.

Date

Signature

(print) Name

Address (print)

City, State, and Zip Code (print)

NORTH CAROLINA

§ 58-70-15. Definition of collection agency and collection agency business

* * *

(4) A "debt buyer." As used in this subdivision, the term "debt buyer" means a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts, or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third party for collection or an attorney-at-law for litigation in order to collect such debt. * * *

§ 58-70-90. Definitions

As used in this Part, the following terms have the meanings specified:

(1) "Collection agency" means a collection agency as defined in G.S. 58-70-15 which engages, directly or indirectly, in debt collection from a consumer.

(2) "Consumer" means an individual, aggregation of individuals, corporation, company, association, or partnership that has incurred a debt or alleged debt.

(3) "Debt" means any obligation owed or due or alleged to be owed or due from a consumer.

NC Gen. Stat. 58-70-90 Definitions (North Carolina General Statutes (2022 Edition))

§ 58-70-145. Complaint of a collection agency plaintiff must contain certain allegations

In any cause of action that arises out of the conduct of a business for which a plaintiff must secure a permit pursuant to this Article, the complaint shall allege as part of the cause of action that the plaintiff is duly licensed under this Article and shall contain the name and number, if any, of the license and the governmental agency that issued it.

§ 58-70-150. Complaint of a debt buyer plaintiff must be accompanied by certain materials

In addition to the requirements of G.S. 58-70-145, in any cause of action initiated by a debt buyer, as that term is defined in G.S. 58-70-15, all of the following materials shall be attached to the complaint or claim:

(1) A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached.

(2) A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

§ 58-70-155. Prerequisites to entering a default or summary judgment against a debtor under this Part

(a) Prior to entry of a default judgment or summary judgment against a debtor in a complaint initiated by a debt buyer, the plaintiff shall file evidence with the court to establish the amount and nature of the debt.

(b) The only evidence sufficient to establish the amount and nature of the debt shall be properly authenticated business records that satisfy the requirements of Rule 803(6) of the North Carolina Rules of Evidence. The authenticated business records shall include at least all of the following items:

- (1) The original account number.
- (2) The original creditor.
- (3) The amount of the original debt.
- (4) An itemization of charges and fees claimed to be owed.
- (5) The original charge-off balance, or, if the balance has not been charged off, an explanation of how the balance was calculated.
- (6) An itemization of post charge-off additions, where applicable.
- (7) The date of last payment.
- (8) The amount of interest claimed and the basis for the interest charged...

OREGON

§ 646.639. Unlawful collection practices

(1) As used in this section and ORS 646A.670:

(a) "Charged-off debt" means a debt that a creditor treats as a loss or expense and not as an asset.

(b) "Consumer" means a natural person who purchases or acquires property, services or credit for personal, family or household purposes.

(c) "Consumer transaction" means a transaction between a consumer and a person that sells, leases or provides property, services or credit to consumers.

(d) "Credit" means a right that a creditor grants to a consumer to defer payment of a debt, to incur a debt and defer payment of the debt, or to purchase or acquire property or services and defer payment for the property or services.

(e) "Creditor" means a person that, in the ordinary course of the person's business, engages in consumer transactions that result in a consumer owing a debt to the person.

(f) "Debt" means an obligation or alleged obligation that arises out of a consumer transaction.

(g)

(A) "Debt buyer" means a person that regularly engages in the business of purchasing charged-off debt for the purpose of collecting the charged-off debt or hiring another person to collect or bring legal action to collect the charged-off debt.

(B) "Debt buyer" does not include a person that acquires charged-off debt as an incidental part of acquiring a portfolio of debt that is predominantly not charged-off debt.

(h) "Debt collector" means a person that by direct or indirect action, conduct or practice collects or attempts to collect a debt owed, or alleged to be owed, to a creditor or debt buyer.

(i) "Debtor" means a consumer who owes or allegedly owes a debt, including a consumer who owes an amount that differs from the amount that a debt collector attempts to collect or that a debt buyer purchased or attempts to collect.

(j) "Legal action" means a lawsuit, mediation, arbitration or any other proceeding in any court, including a small claims court.

(k) "Original creditor" means the last entity that extended credit to a consumer to purchase goods or services, to lease goods or as a loan of moneys.

(L) "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association or any other legal entity.

* * *

(5) A debt collector is not acting on a debt buyer's behalf, and is not subject to the duties to which a debt buyer is subject under this section and ORS 646A.670, if the debt collector collects or attempts to collect a debt on behalf of an owner that retains a direct interest in the debt or if the debt is not a debt that a debt buyer purchased.

§ 646A.640. Definitions.

As used in sections 3 to 13 of this 2017 Act [§§ 646A.648 - 646A.670]

*

(3) "Debt buyer" has the meaning given that term in ORS 646.639.

(4) "Debt buying" means conducting business as a debt buyer or conducting business activities that are subject to regulation under ORS 646.639(4) and sections 1 and 3 to 13 of this 2017 Act.

(5) "Debtor" has the meaning given that term in ORS 646.639.

* * *

§ 646A.670. Legal action to collect debt; requirements for pleadings; judgments; attorney fees.

(1) A debt buyer that brings legal action to collect or brings legal action to attempt to collect purchased debt, or a debt collector that brings legal action on the debt buyer's behalf, shall include in an initial pleading that begins the legal action:

(a) The original creditor's name, written as the original creditor used the name in dealings with the debtor;

(b) The name, address and telephone number of the person that owns the debt and a statement as to whether the person is a debt buyer;

(c) The last four digits of the original creditor's account number for the debt, if the original creditor's account number for the debt had four or more digits;

(d) A detailed and itemized statement that shows:

(A) The amount the debtor last paid on the debt, if the debtor made a payment, and the date of the payment;

(B) The amount and date of the debtor's last payment on the debt before the debtor defaulted or before the debt became charged-off debt, if the debtor made a payment;

(C) The balance due on the debt on the date on which the debt became charged-off debt;

(D) The amount and rate of interest, any fees and any charges that the original creditor imposed, if the debt buyer or debt collector knows the amount, rate, fee or charge;

(E) The amount and rate of interest, any fees and any charges that the debt buyer or any previous owner of the debt imposed, if the debt buyer or debt collector knows the amount, rate, fee or charge;

(F) The attorney fees the debt buyer or debt collector seeks, if the debt buyer or debt collector expects to recover attorney fees; and

(G) Any other fee, cost or charge the debt buyer seeks to recover; and

(e) The date on which the debt buyer purchased the debt.

(2)

(a) A court may not enter a judgment for a debt buyer or debt collector that has not complied with the requirements set forth in this section.

(b) If a court grants a judgment for a debt buyer or debt collector that does not comply with the requirements set forth in this section, the debtor in a motion under ORCP 71 may petition the court for relief from the judgment or the court may grant relief on the court's own motion.

(3) A debt buyer or debt collector may obtain attorney fees in a legal action to collect or attempt to collect a debt only if:

(a) The debt buyer or debt collector prevails in the legal action; and

(b) The contract or writing described in ORS 646.639(4)(b) provides that the creditor may obtain attorney fees from the debtor in a legal action to collect or attempt to collect the debt or another provision of law allows an award of attorney fees to the debt buyer or debt collector.

(4) A debt buyer or a debt collector that acts on the debt buyer's behalf shall provide to a debtor all of the documents described in ORS 646.639(4)(b) within 30 days after receiving a request for information about the debt from the debtor.

TEXAS

FINANCE CODE

§ 392.307. Collection Of Certain Consumer Debt By Debt Buyers

(a) In this section:

(1) "Charged-off debt" means a consumer debt that a creditor has determined to be a loss or expense to the creditor instead of an asset.

(2) "Debt buyer" means a person who purchases or otherwise acquires a consumer debt from a creditor or other subsequent owner of the consumer debt, regardless of whether the person collects the consumer debt, hires a third party to collect the consumer debt, or hires an attorney to pursue collection litigation in connection with the consumer debt. The term does not include:

(A) a person who acquires in-default or charged-off debt that is incidental to the purchase of a portfolio that predominantly consists of consumer debt that has not been charged off; or

(B) a check services company that acquires the right to collect on a paper or electronic negotiable instrument, including an Automated Clearing House (ACH) authorization to debit an account that has not been processed.

(b) Unless otherwise expressly provided, this section prevails to the extent of any conflict between this section and any other law of this state.

(c) A debt buyer may not, directly or indirectly, commence an action against or initiate arbitration with a consumer to collect a consumer debt after the expiration of the applicable limitations period provided by Section 16.004, Civil Practice and Remedies Code, or Section 3.118, Business & Commerce Code.

(d) If an action to collect a consumer debt is barred under Subsection (c), the cause of action is not revived by a payment of the consumer debt, an oral or written reaffirmation of the consumer debt, or any other activity on the consumer debt.

(e) If a debt buyer is engaged in debt collection for a consumer debt for which an action to collect the debt is barred under Subsection (c), the debt buyer, or a debt collector acting on behalf of the debt buyer, shall provide the following notice in the initial written communication with the consumer relating to the debt collection:

(1) if the reporting period for including the consumer debt in a consumer report prepared by a consumer reporting agency has not expired under Section 605, Fair Credit Reporting Act (15 U.S.C.

Section 1681c), and the debt buyer furnishes to a consumer reporting agency information regarding the consumer debt, "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT. IF YOU DO NOT PAY THE DEBT, [INSERT NAME OF DEBT BUYER] MAY CONTINUE TO REPORT IT TO CREDIT REPORTING AGENCIES AS UNPAID FOR AS LONG AS THE LAW PERMITS THIS REPORTING. THIS NOTICE IS REQUIRED BY LAW.";

(2) if the reporting period for including the consumer debt in a consumer report prepared by a consumer reporting agency has not expired under Section 605, Fair Credit Reporting Act (15 U.S.C. Section 1681c), but the debt buyer does not furnish to a consumer reporting agency information regarding the consumer debt, "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT. THIS NOTICE IS REQUIRED BY LAW."; or

(3) if the reporting period for including the consumer debt in a consumer report prepared by a consumer reporting agency has expired under Section 605, Fair Credit Reporting Act (15 U.S.C. Section 1681c), "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT, AND WE WILL NOT REPORT IT TO ANY CREDIT REPORTING AGENCY. THIS NOTICE IS REQUIRED BY LAW."

(f) A notice required under Subsection (e) must be in at least 12-point type that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material.

Justice Court rules (cases up to 20,000)

RULE 501.3. DUTIES OF OFFICER OR PERSON RECEIVING CITATION; RETURN OF SERVICE

- (a) *Endorsement; Execution; Return.* The officer or authorized person to whom process is delivered must:
 - (1) endorse on the process the date and hour on which he or she received it;
 - (2) execute and return the same without delay; and
 - (3) complete a return of service, which may, but need not, be endorsed on or attached to the citation.
- (b) *Contents of Return.* The return, together with any document to which it is attached, must include the following information:
 - (1) the case number and case name;
 - (2) the court in which the case is filed;

- (3) a description of what was served;
 - (4) the date and time the process was received for service;
 - (5) the person or entity served;
 - (6) the address served;
 - (7) the date of service or attempted service;
 - (8) the manner of delivery of service or attempted service;
 - (9) the name of the person who served or attempted service;
 - (10) if the person named in (9) is a process server certified under Supreme Court Order, his or her identification number and the expiration date of his or her certification; and
 - (11) any other information required by rule or law.
- (c) *Citation by Mail.* When the citation is served by registered or certified mail as authorized by Rule 501.2(b)(2), the return by the officer or authorized person must also contain the receipt with the addressee's signature.
- (d) *Failure to Serve.* When the officer or authorized person has not served the citation, the return must show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if ascertainable.
- (e) *Signature.* The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable, or clerk of the court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is (First) (Middle) (Last), my date of birth is (Month) (Day), (Year), and my address is (Street), (City), (State) (Zip Code), (Country). I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of (Month), (Year).

Declarant"

- (f) *Alternative Service.* Where citation is executed by an alternative method as authorized by 501.2(e), proof of service must be made in the manner ordered by the court.
- (g) *Filing Return.* The return and any document to which it is attached must be filed with the court and may be filed electronically or by fax, if those methods of filing are available.
- (h) *Prerequisite for Default Judgment.* No default judgment may be granted in any case until proof of service as provided by this rule, or as ordered by the court in the event citation is executed by an alternative method under 501.2(e), has been on file with the clerk of the court 3 days, exclusive of the day of filing and the day of judgment.

RULE 508. DEBT CLAIM CASES RULES

508.1. APPLICATION

Rule 508 applies to a claim for the recovery of a debt brought by an assignee of a claim, a financial institution, a debt collector or collection agency, or a person or entity primarily engaged in the business of lending money at interest.

RULE 508.2. PETITION

- (a) *Contents.* In addition to the information required by Rule 502.2, a petition filed in a lawsuit governed by this rule must contain the following information:
 - (1) **Credit Accounts.** In a claim based upon a credit card, revolving credit, or open account, the petition must state:
 - (A) the account name or credit card name;
 - (B) the account number (which may be masked);
 - (C) the date of issue or origination of the account, if known;
 - (D) the date of charge-off or breach of the account, if known;
 - (E) the amount owed as of a date certain; and
 - (F) whether the plaintiff seeks ongoing interest.
 - (2) **Personal and Business Loans.** In a claim based upon a promissory note or other promise to pay a specific amount as of a date certain, the petition must state:
 - (A) the date and amount of the original loan;

- (B) whether the repayment of the debt was accelerated, if known;
 - (C) the date final payment was due;
 - (D) the amount due as of the final payment date;
 - (E) the amount owed as of a date certain; and
 - (F) whether plaintiff seeks ongoing interest.
- (3) Ongoing Interest. If a plaintiff seeks ongoing interest, the petition must state:
- (A) the effective interest rate claimed;
 - (B) whether the interest rate is based upon contract or statute; and
 - (C) the dollar amount of interest claimed as of a date certain.
- (4) Assigned Debt. If the debt that is the subject of the claim has been assigned or transferred, the petition must state:
- (A) that the debt claim has been transferred or assigned;
 - (B) the date of the transfer or assignment;
 - (C) the name of any prior holders of the debt; and
 - (D) the name or a description of the original creditor.

RULE 508.3. DEFAULT JUDGMENT

- (a) *Generally.* If the defendant does not file an answer to a claim by the answer date or otherwise appear in the case, the judge must promptly render a default judgment upon the

plaintiff's proof of the amount of damages.

(b) *Proof of the Amount of Damages.*

- (1) Evidence Must Be Served or Submitted. Evidence of plaintiff's damages must either be attached to the petition and served on the defendant or submitted to the court after defendant's failure to answer by the answer date.
- (2) Form of Evidence. Evidence of plaintiff's damages may be offered in a sworn statement or in live testimony. The evidence offered may include documentary evidence.
- (3) Establishment of the Amount of Damages. The amount of damages is established by evidence:
 - (A) that the account or loan was issued to the defendant and the defendant is obligated to pay it;
 - (B) that the account was closed or the defendant breached the terms of the account or loan agreement;
 - (C) of the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied; and
 - (D) that the plaintiff owns the account or loan and, if applicable, how the plaintiff acquired the account or loan.
- (4) Documentary Evidence Offered By Sworn Statement. Documentary evidence may be considered if it is attached to a sworn statement made by the plaintiff or its representative, a prior holder of the debt or its representative, or the original creditor or its representative, that attests to the following:
 - (A) the documents were kept in the regular course of business;
 - (B) it was the regular course of business for an employee or representative with knowledge of the act recorded to make the record or to transmit information to be included in such record;
 - (C) the documents were created at or near the time or reasonably soon thereafter; and
 - (D) the documents attached are the original or exact duplicates of the original.
- (5) Consideration of Sworn Statement. A judge is not required to accept a sworn statement if the source of information or the method or circumstances of preparation indicate lack of trustworthiness. But a judge may not reject a sworn

statement only because it is not made by the original creditor or because the documents attested to were created by a third party and subsequently incorporated into and relied upon by the business of the plaintiff.

- (c) *Hearing.* The judge may enter a default judgment without a hearing if the plaintiff submits sufficient written evidence of its damages and should do so to avoid undue expense and delay. Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant.
- (d) *Appearance.* If the defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not render a default judgment and must set the case for trial.
- (e) *Post-Answer Default.* If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

WASHINGTON

§ 19.16.100. Definitions

* * *

(7) “Debt buyer” means any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims.

(8) “Debtor” means any person owing or alleged to owe a claim.

* * *

§ 19.16.260. Licensing prerequisite to suit-Debt buyer-Prohibited acts

(1)

(a) No collection agency or out-of-state collection agency may bring or maintain an action in any court of this state involving the collection of its own claim or a claim of any third party without alleging and proving that he, she, or it is duly licensed under this chapter and has satisfied the bonding requirements hereof, if applicable: PROVIDED, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency or out-of-state collection agency to prove such matters.

(b) A copy of the current collection agency license or out-of-state collection agency license, certified by the director to be a true and correct copy of the original, shall be prima facie evidence

of the licensing and bonding of such collection agency or out-of-state collection agency as required by this chapter.

(2) No debt buyer may:

(a) Bring any legal action against a debtor without attaching to the complaint a copy of the contract or other writing evidencing the original debt that contains the signature of the debtor, or:

(i) If a claim is based on a credit card debt for which a signed writing evidencing the original debt does not exist, a copy of the most recent monthly statement recording a purchase transaction, payment, or other extension of credit and, if the claim is based on a breach of contract, a copy of the terms and conditions in place at the time of the most recent monthly statement recording a purchase transaction, payment, or extension of credit must also be attached; or

(ii) If a claim is based on an electronic transaction for which a signed writing evidencing the original debt never existed, a copy of the records created during the transaction evidencing the debtor's agreement to the debt and recording the date and terms of the transaction and information provided by the debtor during the transaction.

(b) Request a default judgment against a debtor in any legal action without providing to the court evidence that satisfies the requirements of rule 803(a)(6) of the rules of evidence and RCW 5.45.020 or is otherwise authorized by law or rule that establishes the amount and nature of the debt, including the documents required by (a) of this subsection, and:

(i) The original account number at charge-off;

(ii) The original creditor at charge-off;

(iii) The amount due at charge-off or, if the balance has not been charged off, an itemization of the amount claimed to be owed, including the principal, interest, fees, and other charges or reductions from payment made or other credits;

(iv) An itemization of post charge-off additions, if any;

(v) The date of the last payment, if applicable, or the date of the last transaction;

(vi) If the account is not a revolving credit account, the date the debt was incurred; and

(vii) A copy of the assignment or other writing establishing that the debt buyer is the owner of the debt. If the debt was assigned more than once, each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership, beginning with the original creditor to the first debt buyer and each subsequent sale.

(c) Bring any legal action against a debtor without providing a disclosure in the complaint, in no smaller than ten point type, stating each of the following:

(i) That the action is being brought by, or for the benefit of, a person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes;

- (ii) The date the claim or obligation was purchased;
- (iii) The identity of the person or entity from whom or which the claim or obligation was purchased;
- (iv) That the plaintiff may have purchased this claim or obligation for less than the value stated in the complaint;
- (v) If the claim or obligation was at any time sold without any representation or warranty of accuracy, a statement to that effect; and
- (vi) That the action is being commenced within, and is not barred by, an applicable statute of limitations.

VERMONT

RULES OF CIVIL PROCEDURE

RULE 55. Default

(a) Motion for Default Judgment. When a party against whom a judgment for affirmative relief is sought by complaint, cross-claim, counterclaim, or other pleading has failed to plead or otherwise defend, the party seeking the affirmative relief may file a motion for a default judgment.

(b) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party seeking the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a crossclaim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(c) Judgment.

(1) Affidavits Required. The court shall not enter judgment by default against a party who has not appeared in the action until the moving party files an affidavit made on personal knowledge and setting forth facts as to liability and damages. The court shall not enter judgment by default against a minor or incompetent person unless represented in the action by a guardian, conservator, or other such representative who has appeared therein. The moving party must state in an affidavit whether the opposing party is at least 18 years of age, and whether the moving party has any knowledge as to the competency of the opposing party.

(2) When Claim is for a Sum Certain and Opposing Party Has Not Appeared. If the moving party's claim is for a sum certain or for a sum which can by computation be made certain, and the opposing party is not a minor or incompetent, without notice or hearing and upon affidavit of the amount due, the court may enter judgment for that amount and costs.

(3) When Defendant Has Not Appeared and Claim Not for a Sum Certain, or for Other Reasons. If the defendant has not appeared in the action and the claim is not for a sum certain, or if it is otherwise necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as it deems necessary and proper before entering judgment.

(4) When the Opposing Party Has Appeared. If the party against whom judgment by default is sought has appeared in the action judgment may be entered by the judge after hearing, upon at least 7 days' written notice served by the clerk.

(5) Affidavits Required by Servicemembers Civil Relief Act. Notwithstanding the foregoing, the court shall not enter judgment by default until the filing of an affidavit as required by section 201(b)(1) of the Servicemembers Civil Relief Act, 50 U.S.C. app. 521, stating whether or not the opposing party is in military service and showing necessary facts to support the affidavit or stating that the moving party is unable to determine whether or not the opposing party is in military service. If it appears that the opposing party is in military service, the court shall take appropriate action as provided in that Act.

(6) Failure to Appear at Trial. In those cases in which a party has appeared in the action but has failed to appear at a duly noticed trial on the merits, any other party seeking affirmative relief may either waive trial and move for a default judgment or proceed to trial. If the party seeking affirmative relief obtains judgment based on evidence submitted at trial, that judgment shall be deemed a default judgment solely for the purposes of Rule 55(d), Rule 62(b) and Vermont Rule of Appellate Procedure 4. If the party seeking affirmative relief chooses to file a motion for default judgment, a hearing shall be scheduled on the motion pursuant to paragraph (4).

(7) Credit Card Debt. -- In actions based on a credit card debt, a plaintiff's motion for default judgment shall include a copy of the contract or other documentary evidence of the original debt, which must contain a signature of the defendant. If no such signed writing evidencing the original debt ever existed, then a copy of the last statement generated when the credit card was actually used for purchase or other competent evidence of the existence of the debt must be included. The motion must also contain a copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain at least the last four digits of the original account number of the debt purchased or other identifying information uniquely associated with the account and must show the debtor's name associated with that account number.

(d) Setting Aside Default or a Default Judgment. The court may set aside its order granting a motion for a default judgment for good cause and it may set aside a final default judgment under Rule 60(b).

(e) Judgment Against the State. No judgment by default shall be entered against the State of Vermont or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.

(f) Credit Card Debt. In actions based on a credit card debt, the motion for default shall include a copy of the contract or other documentary evidence of the original debt, which must contain a signature of the defendant. If no such writing evidencing the original debt ever existed, then a copy of the last statement generated when the credit card was actually used for purchase or other competent evidence of the existence of the debt must be included. The motion must also contain a copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more

than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain at least the last four digits of the original account number of the debt purchased or other identifying information uniquely associated with the account and must show the debtor's name associated with that account number.