

Alabama

Alaska

§ 08.24.280. Records and funds

(a) A collection agency shall keep a record of all sums collected by it, and of all disbursements made by it, and shall maintain and keep all the records and all customers' funds in a trust account with a recognized financial institution in this state. Collection agencies shall maintain accounting records of collections for and payments to customers for a period of six years from the date of the last entry. Collection agencies shall keep other records for a period of two years from the date of the last entry.

(b) Every collection agency shall maintain a permanent numerical receipt record that indicates as to each payment made by a debtor the following information:

- (1) the name of the debtor making payment;
- (2) the amount paid;
- (3) the name of the creditor to whom funds are being applied;
- (4) the date and form of payment;
- (5) the balance remaining due on account.

(c) An agency using a computer system giving read-out debtor payment information is not required to maintain a numerical receipt record; however, if requested, a receipt shall be furnished to debtor.

(d) The receipt shall be made immediately upon the receipt of funds by the collection agency in payment of a debt; the original copy to be made immediately available to the debtor who has made payment, upon request; and a copy to be made immediately available to the creditor for whom payment was received, upon request; and a copy to be maintained in the permanent receipt record.

(e) A collection agency shall maintain daily cash ledger sheets showing all funds received from debtors and all funds received as fees for services, such as credit reports and the like.

(f) A collection agency or employee of a collection agency may not intentionally make a false entry in the collection agency record or intentionally mutilate, destroy, or otherwise dispose of a record within the time limits provided in this section. The records shall at all reasonable times be open for inspection by the department.

(g) A collection agency shall maintain a separate trust account exclusively for customers' funds and shall keep the funds in the trust account until disbursed to the customer.

[Alaska Stat. Ann. § 08.24.280 \(West\)](#)

Am. Samoa

Arizona

Rule 140. Entry of Default Judgment

a. When a default judgment may be entered. A default judgment may be entered against a party who was served with a complaint, counterclaim, cross-claim, or third-party complaint, and who failed to file an answer or otherwise respond within the time allowed by these rules. **[ARCP 55(a), (d)]**

b. Application for entry of default. A party seeking a default judgment must first file an application that the court enter a default against the party who failed to answer. The application must inform the party against whom default is sought of the party's failure to file an answer or otherwise respond within the time allowed by these rules. The application must further inform the party against whom default is sought, with either bold or enlarged font, that unless an answer or response is filed within ten (10) days from the filing of the application, the default will become effective and the entry of a default judgment will be requested. A default is entered against the party who has failed to respond when the application for entry of default is filed with the court. **[ARCP 55(a)]**

c. Serving the application. The party who files an application for entry of default with the court must serve a copy of the application on the party claimed to be in default, as follows:

- (1) If the address of the party claimed to be in default is known, the application must be mailed to that address.
- (2) If the current address of the party claimed to be in default is unknown, the application must be mailed to the party's last known address.
- (3) If the party claimed to be in default has no known address, or the party has been served by alternative service or by publication, the party requesting the entry of default must state this in the application.
- (4) If the party who files the application knows that the party claimed to be in default is represented by an attorney concerning this lawsuit, the application must also be mailed to that attorney, whether or not the attorney has formally appeared in the lawsuit.

A party filing an application for entry of default must also serve the application on the other parties in the lawsuit as provided by Rule 120. **[ARCP 55(a)]**

d. Answer or response. If the party claimed to be in default files with the court a written answer or other response within ten (10) days after the application was filed pursuant to section (b) of this rule, the default does not become effective, and the court may not enter a default judgment against that party. The ten (10) day period begins the day after the application is filed with the court; the ten (10) day period does not include Saturdays, Sundays, or holidays, and no additional time is added for service by mail. **[ARCP 55(a)]**

e. Request for entry of a default judgment without a hearing. After the ten (10) day period described above, the party who filed the application for entry of default may file a request for entry of a default judgment without a hearing. A party may request the entry of a default judgment without a hearing if the party's claim is for a specific amount, or if the claim is for an amount that can be

determined by a mathematical calculation. The party requesting the entry of a default judgment without a hearing must attach to the request for entry of a default judgment without a hearing a supporting affidavit concerning the claimed amount, along with attachments that prove the amount of the claim.

A request for entry of a default judgment without a hearing may include a request for an award of reasonable attorneys' fees if: (i) the complaint requested attorneys' fees; (ii) an award of attorneys' fees is allowed by law and the legal basis is specified in the request; (iii) the request includes a separate affidavit with supporting exhibits concerning the amount of the fees; and (iv) if the fee request is based on a written contract, the contract is submitted with the request. A request for the entry of a default judgment without a hearing may also include a request for an award of court costs by attaching to the request a verified statement of costs. Any requests for attorneys' fees or costs must be filed at the same time as the request for entry of a default judgment.

A request for entry of a default judgment, with all of the attachments to the request, must be served upon the party claimed to be in default as provided in section (c) of this rule. A party filing a request for entry of a default judgment must also serve the request and attachments on the other parties in the lawsuit as provided by Rule 120.

Even though the requirements of this paragraph may be met, the court may decline a request for entry of a default judgment and may instead set the matter for a default hearing. The court will not enter a default judgment against a minor child or an incompetent person, or against a party who was served by publication, without a hearing. **[ARCP 55(b)(1)]**

f. Default judgment hearing. If the party who filed an application for entry of default has a claim that is not for a specific amount, or if the amount of the claim cannot be determined by a mathematical calculation, then ten (10) days after the application for entry of default was filed, the party may file a request that the court set a default hearing to determine the terms of the judgment. The court may also set a matter for a default hearing on its own initiative following proper notice to the parties.

The party requesting the hearing must serve the party against whom judgment will be entered, if that party has a known address, and the party's attorney, if any, with a written notice of the hearing at least three (3) days before the default hearing date. The party against whom judgment will be entered or that party's attorney may participate if that party or that party's attorney appears at the default hearing. A notice of hearing must also be served on other parties in the lawsuit as provided by Rule 120.

The court may receive evidence at a default hearing, and the court must provide a jury trial when the law requires one. The court may enter a default judgment against a minor child or an incompetent person only if that child or person was represented at the hearing by a guardian or by legal counsel.

A default judgment entered at a hearing may include an award of attorneys' fees and costs when established in the manner provided in section (e) of this rule. Any request for attorneys' fees or costs must be filed at the same time as the request for a default hearing. **[ARCP 55(b)(2)]**

g. Form of default judgment. A default judgment may be prepared by the court or it may be prepared by a party and submitted to the court for signature. A party may submit a proposed default judgment at the time a request for entry of a default judgment without a hearing is filed, or at the time of a default hearing. A party who prepares and submits a proposed default judgment must also provide the court with stamped envelopes addressed to each party who has appeared in the lawsuit and to the party or

parties in default, in order for the court to mail copies of the default judgment after it is signed by the judge. [ARCP 58(a), (d)]

h. Default judgment against the State. A default judgment will be entered against the State or an officer or agency of the State only if the party requesting the default judgment proves the party's claim by satisfactory evidence. [ARCP 55(e)]

i. Default judgment after service by publication. A default judgment may be entered against a party who was served by publication only if a verbatim record of the default proceeding is made and maintained by the court. [ARCP 55(f)]

j. Setting aside a default or a default judgment. If the party claimed to be in default files a written answer after the ten (10) day period described in section (d), but before the filing of a request for entry of a default judgment without a hearing or a request for default judgment hearing, the court for a good reason provided by the answering party, or the court on its own initiative, may set aside the default and allow the lawsuit to proceed as if the answer was timely, subject to an opportunity of the plaintiff to object. If the default is not set aside as provided in this section, judgment may only be entered after a default judgment hearing. A default judgment that has been entered may be set aside by a motion as provided in Rule 141(c). [ARCP 55(c)]

[AZ ST J CT RCP Rule 140](#)

Arkansas

RULE 55. DEFAULT

(a) When Entitled. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, judgment by default may be entered by the court.

(b) Manner of Entering Judgment. The party entitled to a judgment by default shall apply to the court therefor, but no judgment by default shall be entered against an infant or incompetent person. If the party against whom judgment by default is sought has appeared in the action, he (or if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is 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 and may direct a trial by jury.

(c) Setting Aside Default Judgments. The court may, upon motion, set aside a default judgment previously entered for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) the judgment is void; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or (4) any other reason justifying relief from the operation of the judgment. The party seeking to have the judgment set aside must demonstrate a

meritorious defense to the action; however, if the judgment is void, no other defense to the action need be shown.

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

(e) When Presented. A motion for default judgment may be presented to the court in vacation and at any place in the district or circuit.

(f) Remand From Federal Court. No judgment by default shall be entered against a party in an action removed to federal court and subsequently remanded if that party filed an answer or a motion permitted by Rule 12 in the federal court during removal.

[Ark. R. Civ. P. 55](#)

§ 16-45-104. Affidavit as to correctness of account

(a)(1) In a suit on an account, including without limitation a credit card account or other revolving credit account, in a court of this state, the affidavit of the plaintiff that the account is just and correct, taken and certified according to law, is sufficient to establish the account.

(2) However, if the defendant denies under oath the correctness of the account, the plaintiff is held to prove by other evidence the part of the account in dispute.

(b) An affidavit of account under subsection (a) of this section shall be attached to the complaint and shall contain:

(1) The name of:

(A) The creditor to whom the account is owed;

(B) The creditor pursuing collection of the account; and

(C) The debtor obligated to pay the account;

(2)(A) A statement or disclosure of whether or not the debtor's account has been assigned or is held by the original creditor.

(B) If the account has been assigned, the affidavit shall state the name of the original creditor;

(3) A statement of the affiant's authority to execute the affidavit on behalf of the creditor, including the affiant's job title or relationship to the creditor;

(4) A statement that the affiant is familiar with the books and records of the creditor and the account;

(5) A statement that the information and amount stated in the affidavit is true and correct to the best of affiant's knowledge, information, and belief;

(6) The interest rate and the source of the interest rate; and

(7) The total amount due, including interest, at the time the affidavit is executed.

[Ark. Code Ann. § 16-45-104 \(West\)](#)

§ 17-24-506. False or misleading representations

(a) A debt collector may not use a false, deceptive, or misleading representation or means in connection with the collection of a debt.

(b) Without limiting the general application of subsection (a) of this section, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or a state, including without limitation the use of a badge, uniform, or facsimile thereof;

(2) The false representation of:

(A) The character, amount, or legal status of a debt; or

(B) Any services rendered or compensation that may be lawfully received by a debt collector for the collection of a debt;

(3) The false representation or implication that an individual is an attorney or that a communication is from an attorney;

(4) The representation or implication that nonpayment of a debt will result in the arrest or imprisonment of a person or the seizure, garnishment, attachment, or sale of a property or wages of a person unless the action is lawful and the debt collector or creditor intends to take the action;

(5) The threat to take an action that cannot legally be taken or that is not intended to be taken;

(6) The false representation or implication that a sale, referral, or other transfer of an interest in a debt will cause the consumer to:

(A) Lose a claim or defense to payment of the debt; or

(B) Become subject to a practice prohibited by this subchapter;

(7) The false representation or implication that the consumer committed a crime or other conduct in order to disgrace the consumer;

(8) Communicating or threatening to communicate to a person credit information that is known or that should be known to be false, including without limitation the failure to communicate that a disputed debt is disputed;

(9) The use or distribution of a written communication that simulates or is falsely represented to be a document authorized, issued, or approved by a court, official, or agency of the United States or a state or that creates a false impression as to its source, authorization, or approval;

(10) The use of a false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer;

(11) The failure to disclose:

(A) In the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral in the initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose; and

(B) In subsequent communications, that the communication is from a debt collector, except that this subdivision (b)(11) does not apply to a formal pleading made in connection with a legal action;

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value;

- (13) The false representation or implication that documents are legal process;
- (14) The use of a business, company, or organization name other than the true name of the debt collector's business, company, or organization;
- (15) The false representation or implication that documents are not legal process forms or do not require action by the consumer; or
- (16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f), as it existed on January 1, 2009.

[Ark. Code Ann. § 17-24-506 \(West\)](#)



§ 17-24-507. Unfair practices

- (a) A debt collector may not use unfair or unconscionable means to collect or attempt to collect a debt.
- (b) Without limiting the general application of subsection (a) of this section, the following actions of a debt collector violate this section:
 - (1) The collection of an amount, including interest, a fee, a charge, or an expense incidental to the principal obligation unless the amount is expressly authorized by the agreement creating the debt or permitted by law;
 - (2) The acceptance by a debt collector from a person of a check or other payment instrument postdated by more than five (5) days unless the person is notified in writing of the debt collector's intent to deposit the check or instrument not more than ten (10) nor less than three (3) business days before the deposit;
 - (3) The solicitation by a debt collector of a postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;
 - (4) Depositing or threatening to deposit a postdated check or other postdated payment instrument before the date on the check or instrument;
 - (5) Causing charges to be made to a person for communications by concealment of the true purpose of the communication, including without limitation charges for collect telephone calls and telegrams;
 - (6) Taking or threatening to take a nonjudicial action to effect dispossession or disablement of property if:
 - (A) No present right exists to possession of the property claimed as collateral through an enforceable security interest;
 - (B) No present intention exists to take possession of the property; or
 - (C) The property is exempt by law from the dispossession or disablement;
 - (7) Communicating with a consumer regarding a debt by postcard; or
 - (8) Using a language or symbol other than the debt collector's address on an envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his or her business name if the name does not indicate that he or she is in the debt collection business.

[Ark. Code Ann. § 17-24-507 \(West\)](#)

THE CONUNDRUM OF DEFAULT JUDGMENT DAMAGES IN CREDIT CARD DEBT BUYER LAWSUITS

[Kim Petrone & Dr. Vernon J. Richardson, The Conundrum of Default Judgment Damages in Credit Card Debt Buyer Lawsuits, Ark. Law., Winter 2019, at 34](#)

California

§ 1788.13. Misrepresentations in communications; unlawful practices

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

- (a) Any communication with the debtor other than in the name either of the debt collector or the person on whose behalf the debt collector is acting;
- (b) Any false representation that any person is an attorney or counselor at law;
- (c) Any communication with a debtor in the name of an attorney or counselor at law or upon stationery or like written instruments bearing the name of the attorney or counselor at law, unless such communication is by an attorney or counselor at law or shall have been approved or authorized by such attorney or counselor at law;
- (d) The representation that any debt collector is vouched for, bonded by, affiliated with, or is an instrumentality, agent or official of any federal, state or local government or any agency of federal, state or local government, unless the collector is actually employed by the particular governmental agency in question and is acting on behalf of such agency in the debt collection matter;
- (e) The false representation that the consumer debt may be increased by the addition of attorney's fees, investigation fees, service fees, finance charges, or other charges if, in fact, such fees or charges may not legally be added to the existing obligation;
- (f) The false representation that information concerning a debtor's failure or alleged failure to pay a consumer debt has been or is about to be referred to a consumer reporting agency;
- (g) The false representation that a debt collector is a consumer reporting agency;
- (h) The false representation that collection letters, notices or other printed forms are being sent by or on behalf of a claim, credit, audit or legal department;
- (i) The false representation of the true nature of the business or services being rendered by the debt collector;
- (j) The false representation that a legal proceeding has been, is about to be, or will be instituted unless payment of a consumer debt is made;
- (k) The false representation that a consumer debt has been, is about to be, or will be sold, assigned, or referred to a debt collector for collection; or
- (l) Any communication by a licensed collection agency to a debtor demanding money unless the claim is actually assigned to the collection agency.

Cal. Civ. Code § 1788.13 (West)

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§ 1788.14. Unlawful practices; affirmation from debtor; collection of collector's fee and expenses from debtor; communication with debtor instead of debtor's attorney; written communication to collect time-barred debt without providing written notice

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

(a) Obtaining an affirmation from a debtor of a consumer debt which has been discharged in bankruptcy, without clearly and conspicuously disclosing to the debtor, in writing, at the time such affirmation is sought, the fact that the debtor is not legally obligated to make such affirmation;

(b) Collecting or attempting to collect from the debtor the whole or any part of the debt collector's fee or charge for services rendered, or other expense incurred by the debt collector in the collection of the consumer debt, except as permitted by law; or

(c) Initiating communications, other than statements of account, with the debtor with regard to the consumer debt, when the debt collector has been previously notified in writing by the debtor's attorney that the debtor is represented by such attorney with respect to the consumer debt and such notice includes the attorney's name and address and a request by such attorney that all communications regarding the consumer debt be addressed to such attorney, unless the attorney fails to answer correspondence, return telephone calls, or discuss the obligation in question. This subdivision shall not apply where prior approval has been obtained from the debtor's attorney, or where the communication is a response in the ordinary course of business to a debtor's inquiry.

(d) Sending a written communication to a debtor in an attempt to collect a time-barred debt without providing the debtor with one of the following written notices:

(1) If the debt is not past the date for obsolescence set forth in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c), the following notice shall be included in the first written communication provided to the debtor after the debt has become time-barred:

"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 collector] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting."

(2) If the debt is past the date for obsolescence set forth in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c), the following notice shall be included in the first written communication provided to the debtor after the date for obsolescence:

"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."

(e) For purposes of this section, "first written communication" means the first communication sent to the debtor in writing or by facsimile, email, or other similar means.

Cal. Civ. Code § 1788.14 (West)

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§ 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.

[Cal. Civ. Code § 1788.15 \(West\)](#)

§ 1788.16. Communications simulating legal or judicial process or governmental authorization; unlawful practice in consumer debt collection; misdemeanor; punishment

It is unlawful, with respect to attempted collection of a consumer debt, for a debt collector, creditor, or an attorney, to send a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued, or approved by a governmental agency or attorney when it is not. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500) or by both.

[Cal. Civ. Code § 1788.16 \(West\)](#)

§ 1788.30. Liability of debt collector; individual action; actual and punitive damages; costs; cure of violation; venue; defenses

(a) Any debt collector who violates this title with respect to any debtor shall be liable to that debtor only in an individual action, and his liability therein to that debtor shall be in an amount equal to the sum of any actual damages sustained by the debtor as a result of the violation.

(b) Any debt collector who willfully and knowingly violates this title with respect to any debtor shall, in addition to actual damages sustained by the debtor as a result of the violation, also be liable to the debtor only in an individual action, and his additional liability therein to that debtor shall be for a penalty in such amount as the court may allow, which shall not be less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000).

(d) A debt collector shall have no civil liability under this title if, within 15 days either after discovering a violation which is able to be cured, or after the receipt of a written notice of such violation, the debt collector notifies the debtor of the violation, and makes whatever adjustments or corrections are necessary to cure the violation with respect to the debtor.

(f) Any action under this section may be brought in any appropriate court of competent jurisdiction in an individual capacity only, within one year from the date of the occurrence of the violation.

Cal. Civ. Code § 1788.30 (West)

The remedies provided herein are intended to be cumulative and are in addition to any other procedures, rights, or remedies under any other provision of law. The enactment of this title shall not supersede existing administrative regulations of the Director of Consumer Affairs except to the extent that those regulations are inconsistent with the provisions of this title.

Cal. Civ. Code § 1788.32 (West)

Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

Cal. Civ. Code § 1788.33 (West)

§ 1812.700. Notice to be provided to debtors by third-party collectors subject to federal Fair Debt Collection Practices Act

(a) In addition to the requirements imposed by Article 2 (commencing with Section 1788.10) of Title 1.6C, third-party debt collectors subject to the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) shall provide a notice to debtors that shall include the following description of debtor rights:

"The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov."

(b) The notice shall be included with the first written notice initially addressed to a California address of a debtor in connection with collecting the debt by the third-party debt collector.

(c) If a language other than English is principally used by the third-party debt collector in the initial oral contact with the debtor, a notice shall be provided to the debtor in that language within five working days.

[Cal. Civ. Code § 1812.700 \(West\)](#)

§ 1812.701. Change in notice; type-sized used

(a) The notice required in this title may be changed only as necessary to reflect changes under the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) that would otherwise make the disclosure inaccurate.

(b) The type-size used in the disclosure shall be at least the same type-size as that used to inform the debtor of his or her specific debt, but is not required to be larger than 12-point type.

[Cal. Civ. Code § 1812.701 \(West\)](#)

§ 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.

[Cal. Civ. Code § 1788.50 \(West\)](#)

§ 1788.52. Debt buyer written statements to debtor to attempt debt collection; information that must be provided to debtor; timing requirements; written notice; form; conflict of laws

(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.

(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.

(c) A debt buyer shall provide the information or documents identified in subdivisions (a) and (b) to the debtor without charge within 15 calendar days of receipt of a debtor's written request for information regarding the debt or proof of the debt. If the debt buyer cannot provide the information or documents within 15 calendar days, the debt buyer shall cease all collection of the debt until the debt buyer provides the debtor the information or documents described in subdivisions (a) and (b). Except as provided otherwise in this title, the request by the debtor shall be consistent with the validation requirements contained in Section 1692g of Title 15 of the United States Code. A debt buyer shall provide all debtors with whom it has contact an active postal address to which these requests can be sent. A debt buyer may also provide an active email address to which these requests can be sent and through which information and documents can be delivered, if the parties agree.

(d)(1) A debt buyer shall include with its first written communication with the debtor in no smaller than 12-point type, a separate prominent notice that provides:

"You may request records showing the following: (1) that [insert name of debt buyer] has the right to seek collection of the debt; (2) the debt balance, including an explanation of any interest charges and additional fees; (3) the date of default or the date of the last payment; (4) the name of the charge-off creditor and the account number associated with the debt; (5) the name and last known address of the debtor as it appeared in the charge-off creditor's or debt buyer's records prior to the sale of the debt, as appropriate; and (6) the names of all persons or entities that have purchased the debt. You may also request from us a copy of the contract or other document evidencing your agreement to the debt.

"A request for these records may be addressed to: [insert debt buyer's active mailing address and email address, if applicable]."

(2) When collecting on a time-barred debt where the debt is not past the date for obsolescence provided for in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 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. If you do not pay the debt, [insert name of debt buyer] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting."

(3) When collecting on a time-barred debt where the debt is past the date for obsolescence provided for in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 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."

(e) If a language other than English is principally used by the debt buyer in the initial oral contact with the debtor, the notice required by subdivision (d) shall be provided to the debtor in that language within five working days.

(f) In the event of a conflict between the requirements of subdivision (d) and federal law, so that it is impracticable to comply with both, the requirements of federal law shall prevail.

Cal. Civ. Code § 1788.52 (West)

[https://www.westlaw.com/Document/N262DAAA020C511E39D9491C9D81B78BD/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cb1t1.0](https://www.westlaw.com/Document/N262DAAA020C511E39D9491C9D81B78BD/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cb1t1.0)

§ 1788.56. Statute of limitations bar to actions

A debt buyer shall not bring suit or initiate an arbitration or other legal proceeding to collect a consumer debt if the applicable statute of limitations on the debt buyer's claim has expired.

[Cal. Civ. Code § 1788.56 \(West\)](#)

§ 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.

§ 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.

[Cal. Civ. Code § 1788.61 \(West\)](#)

§ 1788.62. Violations of title by debt buyer; liability; damages; court considerations; limitation of actions

(a) In the case of an action brought by an individual or individuals, a debt buyer that violates any provision of this title with respect to any person shall be liable to that person in an amount equal to the sum of the following:

(1) Any actual damages sustained by that person as a result of the violation, including, but not limited to, the amount of any judgment obtained by the debt buyer as a result of a time-barred suit to collect a debt from that person.

(2) Statutory damages in an amount as the court may allow, which shall not be less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000).

(b) In the case of a class action, a debt buyer that violates any provision of this title shall be liable for any statutory damages for each named plaintiff as provided in paragraph (2) of subdivision (a). If the court finds that the debt buyer engaged in a pattern and practice of violating any provision of this title, the court may award additional damages to the class in an amount not to exceed the lesser of five hundred thousand dollars (\$500,000) or 1 percent of the net worth of the debt buyer.

(c)(1) In the case of any successful action to enforce liability under this section, the court shall award costs of the action, together with reasonable attorney's fees as determined by the court.

(2) Reasonable attorney's fees may be awarded to a prevailing debt buyer upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

(d) In determining the amount of liability under subdivision (b), the court shall consider, among other relevant factors, the frequency and persistence of noncompliance by the debt buyer, the nature of the noncompliance, the resources of the debt buyer, and the number of persons adversely affected.

(e) A debt buyer shall have no civil liability under this section if the debt buyer shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid any error.

(f) An action to enforce any liability created by this title shall be brought within one year from the date of the last violation.

(g) Recovery in an action brought under the Rosenthal Fair Debt Collection Practices Act (Title 1.6C (commencing with Section 1788)) or the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) shall preclude recovery for the same acts in an action brought under this title.

[Cal. Civ. Code § 1788.62 \(West\)](#)

§ 1788.64. Waiver of provisions void

Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

[Cal. Civ. Code § 1788.64 \(West\)](#)

§ 6077.5. Collection of consumer debt; attorneys and employees; compliance with requirements; discipline

An attorney and his or her employees who are employed primarily to assist in the collection of a consumer debt owed to another, as defined by Section 1788.2 of the Civil Code, shall comply with all of the following:

(a) The obligations imposed on debt collectors pursuant to Article 2 (commencing with Section 1788.10) of Title 1.6C of Part 4 of Division 3 of the Civil Code.

(b) Any employee of an attorney who is not a licensee of the State Bar of California, when communicating with a consumer debtor or with any person other than the debtor concerning a consumer debt, shall identify himself or herself, by whom he or she is employed, and his or her title or job capacity.

(c) Without the prior consent of the debtor given directly to the attorney or his or her employee or the express permission of a court of competent jurisdiction, an attorney or his or her employee shall not

communicate with a debtor in connection with the collection of any debt at any unusual time or place, or time or place known, or which should be known, to be inconvenient to the debtor. In the absence of knowledge of circumstances to the contrary, an attorney or his or her employee shall assume that the convenient time for communicating with the debtor is after 8 a.m. and before 9 p.m., local time at the consumer's location.

(d) If a debtor notifies an attorney or his or her employee in writing that the debtor refuses to pay a debt or that the debtor wishes the attorney or his or her employee to cease further communications with the debtor, the attorney or his or her employee shall not communicate further with the debtor with respect to such debt, except as follows:

- (1) To advise the debtor that the attorney or his or her employee's further efforts are being terminated.
- (2) To notify the debtor that the attorney or his or her employee or creditor may invoke specific remedies which are ordinarily invoked by such attorney or creditor.
- (3) Where applicable, to notify the debtor that the attorney or creditor intends to invoke his or her specific remedy.
- (4) Where a suit has been filed or is about to be filed and the debtor is not represented by counsel or has appeared in the action on the debt in propria persona.

For the purpose of this section, "debtor" includes the debtor's spouse, parent, or guardian, if the debtor is a minor, executor, or administrator.

(e) An attorney or his or her employee shall not take or threaten to take any nonjudicial action to effect disposition or disablement of property if (1) there is no present right to possession of the property claimed as collateral through an enforceable security interest; (2) there is no present intention to take possession of the property; or (3) the property is exempt by law from that disposition or disablement.

(f) An attorney or his or her employee shall not cause charges to be made to any person for communications, by concealment of the true purposes of the communication. The charges include, but are not limited to, collect telephone calls and telegram fees.

(g) Within five days after the initial communication with a debtor in connection with the collection of any unsecured debt, an attorney or his or her employee shall, unless the following information is contained in the initial communication or the debtor has paid the debt, send the debtor a written notice containing the following:

- (1) The amount of the debt.
- (2) The name of the creditor to whom the debt is owed.
- (3) A statement that unless the debtor, within 30 days receipt of the notice, disputes the validity of the debt or any portion thereof, the debt will be assumed to be valid by the attorney or his or her employee.
- (4) A statement that if the debtor notifies the debt collector in writing within the 30-day period that the debt, or any portion thereof, is disputed, the attorney or his or her employee will obtain a writing, if any exists, evidencing the debt or a copy of the judgment against the debtor and a copy of such writing or judgment will be mailed to the debtor by the attorney or his or her employee.
- (5) A statement that, upon the debtor's written request within the 30-day period, the attorney or his or her employee will provide the debtor the name and address of the original creditor, if different from the current creditor.

If the debtor notifies the attorney or his or her employee in writing within the 30-day period described in this section that the debt or any portion thereof is disputed, or that the debtor requests the name and address of the original creditor, the attorney and his or her employee shall cease collection of the debt or any disputed portion thereof, except for filing suit thereon, until the attorney obtains a writing, if any exists, evidencing the debt or a copy of a judgment or the name and address of the original creditor, and

a copy of such writing or judgment or the name and address of the original creditor is mailed to the debtor by the attorney or his or her employee.

(h) If any debtor owes multiple debts and makes any single payment to any attorney or his or her employee with respect to the debts, the attorney may not apply such payment to any debt which is disputed by the debtor and, where applicable, shall apply such payment in accordance with the debtor's directions.

(i) A willful breach of this section constitutes cause for the imposition of discipline of the attorney in accordance with Section 6077.

[Cal. Bus. & Prof. Code § 6077.5 \(West\)](#)

§ 127425. Debt collection policy

(a) Each hospital shall have a written policy about when and under whose authority patient debt is advanced for collection, whether the collection activity is conducted by the hospital, an affiliate or subsidiary of the hospital, or by an external collection agency.

(b) Each hospital shall establish a written policy defining standards and practices for the collection of debt, and shall obtain a written agreement from any agency that collects hospital receivables that it will adhere to the hospital's standards and scope of practices. This agreement shall require the affiliate, subsidiary, or external collection agency of the hospital that collects the debt to comply with the hospital's definition and application of a reasonable payment plan, as defined in subdivision (i) of Section 127400. The policy shall not conflict with other applicable laws and shall not be construed to create a joint venture between the hospital and the external entity, or otherwise to allow hospital governance of an external entity that collects hospital receivables. In determining the amount of a debt a hospital may seek to recover from patients who are eligible under the hospital's charity care policy or discount payment policy, the hospital may consider only income and monetary assets as limited by Section 127405.

(c) At time of billing, each hospital shall provide a written summary consistent with Section 127410, which includes the same information concerning services and charges provided to all other patients who receive care at the hospital.

(d) For a patient that lacks coverage, or for a patient that provides information that he or she may be a patient with high medical costs, as defined in this article, a hospital, any assignee of the hospital, or other owner of the patient debt, including a collection agency, shall not report adverse information to a consumer credit reporting agency or commence civil action against the patient for nonpayment at any time prior to 150 days after initial billing.

(e) If a patient is attempting to qualify for eligibility under the hospital's charity care or discount payment policy and is attempting in good faith to settle an outstanding bill with the hospital by negotiating a reasonable payment plan or by making regular partial payments of a reasonable amount, the hospital shall not send the unpaid bill to any collection agency or other assignee, unless that entity has agreed to comply with this article.

(f)(1) The hospital or other assignee that is an affiliate or subsidiary of the hospital shall not, in dealing with patients eligible under the hospital's charity care or discount payment policies, use wage garnishments or liens on primary residences as a means of collecting unpaid hospital bills.

(2) A collection agency or other assignee that is not a subsidiary or affiliate of the hospital shall not, in dealing with any patient under the hospital's charity care or discount payment policies, use as a means of collecting unpaid hospital bills, any of the following:

(A) A wage garnishment, except by order of the court upon noticed motion, supported by a declaration filed by the movant identifying the basis for which it believes that the patient has the ability to make payments on the judgment under the wage garnishment, which the court shall consider in light of the size of the judgment and additional information provided by the patient prior to, or at, the hearing concerning the patient's ability to pay, including information about probable future medical expenses based on the current condition of the patient and other obligations of the patient.

(B) Notice or conduct a sale of the patient's primary residence during the life of the patient or his or her spouse, or during the period a child of the patient is a minor, or a child of the patient who has attained the age of majority is unable to take care of himself or herself and resides in the dwelling as his or her primary residence. In the event a person protected by this paragraph owns more than one dwelling, the primary residence shall be the dwelling that is the patient's current homestead, as defined in Section 704.710 of the Code of Civil Procedure, or was the patient's homestead at the time of the death of a person other than the patient who is asserting the protections of this paragraph.

(3) This requirement does not preclude a hospital, collection agency, or other assignee from pursuing reimbursement and any enforcement remedy or remedies from third-party liability settlements, tortfeasors, or other legally responsible parties.

(g) Extended payment plans offered by a hospital to assist patients eligible under the hospital's charity care policy, discount payment policy, or any other policy adopted by the hospital for assisting low-income patients with no insurance or high medical costs in settling outstanding past due hospital bills, shall be interest free. The hospital extended payment plan may be declared no longer operative after the patient's failure to make all consecutive payments due during a 90-day period. Before declaring the hospital extended payment plan no longer operative, the hospital, collection agency, or assignee shall make a reasonable attempt to contact the patient by telephone and, to give notice in writing, that the extended payment plan may become inoperative, and of the opportunity to renegotiate the extended payment plan. Prior to the hospital extended payment plan being declared inoperative, the hospital, collection agency, or assignee shall attempt to renegotiate the terms of the defaulted extended payment plan, if requested by the patient. The hospital, collection agency, or assignee shall not report adverse information to a consumer credit reporting agency or commence a civil action against the patient or responsible party for nonpayment prior to the time the extended payment plan is declared to be no longer operative. For purposes of this section, the notice and telephone call to the patient may be made to the last known telephone number and address of the patient.

(h) Nothing in this section shall be construed to diminish or eliminate any protections consumers have under existing federal and state debt collection laws, or any other consumer protections available under state or federal law. If the patient fails to make all consecutive payments for 90 days and fails to renegotiate a payment plan, this subdivision does not limit or alter the obligation of the patient to make payments on the obligation owing to the hospital pursuant to any contract or applicable statute from the date that the extended payment plan is declared no longer operative, as set forth in subdivision (g).

[Cal. Health & Safety Code § 127425 \(West\)](#)

§ 127430. Notice required prior to commencing collection activities

(a) Prior to commencing collection activities against a patient, the hospital, any assignee of the hospital, or other owner of the patient debt, including a collection agency, shall provide the patient with a clear and conspicuous written notice containing both of the following:

(1) A plain language summary of the patient's rights pursuant to this article, the Rosenthal Fair Debt Collection Practices Act (Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code), and the federal Fair Debt Collection Practices Act (Subchapter V (commencing with Section 1692) of Chapter 41 of Title 15 of the United States Code). The summary shall include a statement that the Federal Trade Commission enforces the federal act.

The summary shall be sufficient if it appears in substantially the following form: "State and federal law require debt collectors to treat you fairly and prohibit debt collectors from making false statements or threats of violence, using obscene or profane language, and making improper communications with third parties, including your employer. Except under unusual circumstances, debt collectors may not contact you before 8:00 a.m. or after 9:00 p.m. In general, a debt collector may not give information about your debt to another person, other than your attorney or spouse. A debt collector may contact another person to confirm your location or to enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission by telephone at 1-877-FTC-HELP (382-4357) or online at www.ftc.gov."

(2) A statement that nonprofit credit counseling services may be available in the area.

(b) The notice required by subdivision (a) shall also accompany any document indicating that the commencement of collection activities may occur.

(c) The requirements of this section shall apply to the entity engaged in the collection activities. If a hospital assigns or sells the debt to another entity, the obligations shall apply to the entity, including a collection agency, engaged in the debt collection activity.

[Cal. Health & Safety Code § 127430 \(West\)](#)

<< CA R SAN FRANCISCO SUPER CT Rule 6.6 >>

Rule 6.6. Default and Default Judgment

A. The Two–Step Process. The court will only consider entry of default judgment after the clerk has entered a default. A party seeking a default judgment in a civil action ("the requesting party") must either: (1) ask the clerk to enter default first and then request default judgment; or (2) request entry of default and default judgment at the same time. In either instance, the requesting party must deliver all required courtesy copies.

B. Request for Entry of Default.

1) The requesting party must comply with all relevant statutes and rules, including CRC 3.110(g) and this rule.

2) The requesting party must submit all requests for entry of default to the clerk's civil default division.

3) The request for entry of default packet must include the following:

a. The original and a copy of the Request for Entry of Default on Judicial Council Form CIV–100;

b. An endorsed-filed copy of the proof of service of summons or relevant notice of order fixing time for further responsive pleading;

- c. An endorsed-filed copy of the operative complaint;
 - d. A venue declaration;
 - e. In actions in which the requesting party is relying on service of summons by substituted service pursuant to CCP § 415.20(b), a completed declaration by the process server (see LRSF 6.6(C), below);
 - f. In injury or death actions where a damage amount is not alleged in the complaint or pleading, a statement of damages and proof of service demonstrating timely service and compliance with CCP § 425.11(d);
 - g. In actions where punitive damages are sought in the complaint and may be sought in the request for default judgment, a reservation of rights to seek punitive damages on default judgment and proof of service demonstrating timely service and compliance with CCP § 425.115(g);
 - h. Any additional documents required by law; and
 - i. A self-addressed stamped envelope.
- 4) Additional information about lodging documents may be found on the Court's website:
<https://www.sfsuperiorcourt.org/divisions/civil/default-unit>.
- 5) The requesting party must ensure that all information matches the operative pleading and summons.
- 6) Represented parties must e-file their default packet.
- 7) The requesting party must lodge a courtesy copy of any e-filed default packet with the Court's civil default division in compliance with LRSF 2.7.
- 8) If the clerk rejects a request to enter default, the defect is not cured to the clerk's satisfaction, and the requesting party disagrees with the clerk, then the requesting party may apply for ex parte relief to Department 514 on Tuesdays and Thursdays at 10 a.m.

C. Process Server's Due Diligence Declaration In Support of Request for Default. A requesting party who is relying upon service of summons by substituted service pursuant to CCP § 415.20(b) must submit a declaration by the process server stating:

- 1) The factual basis upon which the process server concluded that the place of service and mailing was either the "dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service box" of the person served; and
- 2) That not less than three attempts at personal service were made at three different times of the day, on three different days; and
- 3) At least one of these attempts was made at the last known residence address of the person to be served.

D. Request for Default Judgment.

- 1) A requesting party must comply with all relevant rules, including CRC 3.1800, and statutes, including CCP §§ 585 through 587, as well as this rule. Unless the requesting party strictly complies with these requirements, the request may be rejected, continued to a future date to allow for compliance, or taken off calendar.
- 2) The requesting party must include in the default judgment packet all documents identified in CRC 3.1800, plus the following:
 - a. An endorsed-filed copy of the operative complaint and summons;
 - b. Any relevant statement(s) of damages, as well as proof(s) of service demonstrating timely service and compliance with the applicable service requirements of CCP § 425.11(d) and related case law;

- c. Any relevant reservation(s) of right to seek punitive damages, as well as proof(s) of service demonstrating timely service and compliance with the applicable service requirements of CCP § 425.115(g) and related case law;
- d. A completed default judgment checklist, if applicable, which can be found at <https://www.sfsuperiorcourt.org>, under Forms & Fees—Local Forms;
- e. A notice of payment of reporter's fees, if required;
- f. A declaration identifying the basis for the attorney's fees request (e.g., particular contract provision or specific statute) and, if the amount requested exceeds the amount set forth in the fee schedule in Appendix A, sworn testimony supporting the amount requested where the requesting party seeks attorney's fees (see CRC 3.1800(a)(9));
- g. An interest computation, including a declaration identifying with particularity the basis for pre-judgment interest request (e.g., specific statute), the rate and the authority for the rate, as well as the relevant calculation where the requesting party seeks pre-judgment interest (see CRC 3.1800(a)(3));
- h. The proposed form of judgment (see CRC 3.1800(a)(6)) on the Judicial Council judgment form unless a lengthy or detailed judgment is necessary, or when different relief is sought against different defendants; and,
- i. A self-addressed stamped envelope.

3) Additional information about lodging documents may be found on the Court's website: <https://www.sfsuperiorcourt.org>.

4) The clerk's civil default division will process requests for default judgment consistent with CCP §§ 585(a) and 585(d). Such requests for default judgment must be by affidavit pursuant to CCP § 585(d). The requesting party may request a court judgment. As to any such request, the Court may require a prove-up hearing in which case the clerk will schedule a hearing.

5) In limited jurisdiction actions not covered by paragraph (4), the requesting party must submit papers sufficient to obtain default judgment by affidavit pursuant to CCP § 585(d). The clerk's civil default division will process the request. The requesting party may request a court judgment. As to any request covered by this paragraph, the Court may require a prove-up hearing in which case the clerk will inform the moving party of the date, time and place of the hearing and the moving party will have to file a notice of hearing and pay related motion and court reporter's fees.

6) For all requests covered by paragraphs (4) and (5), the requesting party must lodge a courtesy copy of the default judgment packet with the clerk's civil default division in compliance with LRSF 2.7.

7) In all unlimited jurisdiction actions not covered by paragraph (4) above, the requesting party will be required to participate in a hearing to prove-up the default.

a. Prove-up hearings are held in Department 514 on Tuesdays and Thursdays at 9:00 a.m. The default judgment packet must be filed without a hearing date. The clerk, upon the filing of the papers, will select and schedule the hearing in accordance with CCP § 1005 and available calendar space. Represented parties must e-file their default judgment packet. Parties should utilize the "Note to Clerk" option to indicate preferred or unavailable date(s). After the packet is e-filed the moving party can obtain a copy of the e-filed motion with the hearing date from the Court's website at <https://www.sfsuperiorcourt.org>. The requesting party must deliver an endorsed-filed courtesy copy of the default packet to Department 514 in compliance with LRSF 2.7. In its discretion and based on calendar management considerations, the Court will determine the number of motions filed by the same counsel that will be set for, or heard on, a given day; however, no more than three motions by the same counsel will be set for, or heard on, any given date.

b. Counsel and all witnesses necessary to establish the essential facts must appear at the prove-up hearing. The requesting party may request a waiver of the witness requirement and permission to proceed by declaration in whole or in part by filing an ex parte application showing good cause,

declaration(s) in support of the good-cause showing and a proposed order. Represented parties must e-file their application and related materials. All such applications must be filed at least 10 days before the date of the prove-up hearing. The requesting party must lodge a courtesy copy of their papers in Department 514 in compliance with LRSF 2.7.

c. All testimony, whether live or by declaration, must be presented by competent witnesses having personal knowledge of the essential facts

8) Absent a showing of good cause, a dismissal of all "Doe" defendants must be on file at the time of the request for default judgment.

9) If a requesting party seeks a single judgment to resolve an entire action in which some defendants have appeared and some have defaulted, the requesting party must demonstrate in writing that a judgment can be entered as to the appearing defendant(s) and the terms of such judgment as to the appearing defendant(s).

10) Absent a showing of good cause, the Court will not enter a several judgment before resolution of the entire action (see CRC 3.1800(7) and CCP § 579).

11) In an action brought by a debt buyer upon a consumer debt sold or resold on or after January 1, 2014, the operative complaint must satisfy CCP § 1788.58 and the requesting party's evidence in support of default judgment must satisfy the evidentiary requirements of CCP § 1788.60.

12) Applications for Auto Default Judgment must be submitted on affidavits pursuant CCP§ 585(d) and include an Auto Deficiency Judgment Declaration Form. See court's website (<http://sfsuperiorcourt.org/Forms&Fees>; Local Forms: Deficiency Judgment Declaration- Auto Sale.

E. Default Judgment in Forfeiture Actions. See LRSF 8.8.

F. Dissolution Cases. See LRSF 11.14.

[2020 CALIFORNIA COURT ORDER 0206 \(C.O. 0206\)](#)

Colorado

§ 5-16-107. False or misleading representations

(1) A debt collector or collection agency shall not use any false, deceptive, or misleading representation or means in connection with the collection of any debt, including, but not limited to, the following conduct:

(a) The false representation or implication that the debt collector or collection agency is vouched for, bonded by, or affiliated with the United States government or any state government, including the use of any misleading name, badge, uniform, or facsimile thereof;

(b) The false representation of:

(I) The character, amount, or legal status of any debt; or

(II) Any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt;

(c) The false representation or implication that any individual is an attorney or that any communication is from an attorney;

- (d) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or in the seizure, garnishment, attachment, or sale of any property or wages of any person unless the action is lawful and the debt collector, collection agency, or creditor intends to take such action;
- (e) The threat to take any action that cannot legally be taken or that is not intended to be taken;
- (f) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:
 - (I) Lose any claim or defense to payment of the debt; or
 - (II) Become subject to any practice prohibited by this article 16;
- (g) The false representation or implication that the consumer committed any crime;
- (h) The false representation or implication that the consumer has engaged in any disgraceful conduct;
- (i) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed;
- (j) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state or which creates a false or misleading impression as to its source, authorization, or approval;
- (k) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;
- (l) Except as otherwise provided for communications to acquire location information under section 5-16-104, the failure to disclose clearly, in the initial written communication made to collect a debt or obtain information about a consumer and also, if the initial communication with the consumer is oral, in the initial oral communication, that the debt collector or collection agency is attempting to collect a debt and that any information obtained will be used for that purpose, and, in subsequent communications, that the communication is from a debt collector or collection agency; except that this subsection (1)(l) shall not apply to a formal pleading made in connection with a legal action;
- (m) The false representation or implication that accounts have been turned over to innocent purchasers for value;
- (n) The false representation or implication that documents are legal process;
- (o) The use of any business, company, or organization name other than the true name of the collection agency's business, company, or organization;
- (p) The false representation or implication that documents are not legal process forms or do not require action by the consumer;
- (q) The false representation or implication that a debt collector or collection agency operates or is employed by a consumer reporting agency.

[Colo. Rev. Stat. Ann. § 5-16-107 \(West\)](#)



[§ 5-16-108. Unfair practices](#)

(1) A debt collector or collection agency shall not use unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to, the following conduct:

(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;

(b) The acceptance by a debt collector or collection agency from any person of a check or other payment instrument postdated by more than five days unless the person is notified in writing of the debt collector's or collection agency's intent to deposit the check or instrument not more than ten nor less than three business days prior to the deposit;

(c) The solicitation by a debt collector or collection agency of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(d) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on the check or instrument;

(e) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(f) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(I) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(II) There is no present intention to take possession of the property; or

(III) The property is exempt by law from such dispossession or disablement;

(g) Communicating with a consumer regarding a debt by postcard;

(h) Using any language or symbol, other than the debt collector's or collection agency's address, on any envelope when communicating with a consumer by use of the mails or by telegram; except that a debt collector or collection agency may use his business name if the name does not indicate that he or she is in the debt collection business;

(i) Failing to comply with the provisions of section 13-21-109 regarding the collection of checks, drafts, or orders not paid upon presentment;

(j) Communicating credit information to a consumer reporting agency earlier than thirty days after the initial notice to the consumer has been mailed, unless the consumer's last-known address is known to be invalid. This subsection (1)(j) shall not apply to checks, negotiable instruments, or credit card drafts.

[Colo. Rev. Stat. Ann. § 5-16-108 \(West\)](#)



§ 5-16-109. Validation of debts

(1) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector or collection agency shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice with the disclosures specified in subsections (1)(a) to (1)(e) of this section. If the disclosures are placed on the

back of the notice, the front of the notice shall contain a statement notifying consumers of that fact. The disclosures shall state:

- (a) The amount of the debt;
 - (b) The name of the creditor to whom the debt is owed;
 - (c) That, unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector or collection agency;
 - (d) That, if the consumer notifies the debt collector or collection agency in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector or collection agency will obtain verification of the debt or a copy of a judgment against the consumer and a copy of the verification or judgment will be mailed to the consumer by the debt collector or collection agency;
 - (e) That upon the consumer's written request within the thirty-day period, the debt collector or collection agency will provide the consumer with the name and address of the original creditor, if different from the current creditor.
- (2) If the consumer notifies the debt collector or collection agency in writing within the thirty-day period described in subsection (1)(c) of this section that the debt, or any portion thereof, is disputed or that the consumer requests the name and address of the original creditor, the debt collector or collection agency shall cease collection of the debt, or any disputed portion thereof, until the debt collector or collection agency obtains verification of the debt or a copy of a judgment or the name and address of the original creditor and mails a copy of the verification or judgment or name and address of the original creditor to the consumer.
- (3) The failure of a consumer to dispute the validity of a debt under this section shall not be construed by any court as an admission of liability by the consumer.
- (4) It shall be an affirmative defense to any action based upon failure of a debt collector or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

[Colo. Rev. Stat. Ann. § 5-16-109 \(West\)](#)

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

- (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

§ 19a-673b. Initiation of debt collection activities

(a) No hospital shall refer to a collection agent, as defined in section 19a-509b, or initiate an action against an individual patient or such patient's estate to collect fees arising from care provided at a hospital on or after October 1, 2003, unless the hospital has made a determination whether such individual is (1) an uninsured patient, as defined in section 19a-673, and (2) not eligible for the hospital bed fund.

(b) Nothing in this section shall affect a hospital's ability to initiate an action against an individual patient or such patient's estate to collect coinsurance, deductibles or fees arising from care provided at a hospital where such coinsurance, deductibles or fees may be eligible for reimbursement through awards, settlements or judgments arising from claims, suits or proceedings. In addition, nothing in this section shall affect a hospital's ability to initiate an action against an individual patient or such patient's estate where payment or reimbursement has been made, or likely is to be made, directly to the patient.

[Conn. Gen. Stat. Ann. § 19a-673b \(West\)](#)

§ 36a-648. Abusive, harassing, fraudulent, deceptive or misleading debt collection practices. Liability. Exemptions. Limitations on actions

(a) A creditor, as defined in section 36a-645, who uses any abusive, harassing, fraudulent, deceptive or misleading representation, device or practice with respect to any person to collect or attempt to collect a debt in violation of section 36a-646, section 36a-805 or the regulations adopted pursuant to section 36a-647 or 36a-809 shall be liable to such person in an amount equal to the sum of: (1) Any actual damages sustained by such person, (2) if such person is an individual, such additional damages as the court may award, not to exceed one thousand dollars, and (3) in the case of any successful action to enforce liability under the provisions of this subsection, the costs of the action and, in the discretion of the court, a reasonable attorney's fee.

(b) In determining the amount of liability in an action brought pursuant to subsection (a) of this section, the trier of fact shall consider, among other relevant factors, the frequency and persistence of noncompliance by the creditor, the nature of such noncompliance and the extent to which such noncompliance was intentional.

(c) A creditor may not be held liable in an action brought under this section if the creditor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted by the creditor to avoid any such error.

(d) An action to enforce liability under this section may be brought in any court of competent jurisdiction not later than one year after the date on which the violation occurs.

[Conn. Gen. Stat. Ann. § 36a-648 \(West\)](#)

§ 36a-805. Prohibited practices. Exception

(a) No consumer collection agency or control person shall: (1) Furnish legal advice or perform legal services or represent that it is competent to do so, or institute judicial proceedings on behalf of others; (2) communicate with consumer debtors, property tax debtors or federal income tax debtors in the name of an attorney or upon the stationery of an attorney, or prepare any forms or instruments which only attorneys are authorized to prepare; (3) receive assignments as a third party of claims for the purpose of collection or institute suit thereon in any court; (4) assume authority on behalf of a creditor to employ or terminate the services of an attorney unless such creditor has authorized such agency in writing to act as such creditor's agent in the selection of an attorney to collect the creditor's accounts; (5) demand or obtain in any manner a share of the proper compensation for services performed by an attorney in collecting a claim, whether or not such agency has previously attempted collection thereof; (6) solicit claims for collection under an ambiguous or deceptive contract; (7) refuse to return any claim or claims upon written request of the creditor, claimant or forwarder, which claims are not in the process of collection after the tender of such amounts, if any, as may be due and owing to the agency; (8) advertise or threaten to advertise for sale any claim as a means of forcing payment thereof, unless such agency is acting as the assignee for the benefit of creditors; (9) refuse or fail to account for and remit to its clients all money collected which is not in dispute within sixty days from the last day of the month in which said money is collected; (10) refuse or intentionally fail to return to the creditor all valuable papers deposited with a claim when such claim is returned; (11) refuse or fail to furnish at intervals of not less than ninety days, upon the written request of the creditor, claimant or forwarder, a written report upon claims received from such creditor, claimant or forwarder; (12) add any post-charge-off charge or fee for cost of collection, unless such cost is a court cost, to the amount of any claim which it receives for collection or knowingly accept for collection any claim to which any such charge or fee has already been added to the amount of the claim unless (A) the consumer debtor is legally liable for such charge or fee as determined by the contract or other evidence of an agreement between the consumer debtor and creditor, a copy of which shall be obtained by or available to the consumer collection agency from the creditor and maintained as part of the records of the consumer collection agency or the creditor, or both, and (B) the total charge or fee for cost of collection does not exceed fifteen per cent of the total amount actually collected and accepted as payment in full satisfaction of the debt; (13) use or attempt to use or make reference to the term "bonded by the state of Connecticut", "bonded" or "bonded collection agency" or any combination of such terms or words, except the word "bonded" may be used on the stationery of any such agency in type not larger than twelve-point; (14) when the debt is beyond the statute of limitations, fail to provide the following disclosure in type not less than ten-point informing the consumer debtor in its initial communication with such consumer debtor that (A) when collecting on debt that is not past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15 USC 1681c: "The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) will not sue you for it. If you do not pay the debt, (INSERT OWNER NAME) may report or continue to report it to the credit reporting agencies as unpaid"; and (B) when collecting on debt that is past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15 USC 1681c: "The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) will not sue you for it and (INSERT OWNER NAME) will not report it to any credit reporting agencies."; (15) engage in any activities prohibited by sections 36a-800 to 36a-814, inclusive; or (16) fail to establish, enforce and maintain policies and procedures for supervising employees, agents and office operations that are reasonably designed to achieve compliance with applicable consumer collection laws and regulations.

(b) No consumer collection agency shall impose a charge or fee for any child support payments collected through the efforts of a governmental agency. If the imposition of a charge or fee is permitted under section 36a-801b, no consumer collection agency shall impose a charge or fee for the collection of any child support overdue at the time of the contract in excess of twenty-five per cent of overdue support actually collected.

(c) (1) No consumer collection agency shall receive any property tax on behalf of a creditor that is a municipality, unless the consumer collection agency has procured from an insurer authorized to transact business in this state an insurance policy providing coverage against loss of money, securities or other property, including loss arising from any fraudulent or dishonest act of any employee, officer or director of the consumer collection agency, with limits of at least two million dollars. It shall be the obligation of the municipality to ensure compliance with the requirements of this subdivision.

(2) A municipality that enters into an agreement with a consumer collection agency to collect and receive for payment property tax on behalf of the municipality may also require such consumer collection agency to file a bond with the municipality in an amount not exceeding the total amount of the property tax to be collected on behalf of the municipality. Such bond, the form of which shall be approved by the municipality, shall be written by a surety authorized to write bonds in this state and shall contain a provision requiring the surety to provide the municipality with written notice of cancellation of such bond. Such notice shall be sent by certified mail to the municipality at least thirty days prior to the date of cancellation. The bond shall be conditioned that such consumer collection agency shall well, truly and faithfully account for all funds collected and received by the consumer collection agency for the municipality pursuant to such agreement. If the municipality is damaged by the wrongful conversion of any property tax debtor funds received by the consumer collection agency, the municipality may proceed on such bond against the principal or surety on the bond, or both, to recover damages. The proceeds of the bond, even if commingled with the other assets of the consumer collection agency, shall be deemed by operation of law to be held in trust for the benefit of the municipality in the event of bankruptcy of the consumer collection agency and shall be immune from attachment by creditors and judgment creditors.

[Conn. Gen. Stat. Ann. § 36a-805 \(West\)](#)

§ 36a-806. Prohibited practices within and without state. Examination of affairs

(a) No consumer collection agency shall engage in this state in any practice which is prohibited in section 36a-805 or determined pursuant to section 36a-808 to be an unfair or deceptive act or practice, nor shall any consumer collection agency engage outside of this state in any act or practice prohibited in said section 36a-805. The commissioner shall have power to examine the affairs of every consumer collection agency in this state in order to determine whether it has been or is engaged in any act or practice prohibited by sections 36a-805 to 36a-808, inclusive.

(b) No creditor or consumer collection agency shall retain, hire, or engage the services or continue to retain or engage the services of any person who engages in the business of a consumer collection agency and who is not licensed to act as such by the commissioner, if such creditor has actual knowledge that such person is not licensed by the commissioner to act as a consumer collection agency.

[Conn. Gen. Stat. Ann. § 36a-806 \(West\)](#)

§ 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.

[Conn. Gen. Stat. Ann. § 36a-813 \(West\)](#)



Sec. 24-9. --Preparation of Writ

The small claims writ and notice of suit shall be on a form prescribed by the Office of the Chief Court Administrator. The plaintiff, or representative, shall state the nature and amount of the claim on the writ in concise, untechnical form and, if the claim seeks collection of a consumer debt, shall state the basis upon which the plaintiff claims that the statute of limitations has not expired. The writ is to be signed by either the plaintiff, or representative, under oath. The oath shall provide that the signer has read the claim, and that to the best of the signer's knowledge, information and belief there is good ground to support it. If the claim is more than a convenient length for entry on the writ in full, the plaintiff, or

representative, shall attach additional pages as needed. The plaintiff, or representative, shall also state on the writ the plaintiff's and the defendant's place of residence or other address. At the time of filing any writ, the plaintiff, or attorney shall verify the defendant's address. Such verification shall include confirmation by at least one of the following methods made during the six months prior to the filing of the writ: (1) municipal record verification (e.g., from a street list or tax records); (2) verification from the Department of Motor Vehicles; (3) receipt of correspondence from the defendant with that return address; (4) other verification, specifically described by the plaintiff, from the defendant that the address is current; (5) the mailing by first class mail, at least four weeks prior to the filing of the small claims action, of a letter to the defendant at such address, which letter has not been returned by the United States Postal Service. The plaintiff shall state under oath in the writ which method of verification was employed within the last six months, the date of verification, and that the method confirmed the accuracy of the address submitted. No default judgment shall enter in the absence of such verification or if it is apparent that the defendant did not reside at the address at the time of service.

Conn. Practice Book Sec. 24-9

Delaware District of Columbia

§ 28-3814. Debt collection.

(a) This section only applies to conduct and practices in connection with collection of obligations arising from consumer credit sales, consumer leases, and direct installment loans (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of Title 28).

(b) As used in this section, the term --

(1) "claim" means any obligation or alleged obligation, arising from a consumer credit sale, consumer lease, or direct installment loan;

(1A) "creditor" means a claimant or other person holding a claim;

(2) "debt collection" means any action, conduct or practice in connection with the solicitation of claims for collection or in connection with the collection of claims, that are owed or due, or are alleged to be owed or due, a seller or lender by a consumer; and

(3) "debt collector" means any person engaging directly or indirectly in debt collection, and includes any person who sells or offers to sell forms represented to be a collection system, device, or scheme intended or calculated to be used to collect claims.

(c) No creditor or debt collector shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion, or attempt to coerce in any of the following ways:

(1) the use, or express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation, or property of any person;

(2) the accusation or threat to falsely accuse any person of fraud or any crime, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;

(3) false accusations made to another person, including any credit reporting agency, that a consumer has not paid a just debt, or threat to so make such false accusations;

(4) the threat to sell or assign to another the obligation of the consumer with an attending representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to harsh, vindictive, or abusive collection attempts; and

(5) the threat that nonpayment of an alleged claim will result in the arrest of any person.

(d) No creditor or debt collector shall unreasonably oppress, harass, or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another in any of the following ways:

(1) the use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(2) the placement of telephone calls without disclosure of the caller's identity or with the intent to harass or threaten any person at the called number; and

(3) causing expense to any person in the form of long-distance telephone tolls, telegram fees, or other charges incurred by a medium of communication, by concealment of the true purpose of the notice, letter, message, or communication.

(e) No creditor or debt collector shall unreasonably publicize information relating to any alleged indebtedness or debtor in any of the following ways:

(1) the communication of any false information relating to a consumer's indebtedness to any employer or his agent except where such indebtedness had been guaranteed by the employer or the employer has requested the loan giving rise to the indebtedness and except where such communication is in connection with an attachment or execution after judgments as authorized by law;

(2) the disclosure, publication, or communication of false information relating to a consumer's indebtedness to any relative or family member of the consumer unless such person is known to the creditor or debt collector to be a member of the same household as the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;

(3) the disclosure, publication, or communications of any information relating to a consumer's indebtedness by publishing or posting any list of consumers, except for the publication and distribution of "stop lists" to point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through proper legal action, process, or proceeding; and

(4) the use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged claim other than the name, address, and phone number of the creditor or debt collector.

(f) No creditor or debt collector shall use any fraudulent, deceptive, or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers in any of the following ways:

(1) the use of any company name, while engaged in debt collection, other than the creditor or debt collector's true company name;

(2) the failure to clearly disclose in all written communications made to collect or attempt to collect a claim or to obtain or attempt to obtain information about a consumer, that the creditor or debt collector is attempting to collect a claim and that any information obtained will be used for that purpose;

(3) any false representation that the creditor or debt collector has in his possession information or something of value for the consumer, that is made to solicit or discover information about the consumer;

(4) the failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(5) any false representation or implication of the character, extent, or amount of a claim against a consumer, or of its status in any legal proceeding;

(6) any false representation or false implication that any creditor or debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent, or official of the District of Columbia or any agency of the Federal or District government;

(7) the use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval;

(8) any representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and

(9) any false representation or false impression about the status or true nature of or the services rendered by the creditor or debt collector or his business.

(g) No creditor or debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim in any of the following ways:

(1) the seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessities of life where the original obligation was not in fact incurred for such necessities;

(2) the seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(3) the collection or the attempt to collect from the consumer all or any part of the creditor or debt collector's fee or charge for services rendered;

(4) the collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the consumer or unless such interest or incidental fee, charge, or expense is expressly authorized by law; and

(5) any communication with a consumer whenever it appears that the consumer has notified the creditor that he is represented by an attorney and the attorney's name and address are known.

(h) No creditor or debt collector shall use, or distribute, sell, or prepare for use, any written communication that violates or fails to conform to United States postal laws and regulations.

(i) No creditor or debt collector shall take or accept for assignment any of the following:

(1) an assignment of any claim for attorney's fees which have not been lawfully provided for in the writing evidencing the obligation; or

(2) an assignment for collection of any claim upon which suit has been filed or judgment obtained, without the creditor or debt collector first making a reasonable effort to contact the attorney representing the consumer.

(j)(1) Proof, by substantial evidence, that a creditor or debt collector has wilfully violated any provision of the foregoing subsections of this section shall subject such creditor or debt collector to liability to any person affected by such violation for all damages proximately caused by the violation.

(2) Punitive damages may be awarded to any person affected by a wilful violation of the foregoing subsections of this section, when and in such amount as is deemed appropriate by the court and trier of fact.

(k) No creditor, debt collector, or collection agency, or their representatives or agents shall contact consumers by telephone before 8 a.m. and after 9 p.m. EST or EDT, whichever time zone is in effect.

[D.C. Code Ann. § 28-3814 \(West\)](#)

Proposed Legislation: 2019 Washington DC Legislative Bill No. 118, Washington DC Council Period
Twenty-Three DISTRICT OF COLUMBIA BILL TEXTTITLE: Debt Buying Limitation Amendment Act of 2019

VERSION: Introduced

February 05, 2019

Councilmember Cheh

Image 1 within document in PDF format.

SUMMARY: To amend Subchapter I of Chapter 38 of Title 28 of the D.C. Official Code to further prohibit the use of fraudulent, deceptive, or misleading devices or practices to collect a consumer debt, to require the possession of particular information before a debt collector may collect on a consumer debt, to require the debt collector to provide a consumer with a notice pertaining to the debt collection, to impose filing requirements on a debt buyer initiating a cause of action against a consumer, and to establish penalties for a debt buyer that violates the requirements.

TEXT:

Councilmember Mary M. Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Subchapter I of Chapter 38 of Title 28 of the D.C. Official Code to further prohibit the use of fraudulent, deceptive, or misleading devices or practices to collect a consumer debt, to require the possession of particular information before a debt collector may collect on a consumer debt, to require the debt collector to provide a consumer with a notice pertaining to the debt collection, to impose filing requirements on a debt buyer initiating a cause of action against a consumer, and to establish penalties for a debt buyer that violates the requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Debt Buying Limitation Amendment Act of 2019".

Sec. 2. Chapter 38 of Title 28 of the District of Columbia Official Code is amended as follows:

(a) Section 28-3814 is amended as follows:

(1) Subsection (a) is amended by striking the phrase "arising from consumer credit sales, consumer leases, and direct installment loans" and inserting the phrase "arising from any consumer debt" in its place.

(2) Subsection (b) is amended to read as follows:

"(b) As used in this section, the term:

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

"(2) "claim" means an obligation or alleged obligation, arising from a consumer debt;

"(3) "consumer debt" means an obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, goods, 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;

"(4) "creditor" means a claimant or other person holding a claim;

"(5) "debt buyer" means a person or entity that is engaged in the business of purchasing charged-off consumer debt or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third party for collection, including an attorney, in order to collect such debt. A debt buyer is considered a debt collector for all purposes;

"(6) "debt collection" means any action, conduct or practice in connection with the solicitation or collection of claims that are owed or due or are alleged to be owed or due;

"(7) "debt collector" means a person engaging directly or indirectly in debt collection, including a person who sells or offers to sell forms represented to be a collection system, device, or scheme intended or calculated to be used to collect claims; and

"(8) "person" means an individual, corporation, business trust, estate, trust partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity."

(3) Subsection (c) is amended as follows:

(A) The lead-in language is amended by striking the phrase "or attempt to coerce in any of the following ways:" and inserting the phrase "or attempt to coerce in any way, including:" in its place.

(B) Paragraph (2) is amended by striking the phrase "would tend to disgrace such other person or in any way subject him to ridicule, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;" and inserting the phrase "would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;" in its place.

(C) Paragraph (4) is amended as follows:

(i) Strike the phrase "the threat to sell or assign to another the obligation of the consumer with an attending representation" and insert the phrase "the threat to sell or assign to another the consumer debt with an attending representation" in its place.

(ii) Strike the phrase "; and" and insert a semicolon in its place.

(D) Paragraph (5) is amended by striking the period and inserting a semicolon in its place.

(E) New paragraphs (6) and (7) are added to read as follows:

"(6) disclose or threaten to disclose information concerning the existence of a debt known to be disputed by the consumer without disclosing the fact that the debt is disputed by the consumer; and

"(7) disclose or threaten to disclose information affecting the consumer's reputation for credit worthiness with knowledge or reason to know that the information is false."

(4) Subsection (d) is amended as follows:

(A) The lead-in language is amended by striking the phrase "in any of the following ways:" and inserting the phrase "in any way, including" in its place.

(B) Paragraph (2) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(C) Paragraph (3) is amended by striking the period and inserting the phrase "; and" in its place.

(D) A new paragraph (4) is added to read as follows:

"(4) communicate with the consumer or any member of the consumer's family or household with such frequency or in such a manner that can reasonably be expected to abuse or harass the consumer."

(5) Subsection (e) is amended as follows:

(A) The lead-in language is amended by striking the phrase "in any of the following ways:" and inserting the phrase "in any way, including:"

(B) Paragraph (1) is amended by striking the phrase "the communication of any false information" and inserting the phrase "the communication of any information" in its place.

(C) Paragraph (2) is amended by striking the phrase "communication of false information" and inserting the phrase "communication of information" in its place.

(6) The lead-in language of subsection (f) is amended to read as follows:

"(f) No creditor or debt collector shall use any unfair, abusive, harassing, fraudulent, deceptive, or misleading representation, device, or practice to collect a consumer debt or to obtain information concerning consumers in any way, including:"

(7) The lead-in language of subsection (g) is amended by striking the phrase "in any of the following ways" and inserting the phrase "in any way, including:" in its place.

(8) Subsection (j) is amended as follows:

(A) Paragraph (1) is amended as follows:

(i) Strike the phrase "has willfully violated" and insert the phrase "has violated" in its place.

(ii) Strike the phrase "any provision of the foregoing subsections of this section" and insert the phrase "any provision of this section" in its place.

(B) Paragraph (2) is amended by striking the phrase "violation of the foregoing subsections of this section" and inserting the phrase "violation of any provision of this section" in its place.

(9) New subsections (1), (m), (n), (o), and (p) are added to read as follows:

"(1) A violation of the Fair Debt Collection Practices Act, approved September 20, 1977 (91 Stat. 874; 15 U.S.C. § 1692 et seq.), shall constitute a violation of this section.

"(m)(1) No debt collector shall collect or attempt to collect a consumer debt, unless the debt collector is in possession of the following information or documents:

"(A) The name of the current creditor or owner of the consumer debt;

"(B) The original creditor's name at the time of charge-off, if different from the current owner of the consumer debt;

"(C) The original creditor's account number for the consumer at the time of charge-off;

"(D) The principal amount due at charge-off;

"(E) An itemization of interest and fees that accrued before being charged-off, if any, claimed to be owed;

"(F) An itemization of interest and fees that accrued after being charged-off, if any, claimed to be owed and an indication of whether said interest and fees were imposed by the original creditor or any subsequent owners of the consumer debt;

"(G) The date that the consumer debt was incurred; provided, that in the case of a revolving credit account, the date that the consumer debt was incurred shall be the last extension of credit made for the purchase of goods or services, for the lease of goods, or as a loan of money;

"(H) The date and amount of the last payment, if applicable; and

"(I) The names of all persons or entities that owned the consumer debt after the original creditor, if applicable, and the date of each sale or transfer.

"(2) A debt collector shall provide the information or documents identified in paragraph (1) of this subsection to the consumer in writing within 5 days after the initial communication with the consumer and shall cease all collection of the consumer debt until such information is provided.

"(3) No debt collector shall initiate a cause of action to collect a consumer debt when the debt collector knows or reasonably should know that the applicable statute of limitations period has expired."

"(4) Notwithstanding any other provision of law, when the applicable statute of limitations period expires, any subsequent payment toward or written or oral affirmation of such consumer debt shall not extend the limitations period."

"(n)(1) No debt buyer shall collect, attempt to collect, or initiate a cause of action to collect a consumer debt when the debt buyer knows or reasonably should know that the applicable statute of limitations period has expired.

(2) No debt buyer shall collect, attempt to collect, or initiate a cause of action to collect a consumer debt, unless the debt buyer is in possession of the following information or documents:

"(A) Documentation establishing the information identified in subsection (m)(1) of this section;

"(B) Documentation establishing that the debt buyer is the owner of the specific consumer debt at issue; and

"(C) A copy of the contract, application, or other writing evidencing the consumer's agreement to the consumer debt containing the consumer's signature, subject to the following exceptions:

"(i) Should the consumer debt arise from a revolving credit account and no signed document evidencing the consumer debt ever existed, then the debt buyer shall provide copies of the most recent monthly statement recording a purchase transaction, service billed, last payment, or balance transfer and monthly statements from the 11 months immediately preceding the most recent statement; and

"(ii) For all other transactions where a signature is not required, the debt buyer shall provide other documentation evidencing the consumer's agreement to the consumer debt.

"(3)(A) A debt buyer shall provide the documents identified in paragraph (1) of this subsection to the consumer without charge within 15 days of receipt of a consumer's request for documentation regarding the consumer debt or proof of the consumer debt.

"(B) If the debt buyer cannot provide the documents within 15 days, the debt buyer shall cease all collection of the consumer debt until the debt buyer provides the consumer the documents described in paragraph (1) of this subsection.

"(o)(1) In its first written communication with a consumer, a debt buyer shall include a separate, prominent notice in a font of at least 12-point type stating the following:

"You may request records demonstrating the following: (1) that [insert name of debt "buyer"] is the current owner of the debt and has the right to seek collection of the debt; (2) the "debt balance, including an explanation of any interest charges and additional fees; (3) the date "of default or the date of the last payment; (4) the name of the charge-off creditor and the "account number associated with

the debt; (5) the name and last known address of the debtor as "it appeared in the charge-off creditor's or debt buyer's records prior to the sale of the debt; and "(6) the names of all persons or entities that have purchased the debt. You may also request from "us a copy of the contract or other document evidencing your agreement to the debt. A request "for these records may be addressed to: [insert debt buyer's active mailing address and email "address, if applicable]."

"(2) If a language other than English is principally used by the debt buyer in the initial verbal contact with the consumer, the notices required by this section shall be provided to the consumer in that language.

"(p)(1) A debt collector who enters into a payment schedule or settlement agreement regarding a consumer debt shall provide a written copy of the payment schedule or settlement agreement to the consumer within 15 days.

"(2) A consumer shall not be required to make a payment on a payment schedule or settlement agreement until the written agreement required by paragraph (1) of this subsection has been provided by the debt collector."

(b) The table of contents is amended by adding a new section designation to read as follows:

"28-3814a. Debt buyer; causes of action."

(c) A new section 28-3814a is added to read as follows:

"§ 28-3814a. Debt buyer; causes of action.

"(a) For purposes of this section, the terms "consumer debt," "debt buyer," "debt collection," and "debt collector" shall have the same meaning as provided in §28-3814(b).

"(b) In a cause of action initiated by a debt buyer to collect a consumer debt, the debt buyer shall allege the following information in the complaint or statement of claim:

"(1) A short and plain statement of the type of consumer debt;

"(2) The information enumerated in § 28-3814(m)(1);

"(3) The basis for any interest and fees charged;

"(4) The basis for the request of attorney's fees, if applicable;

"(5) That the debt buyer is the current owner of the consumer debt and a chronological listing of the names of all prior owners of the consumer debt and the date of each transfer of ownership, beginning with the original creditor; and

"(6) That the suit is filed within the applicable statute of limitations period;

"(c) In a cause of action initiated by a debt buyer to collect a consumer debt, the debt buyer shall attach all of the following materials in the complaint or statement of claim:

"(1) Documentation to establish the information required in § 28-3814(m)(1);

"(2) Documentation to establish the information required in § 28-3814(n)(1)(C); and

"(3) A copy of the bill of sale or other writing establishing that the debt buyer is the owner of the consumer debt; provided, that if the consumer debt has transferred ownership more than once, a copy of each bill of sale or other writing establishing transfer of ownership of the consumer debt shall be attached; provided, further that each bill of sale or other writing evidencing transfer of ownership shall contain the original creditor's account number of the consumer debt purchased and must clearly show the consumer's name associated with that account number.

"(d)(1) In a cause of action initiated by a debt buyer to collect on a consumer debt where the defendant's income includes income exempt from garnishment under federal or state law, or the settlement agreement requires the defendant to make payments from disposable wages in amounts more than what

is allowable under § 16-572, the court shall not approve a settlement agreement subject to this subsection, unless the defendant has:

"(A) Been informed of the nature of the protected income;

"(B) Affirmed that he or she understands that some or all of such protected income may be included in the settlement agreement; and

"(C) Affirmed that they have the ability to make the settlement payments.

"(2) The requirements of paragraph (1) of this subsection shall be satisfied by an affidavit or other form signed by the defendant.

"(e) If the defendant appears for trial on the scheduled trial date and the debt buyer either fails to appear or is not prepared to proceed with trial, and the court does not find good cause for a continuance, the court shall dismiss the action with prejudice and may award the defendant reasonable attorney's fees and costs incurred in defending the action and preparing for trial, including lost wages and transportation expenses.

"(f) In a cause of action initiated by a debt buyer to collect a consumer debt, before entry of a judgment or order against a defendant, the debt buyer shall file with the court:

"(1) A statement of compliance with subsections (b) and (c) of this section;

"(2) Authenticated business records that establish the information and documentation required under subsections (b) and (c) of this section;

"(3) An authenticated copy of the terms and conditions that apply to the consumer's account and establish the basis for the interest and fees claimed;

"(4) An affidavit executed by the debt buyer's counsel affirming that the statute of limitations period has not expired and providing the factual and legal basis for such affirmation; and

"(5) Notwithstanding any other provision of law, if attorney's fees are sought pursuant to a valid contract, an authenticated copy of the contract evidencing the debt buyer's entitlement to attorney's fees.

"(g) In a cause of action initiated by a debt buyer to collect a consumer debt, if a debt buyer seeks a judgment or order against the defendant and has not complied with the requirements of this section, the court shall dismiss the action with prejudice.

"(h) If the debt buyer is the prevailing party in an action to collect a consumer debt, interest on the judgment shall be determined by the rate agreed upon in the original contract; provided, that the interest rate shall not exceed an annual rate of 2%.

"(i) A debt buyer that violates any provision of this section with respect to a consumer shall be liable to the consumer for the following:

"(1) Actual damages;

"(2) Costs and reasonable attorney's fees;

"(3) Punitive damages;

"(4) If the consumer is an individual, the court may award an additional penalty in an amount not less than \$500 per violation and not to exceed \$4,000 per violation;

"(5) In the case of a class action, the amount for each named plaintiff as could be recovered under paragraph (1) of this subsection and an amount as the court may determine for each class member, not exceeding the amount per person that could be recovered under paragraph (2) of this subsection; and

"(6) Any other relief which the court determines proper.

"(j) If a debt buyer violates this section, neither the debt buyer nor any other person or entity who may legally seek to collect on the consumer debt shall be allowed to collect the amount of the original claim or

consumer debt or any interest, service charge, attorney's fees, collection costs, delinquency charge, or any other fees or charges legally chargeable to the consumer on such consumer debt.

"(k) A cause of action against a debt buyer, pursuant to this section, shall be brought within 4 years after the date on which the violation occurs."

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813, D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

[2019 Washington DC Legislative Bill No. 118, Washington DC Council Period Twenty-Three, 2019 Washington DC Legislative Bill No. 118, Washington DC Council Period Twenty-Three](#)

Florida

559.72. Prohibited practices generally

In collecting consumer debts, no person shall:

- (1) Simulate in any manner a law enforcement officer or a representative of any governmental agency.
- (2) Use or threaten force or violence.
- (3) Tell a debtor who disputes a consumer debt that she or he or any person employing her or him will disclose to another, orally or in writing, directly or indirectly, information affecting the debtor's reputation for credit worthiness without also informing the debtor that the existence of the dispute will also be disclosed as required by subsection (6).
- (4) Communicate or threaten to communicate with a debtor's employer before obtaining final judgment against the debtor, unless the debtor gives her or his permission in writing to contact her or his employer or acknowledges in writing the existence of the debt after the debt has been placed for collection. However, this does not prohibit a person from telling the debtor that her or his employer will be contacted if a final judgment is obtained.
- (5) Disclose to a person other than the debtor or her or his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false.
- (6) Disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing that fact. If a disclosure is made before such dispute has been asserted and written notice is received from the debtor that any part of the debt is disputed, and if such dispute is reasonable, the person who made the original disclosure must reveal upon the request of the debtor within 30 days the details of the dispute to each person to whom disclosure of the debt without notice of the dispute was made within the preceding 90 days.

- (7) Willfully communicate with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family.
- (8) Use profane, obscene, vulgar, or willfully abusive language in communicating with the debtor or any member of her or his family.
- (9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.
- (10) Use a communication that simulates in any manner legal or judicial process or that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law, when it is not.
- (11) Communicate with a debtor under the guise of an attorney by using the stationery of an attorney or forms or instruments that only attorneys are authorized to prepare.
- (12) Orally communicate with a debtor in a manner that gives the false impression or appearance that such person is or is associated with an attorney.
- (13) Advertise or threaten to advertise for sale any debt as a means to enforce payment except under court order or when acting as an assignee for the benefit of a creditor.
- (14) Publish or post, threaten to publish or post, or cause to be published or posted before the general public individual names or any list of names of debtors, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer debts.
- (15) Refuse to provide adequate identification of herself or himself or her or his employer or other entity whom she or he represents if requested to do so by a debtor from whom she or he is collecting or attempting to collect a consumer debt.
- (16) Mail any communication to a debtor in an envelope or postcard with words typed, written, or printed on the outside of the envelope or postcard calculated to embarrass the debtor. An example of this would be an envelope addressed to "Deadbeat, Jane Doe" or "Deadbeat, John Doe."
- (17) Communicate with the debtor between the hours of 9 p.m. and 8 a.m. in the debtor's time zone without the prior consent of the debtor.
- (a) The person may presume that the time a telephone call is received conforms to the local time zone assigned to the area code of the number called, unless the person reasonably believes that the debtor's telephone is located in a different time zone.
- (b) If, such as with toll-free numbers, an area code is not assigned to a specific geographic area, the person may presume that the time a telephone call is received conforms to the local time zone of the debtor's last known place of residence, unless the person reasonably believes that the debtor's telephone is located in a different time zone.
- (18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication.
- (19) Cause a debtor to be charged for communications by concealing the true purpose of the communication, including collect telephone calls and telegram fees.

[Fla. Stat. Ann. § 559.72 \(West\)](#)

Georgia Guam Hawaii

[§ 480D-3]. Prohibited practices

It shall be a prohibited practice for any debt collector to engage in any of the following practices while collecting a consumer debt:

- (1) To threaten the use of violence or other criminal means to cause harm to the physical person, reputation, or property of any person;
- (2) To falsely accuse or threaten to falsely accuse any person of fraud or any other criminal conduct;
- (3) To make false accusations or threaten to make false accusations, to another person, including any credit reporting agency, that a debt has not been paid;
- (4) To threaten that nonpayment of a debt will result in the arrest of any person;
- (5) To threaten to turn over the collection of the debt to a person who will engage in practices prohibited by this section;
- (6) To threaten to sell or assign the debt with statements that, or implying that, the sale or assignment will cause the debtor to lose a defense or legal right as a result of the sale or assignment;
- (7) To use profane or obscene language that is intended to abuse the hearer or reader;
- (8) To disclose, publish, or communicate any false and material information relating to the indebtedness;
- (9) To represent that an existing obligation may be increased by attorney's fees, investigation fees, service fees, and other fees or charges when in fact the fees or charges may not legally be added to the existing obligations;
- (10) To seek or obtain any statement or acknowledgment that the debt was incurred for necessities of life when in fact the debt was not so incurred; or
- (11) To collect or attempt to collect any interest, charge, fee, or expense incidental to the debt unless the additions are authorized by the agreement or by law.

[Haw. Rev. Stat. Ann. § 480D-3 \(West\)](#)

Idaho

Illinois

425/1a. Declaration of public policy

§ 1a. Declaration of public policy. The practice as a collection agency by any entity in the State of Illinois is hereby declared to affect the public health, safety and welfare and to be subject to regulation and

control in the public interest. It is further declared to be a matter of public interest and concern that the collection agency profession merit and receive the confidence of the public and that only qualified entities be permitted to practice as a collection agency in the State of Illinois. This Act shall be liberally construed to carry out these objects and purposes.

It is further declared to be the public policy of this State to protect consumers against debt collection abuse.

[225 Ill. Comp. Stat. Ann. 425/1a](#)



[§ 17-5. Deceptive collection practices.](#)

A collection agency as defined in the Collection Agency Act¹ or any employee of such collection agency commits a deceptive collection practice when, with the intent to collect a debt owed to an individual or a corporation or other entity, he, she, or it does any of the following:

- (a) Represents falsely that he or she is an attorney, a policeman, a sheriff or deputy sheriff, a bailiff, a county clerk or employee of a county clerk's office, or any other person who by statute is authorized to enforce the law or any order of a court.
- (b) While attempting to collect an alleged debt, misrepresents to the alleged debtor or to his or her immediate family the corporate, partnership or proprietary name or other trade or business name under which the debt collector is engaging in debt collections and which he, she, or it is legally authorized to use.
- (c) While attempting to collect an alleged debt, adds to the debt any service charge, interest or penalty which he, she, or it is not entitled by law to add.
- (d) Threatens to ruin, destroy, or otherwise adversely affect an alleged debtor's credit rating unless, at the same time, a disclosure is made in accordance with federal law that the alleged debtor has a right to inspect his or her credit rating.
- (e) Accepts from an alleged debtor a payment which he, she, or it knows is not owed.

Sentence. The commission of a deceptive collection practice is a Business Offense punishable by a fine not to exceed \$3,000.

[720 Ill. Comp. Stat. Ann. 5/17-5](#)

Rule 280. Applicability

A civil action is subject to the requirements of this Part if the complaint contains any claim originating from a credit card or by a debt buyer attempting to collect a consumer debt.

[IL R S CT Rule 280](#)

Modified Rule 280.2

<< IL R S CT Rule 280.2 >>

Rule 280.2. Complaint in Credit Card or Debt Buyer Collection Actions.

In addition to the requirements set forth in Rules 131 and 282(a), the complaint in a credit card or debt buyer collection actions shall:

- (a) Print the name of the person who signs the complaint under the signature line;
- (b) Attach a completed Credit Card or Debt Buyer Collection Affidavit, prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix;
- (c) In addition to the affidavit, the plaintiff shall attach one of the following to the complaint:
 - (1) The written contract giving rise to the debt that is the subject of the complaint (the "Consumer Debt"); or
 - (2) If the case is based on an unwritten contract, a copy of a document provided to the consumer while the account was active, demonstrating that the consumer debt was incurred by the consumer. For a revolving credit account, a statement reflecting the charge-off balance shall be deemed sufficient to satisfy this requirement. The statement reflecting the charge-off balance will not reflect any post-charge-off payments or credits by or to the charge-off creditor, the debt buyer, or their attorneys.
- (d) Include a statement that the suit is filed within a relevant statute of limitations; and
- (e) Have the Credit Card or Debt Buyer Collection Affidavit signed by the plaintiff or the plaintiff's designated agent. For purposes of this Rule, the attorney for the plaintiff may not sign the affidavit on behalf of the plaintiff or plaintiff's designated agent.

Credits

Adopted June 8, 2018, eff. Oct. 1, 2018; amended July 19, 2019, eff. Nov. 1, 2019.

Modified Article II Forms Appendix

<< IL R S CT App. 280.2 >>

Rule 280.2. Complaint in Credit Card or Debt Buyer Collection Actions.

)

Plaintiff

)

)

v.

)

CASE NUMBER: _____

)

)

Defendant

)

CREDIT CARD OR DEBT BUYER COLLECTION ACTION AFFIDAVIT
(SUPREME COURT RULE 280.2)

INSTRUCTIONS: Provide the following information. Supreme Court Rule 280.1 provides the definitions of the terms in this Affidavit.

Comes now affiant, and states:

I am a designated Agent 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 Plaintiffs business and/or my personal knowledge:

1. IDENTIFICATION ABOUT THE CONSUMER DEBT OR ACCOUNT

Complete the tables.

a. As of charge-off date:

Full name of the creditor

Full name of the defendant as it appears on the account

Last four digits of the account number

Date the account was opened or the debt originated

Nature of the debt, (credit card debt, payday loan, retail installment loan, etc.)

b. The most recent activity on the account prior to or after charge-off, includes:

Charge-off

Balance

Charge-off Date

Date of Last Payment*

Amount of Last Payment

Total Amount of Credits and/or Payments Since Charge-off Date**

c. For a revolving credit account. Plaintiff further certifies that it has in its possession and can produce on request the most recent monthly statement recording a purchase, transaction, last payment, or balance transfer.

2. PROOF OF OWNERSHIP OR RIGHT TO SUE FOR DEBT BUYERS

Complete the table and list the prior owners or creditors since the charge-off date. Start with the first assignment through the current creditor or owner of the consumer debt. List in chronological order, beginning with the first assignment:

From (Name)

To (Name)

Date of Assignment (On or About)

Does not apply—Plaintiff is the charge-off creditor.

3. ADDITIONAL ACCOUNT INFORMATION AFTER CHARGE-OFF

Plaintiff is seeking additional amounts after the charge-off date:

No*

Yes

Total amount of interest accrued: \$ _____;

Total amount of non-interest charges or fee accrued \$ _____;

Plaintiff is seeking attorney's fees in the amount of \$ _____.

Balance due and owing as of date of affidavit:

\$

*Costs prayed for in the Complaint will not be reflected.

Affiants may certify their statements pursuant to section 1–109 of the Code of Civil Procedure or have their signature notarized in the manner required by law.

Under penalties as provided by law under section 1–109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that [s]he verily believes the same to be true.

Name of Affiant

Signature of Affiant

Date

IL ORDER 19-0022

Footnotes

*

Last payment on the account, pre- or post-charge-off.

**

Credits or payments made within 30 days of the signing of this affidavit may not be reflected.

[2019 ILLINOIS COURT ORDER 0022 \(C.O. 0022\)](#)

Rule 280.4. Consequences for Non-Compliance

If the plaintiff fails to comply with the requirements of this Part, the court may not enter a default judgment, and the court, on motion or on its own initiative, may dismiss the complaint.

Indiana
Iowa
Kansas
Kentucky

CR 5.02 Service; how made

(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, which shall not include a warning order attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Except as provided in paragraph (2) of this rule, service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the last known address of such person; or, if no address is known, by leaving it with the clerk of the court. **Service is complete upon mailing unless the serving party learns or has reason to know that it did not reach the person to be served.** Delivery of a copy within this rule means handing it to the attorney or to a party; or leaving it at the office of the attorney or party with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(2) An attorney or party may elect to effectuate and receive service via electronic means to and from all other attorneys or parties in the action by filing a notice of such election with the clerk and serving a copy of such election by personal delivery or by mail as provided for in paragraph (1) of this rule, except that such notice may be sent electronically to any other party or attorney who has already filed and served a notice of election of electronic service hereunder. The notice must include the electronic notification address at which the attorney or party agrees to accept service. Methods of electronic service that may be elected under this rule include electronic mail or telecopy (facsimile). Documents sent through electronic mail shall be sent as an attachment in PDF or similar format unless otherwise agreed by the parties. Once an attorney or party files a notice of election of electronic service and serves the notice on all other attorneys or parties in the case, all other attorneys or parties shall promptly provide the requesting party or attorney with an electronic notification address at which the other attorneys or parties may be served, and shall thereafter serve the requesting attorney or party through electronic means whenever service of a document is required by these rules. Upon motion of an attorney or party and for good cause shown, the court may relieve the attorney or party of the obligation to make or receive service by electronic means. Unrepresented parties who are unable to utilize electronic service methods may continue to serve all other attorneys or parties through any method permitted by these rules. Electronic service of documents that are filed with the clerk shall be made on or before the day they are filed. Service is complete upon electronic transmission, but electronic transmission is not effective if the serving party learns or has reason to know that it did not reach the person to be served. When documents are too large or numerous to be processed electronically by the sender or recipient, the serving attorney or party shall serve them by mail or personal delivery. The signature of an attorney or party on a document served by electronic mail may be

represented by “/s/” followed by the typed name of the person signing the document or by a scanned version of an original signature. Signature in such manner is equivalent to a hand-signed original signature for all purposes under these Rules.

[Ky. R. Civ. P. 5.02](#)

CR 55.01 Judgment

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply to the court therefor. If the party against whom judgment by default is sought has appeared in the action, he, or if appearing by representative, his representative shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. The motion for judgment against a party in default for failure to appear shall be accompanied by a certificate of the attorney that no papers have been served on him by the party in default. If, in order to enable the court to enter judgment or to carry it into effect, it is 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, without a jury, shall conduct such hearings or order such references as it deems necessary and proper, unless a jury is demanded by a party entitled thereto or is mandatory by statute or by the Constitution. A party in default for failure to appear shall be deemed to have waived his right of trial by jury.

[Ky. R. Civ. P. 55.01](#)

Rule 408 Default Judgments

(a) Motions for Default Judgment shall not be set for hearing and will be considered by the court without the necessity of counsel for movant or *pro se* movant appearing before the court.

(b) All motions for Default Judgment in claims involving a liquidated amount shall be accompanied by a Default Judgment Certificate as follows:

DEFAULT JUDGMENT CERTIFICATE

Plaintiff, by counsel, certifies that:

- 1) No papers have been served on plaintiff's counsel by the defendant(s) in default.
- 2) Defendant(s) were served on _____.
- 3) The balance due the plaintiff is as follows:

- a) The amount of the original obligation is \$____.
- b) The amount paid by defendant(s) to be deducted from the original obligation is \$____.
- c) If the obligation contains pre-computed interest, and other pre-computed charges, the amount to be deducted by statute is \$____.
- d) The balance due from defendant(s) is \$____.
- e) If the balance due on line “d” above is different from the amount sought in the Default Judgment, the reason is: _____.

[KY R WARREN CIR CT Rule 408](#)



Rule 205

Motions for default judgment shall be noticed for a hearing on a date certain, with notice to the defendant. Any motion not accompanied by notice of date for hearing, shall be summarily overruled except for good cause shown. All motions for default judgment shall be accompanied by a default judgment certificate as follows:

Default Judgment Certificate

Plaintiff, by counsel, certifies that:

1. No papers have been served on plaintiff's counsel by the defendant(s) in default.
2. Defendant(s) were served on _____.
3. The balance is due as follows:
 - a. The amount of the original obligations is \$____.
 - b. The amount paid by defendant(s) to be deducted from the original obligations is \$____.
 - c. If the obligation contained precomputed interest and other precomputed charges, the amount to be deducted pursuant to statute is \$____.
 - d. The balance due from defendant(s) is \$____.
 - e. If the balance due on line d is different from the amount sought in the default judgment, the reason is: _____.
4. Affidavit as to military status of defendant(s).

5. All claims for liquidated damages shall be supported by sufficient written documentation to establish that the amount claimed is accurate, including but not limited to the following proof:

- a. If the basis of plaintiff's claim is a promissory note, the original note, a duplicate original or a photostatic copy, if not previously filed.
- b. If the basis of the plaintiff's claim is property damage to an automobile, a copy of the repair estimate or other document evidencing the damages sought, if not previously filed. If none available, a statement as to the reasons for non-availability.
- c. If the basis of plaintiff's claim is a debt owed on a sale of product or services provided, a copy of an account ledger, billing record or other document evidencing the indebtedness claimed, if not previously filed.

[KY R JOHNSON DIST CT Rule 205](#)

[Kentucky Handbook Series, Kentucky Collections](#)

[§ 5:1. Generally, Ky. Collections § 5:1 \(2019 ed.\)](#)

Louisiana

[LSA-C.C.P. Art. 1702](#)

Art. 1702. Confirmation of preliminary default

A. A preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to the entry of a final default judgment. The court may permit documentary evidence to be filed in the record in any electronically stored format authorized by the local rules of the district court or approved by the clerk of the district court for receipt of evidence. If no answer or other pleading is filed timely, this confirmation may be made after two days, exclusive of holidays, from the entry of the preliminary default. When a preliminary default has been entered against a party that is in default after having made an appearance of record in the case, notice of the date of the entry of the preliminary default must be sent by certified mail by the party obtaining the preliminary default to counsel of record for the party in default, or if there is no counsel of record, to the party in default, at least seven days, exclusive of holidays, before confirmation of the preliminary default.

B. (1) When a demand is based upon a conventional obligation, affidavits and exhibits annexed thereto which contain facts sufficient to establish a prima facie case shall be admissible, self-authenticating, and sufficient proof of such demand. The court may, under the circumstances of the case, require additional evidence in the form of oral testimony before entering a final default judgment.

(2) When a demand is based upon a delictual obligation, the testimony of the plaintiff with corroborating evidence, which may be by affidavits and exhibits annexed thereto which contain facts sufficient to establish a prima facie case, shall be admissible, self-authenticating, and sufficient proof of such demand. The court may, under the circumstances of the case, require additional evidence in the form of oral testimony before entering a final default judgment.

(3) When the sum due is on an open account or a promissory note or other negotiable instrument, an affidavit of the correctness thereof shall be prima facie proof. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

C. In those proceedings in which the sum due is on an open account or a promissory note, other negotiable instrument, or other conventional obligation, or a deficiency judgment derived therefrom, including those proceedings in which one or more mortgages, pledges, or other security for the open account, promissory note, negotiable instrument, conventional obligation, or deficiency judgment derived therefrom is sought to be enforced, maintained, or recognized, or in which the amount sought is that authorized by R.S. 9:2782 for a check dishonored for nonsufficient funds, a hearing in open court shall not be required unless the judge, in his discretion, directs that such a hearing be held. The plaintiff shall submit to the court the proof required by law and the original and not less than one copy of the proposed final default judgment. The judge shall, within seventy-two hours of receipt of such submission from the clerk of court, sign the proposed final default judgment or direct that a hearing be held. The clerk of court shall certify that no answer or other pleading has been filed by the defendant. The minute clerk shall make an entry showing the dates of receipt of proof, review of the record, and rendition of the final default judgment. A certified copy of the signed final default judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing of the final default judgment shall be given as provided in Article 1913.

D. When the demand is based upon a claim for a personal injury, a sworn narrative report of the treating physician or dentist may be offered in lieu of his testimony.

E. Notwithstanding any other provisions of law to the contrary, when the demand is for divorce under Civil Code Article 103(1) or (5), whether or not the demand contains a claim for relief incidental or ancillary thereto, a hearing in open court shall not be required unless the judge, in his discretion, directs that a hearing be held. The plaintiff shall submit to the court an affidavit specifically attesting to and testifying as to the truth of all of the factual allegations contained in the petition, the original and not less than one copy of the proposed final judgment, and a certification which shall indicate the type of service made on the defendant, the date of service, the date a preliminary default was entered, and a certification by the clerk that the record was examined by the clerk, including the date of the examination, and a statement that no answer or other pleading has been filed. If the demand is for divorce under Civil Code Article 103(5), a certified copy of the protective order or injunction rendered after a contradictory hearing or consent decree shall also be submitted to the court. If no answer or other pleading has been filed by the defendant, the judge shall, after two days, exclusive of holidays, of entry of a preliminary default, review the affidavit, proposed final default judgment, and certification,

render and sign the proposed final default judgment, or direct that a hearing be held. The minutes shall reflect rendition and signing of the final default judgment.

[La. Code Civ. Proc. Ann. Art. 1702](#)

[Art. 1702.1. Confirmation of preliminary default without hearing in open court; required information; certifications](#)

A. When the plaintiff seeks to confirm a preliminary default without appearing for a hearing in open court as provided in Article 1702(B)(1) and (C), along with any proof required by law, he or his attorney shall include in an itemized form with a written motion for confirmation of preliminary default and proposed final default judgment a certification that the suit is on an open account, promissory note, or other negotiable instrument, on a conventional obligation, or on a check dishonored for nonsufficient funds, and that the necessary invoices and affidavit, note and affidavit, or check or certified reproduction thereof are attached. If attorney fees are sought under R.S. 9:2781 or 2782, the attorney shall certify that fact and the fact that the number of days required by R.S. 9:2781(A) or 2782(A), respectively, have elapsed since demand was made upon the defendant.

B. The certification shall indicate the type of service made on the defendant, the date of service, and the date a preliminary default was entered, and shall also include a certification by the clerk that the record was examined by the clerk, including therein the date of the examination and a statement that no answer or other pleading has been filed within the time prescribed by law or by the court.

[La. Code Civ. Proc. Ann. Art. 1702.1](#)

[LSA-C.C.P. Art. 1703](#)

Art. 1703. Scope of judgment

A final default judgment shall not be different in kind from that demanded in the petition. The amount of damages awarded shall be the amount proven to be properly due as a remedy.

Maine

32 M.R.S.A. § 11013

Effective: August 1, 2018

§ 11013. Prohibited practices

1. Harassment or abuse. A debt collector may not engage in any conduct, the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

- A.** The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person;
- B.** The use of obscene or profane language, or language the natural consequence of which is to abuse the hearer or reader;
- C.** The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of Title 10, chapter 209-B;¹
- D.** The advertisement for sale of any debt to coerce payment of the debt;
- E.** Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass any person at the called number;
- F.** Except as provided in section 11011, the placement of telephone calls without meaningful disclosure of the caller's identity; and
- G.** The use of "shame cards," "shame automobiles" or similar devices.

2. False or misleading representations. A debt collector may not use any false, deceptive or misleading representation or means in connection with the collection of any debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

- A.** The false representation or implication that the debt collector is vouched for, bonded by or affiliated with the United States or any state, including the use of any badge, uniform, seal, insignia or facsimile;
- B.** The false representation of:
 - (1)** The character, amount or legal status of any debt; or
 - (2)** Any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt;
- C.** The false representation or implication that any individual is an attorney or that any communication is from an attorney;
- D.** The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment or sale of any property or wages of any person, unless that action is lawful and the debt collector or creditor intends to take that action;

- E.** The threat to take any action that may not legally be taken or that is not intended to be taken;
- F.** The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the consumer to:
 - (1)** Lose any claim or defense to payment of the debt; or
 - (2)** Become subject to any practice prohibited by this Act or the Maine Consumer Credit Code, Title 9-A;
- G.** The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer;
- H.** Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed;
- I.** The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by any court, official or agency of the United States or any state, or which creates a false impression as to its source, authorization or approval;
- J.** The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;
- K.** Repealed. Laws 1997, c. 155, § D-1.
- K-1.** The failure to disclose in the initial written communication with the consumer and, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph does not apply to a formal pleading made in connection with a legal action;
- L.** The false representation or implication that accounts have been turned over to innocent purchasers for value;
- M.** The false representation or implication that documents are legal process;
- N.** The use of any business, company or organization name other than the true name of the debt collector's business, company or organization;
- O.** The false representation or implication that documents are not legal process forms or do not require action by the consumer; or
- P.** The false representation or implication that a debt collector operates or is employed by a consumer reporting agency, as defined by Title 10, section 1308, subsection 3.
- 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;
 - B.** The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than 5 days, unless that person is notified in writing of the debt collector's intent to deposit that check or instrument not more than 10 nor less than 3 business days prior to the deposit;
 - C.** The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;
 - D.** Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on the check or instrument;

E. Causing charges to be made to any person for communications by concealment of the true purpose of the communication. These charges include, but are not limited to, collect telephone calls and telegram fees;

F. Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(1) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(2) There is no present intention to take possession of the property; or

(3) The property is exempt by law from the dispossession or disablement;

G. Communicating with a consumer regarding a debt by postcard;

H. Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if that name does not indicate that he is in the debt collection business;

I. Using or employing notaries public, constables, sheriffs or any other officer authorized to serve legal papers in the collection of a claim;

J. Exercising authority on behalf of a creditor to employ the services of lawyers, unless the creditor has specifically authorized the agency in writing to do so and the debt collector's course of conduct is at all times consistent with the true relationship of attorney and client between the lawyer and the creditor, such that the debt collector will not demand or obtain in any manner a share of the compensation for services performed by a lawyer in collecting a claim;

K. Failing to return any claim or claims upon written request of the creditor, claimant or forwarder after the tender of such amounts, if any, as may be due and owing to the debt collector, or refusing or intentionally failing to account to its clients for all money collected within 30 days from the last day of the month in which the money is collected or refusing, or intentionally failing, to return to the creditor all valuable papers deposited with a claim when that claim is returned;

L. Commingling money collected for a creditor with the debt collector's own funds or using any part of a creditor's money in the conduct of the debt collector's business;

M. Engaging in the business of lending money to any person or contacting any person for the purpose of securing a loan for any person with which to pay any claim left with it for collection, or recommending any person or persons as a source of funds to pay any such claim; or

N. Threatening to bring legal action in the debt collector's own name or instituting a suit on behalf of others or furnishing legal advice, except that a debt collector who is also an attorney may bring an action under this paragraph in the name of the creditor in any division or county permitted by 15 United States Code, Section 1692i and may furnish legal advice to the creditor with respect to a debt.

4. Reporting to consumer reporting agency. A debt collector may not report solely in its own name any credit or debt information to a consumer reporting agency, as defined by Title 10, section 1308, subsection 3.

5. Reporting certain unpaid medical expenses; court or administrative orders. A debt collector may not report to a consumer reporting agency any credit or debt information regarding overdue medical expenses owed by a parent for a minor child if the debt collector is notified orally or in writing of the existence of a court order or administrative order identifying another person as the party responsible for payment of medical expenses for that minor child. In addition, a report may not be made until after the debt collector has notified, or made a good faith effort to notify, the responsible party of that party's obligation to pay the overdue medical expenses. The debt collector may request reasonable verification of the order, including requesting a certified copy of the order.

6. Written requirement for payment schedule or settlement agreement. A debt collector may not enter into a payment schedule or settlement agreement regarding a debt unless the payment schedule or settlement agreement is either documented in open court, approved by the court and included in a court order or otherwise reduced to writing. If a payment schedule or settlement agreement is not included in a court order, the debt collector shall provide a written copy of the payment schedule or settlement agreement to the consumer within 10 business days of entering into the payment schedule or settlement agreement and the consumer need not make a payment on the payment schedule or settlement agreement until the written copy has been provided in accordance with this subsection.

7. Acting on time-barred debt. A debt collector may not initiate a collection action when the debt collector knows or reasonably should know that the collection action is barred by the limitations period as set forth in subsection 8.

8. Limitations period for debt collectors. A debt collector may not commence a collection action more than 6 years after the date of the consumer's last activity on the debt. This limitations period applies notwithstanding any other applicable statute of limitations, unless a shorter limitations period is provided under the laws of this State. Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period.

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.

10. Transfer of ownership of certain debts. A debt buyer may not sell or otherwise transfer ownership of:

- A.** A debt without the information and documentation required pursuant to subsection 9; or

B. A resolved debt, an interest in a resolved debt or any financial information relating to a resolved debt.

Me. Rev. Stat. tit. 32, § 11013

[https://www.westlaw.com/Document/ND91B40D15E1B11E8911880B8173A9115/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/ND91B40D15E1B11E8911880B8173A9115/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)



§ 11014. Validation of debts

1. Written notice. Within 5 days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing:

A. The amount of the debt;

B. The name of the creditor to whom the debt is owed;

C. A statement that unless the consumer, within 30 days after receipt of the notice, disputes the validity of the debt or any portion of the debt, the debt will be assumed to be valid by the debt collector;

D. A statement that if the consumer notifies the debt collector in writing within the 30-day period that the debt, or any portion of the debt, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of the verification or judgment will be mailed to the consumer by the debt collector; and

E. A statement that, upon the consumer's written request within the 30-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

2. Cease collection. If the consumer notifies the debt collector in writing within the 30-day period described in subsection 1 that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt or any disputed portion of the debt, until the debt collector obtains verification of the debt or a copy of the judgment, or the name and address of the original creditor, and a copy of the verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

2-A. Economic abuse. If the consumer provides documentation to the debt collector as set forth in Title 14, section 6001, subsection 6, paragraph H that the debt or any portion of the debt is the result of economic abuse as defined in Title 19-A, section 4002, subsection 3-B, the debt collector shall cease collection of the debt or any disputed portion of the debt owed by the consumer subjected to economic abuse.

3. Liability. The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

[Me. Rev. Stat. tit. 32, § 11014](#)

§ 11019. Collection action by debt buyer

1. Complaint; required allegations. A debt buyer may not initiate a collection action against a consumer, including an action brought in small claims court pursuant to Title 14, chapter 738, 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 fee' are sought under contract, a copy admissible under the Maine Rules of Evidence of the contract evidencing entitlement to attorney's fee'.

Maryland

§ 5-1203. Consumer debt collection action

- (c) **Initiation of actia**) 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.

Required documents

(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.

[Md. Code Ann., Cts. & Jud. Proc. § 5-1203 \(West\)](#)

§ 14-202. Certain acts prohibited

In collecting or attempting to collect an alleged debt a collector may not:

- (1) Use or threaten force or violence;
- (2) Threaten criminal prosecution, unless the transaction involved the violation of a criminal statute;
- (3) Disclose or threaten to disclose information which affects the deb'tor's reputation for credit worthiness with knowledge that the information is false;
- (4) Except as permitted by statute, contact a per'son's employer with respect to a delinquent indebtedness before obtaining final judgment against the debtor;
- (5) Except as permitted by statute, disclose or threaten to disclose to a person other than the debtor or his spouse or, if the debtor is a minor, his parent, information which affects the deb'tor's reputation, whether or not for credit worthiness, with knowledge that the other person does not have a legitimate business need for the information;
- (6) Communicate with the debtor or a person related to him with the frequency, at the unusual hours, or in any other manner as reasonably can be expected to abuse or harass the debtor;
- (7) Use obscene or grossly abusive language in communicating with the debtor or a person related to him;
- (8) Claim, attempt, or threaten to enforce a right with knowledge that the right does not exist;
- (9) Use a communication which simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, governmental agency, or lawyer when it is not;
- (10) Engage in unlicensed debt collection activity in violation of the Maryland Collection Agency Licensing Act; or
- (11) Engage in any conduct that violates §§ 804 through 812 of the federal Fair Debt Collection Practices Act.

[Md. Code Ann., Com. Law § 14-202 \(West\)](#)

Issue: Is it permissible for a judge to query *sua sponte* whether a collection action is time barred under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 ("the Act")?

Answer: Yes.

In Opinion Request No. 2006-01, dated April 10, 2006, the Committee concluded that a judge may not raise *sua sponte* the defense of statute of limitations on behalf of a *pro se* defendant against whom a local government seeks judgment for unpaid parking tickets and penalties. The Committee held that, in doing so, a judge would be casting doubt on his or her impartiality in violation of Maryland Code of Judicial Conduct (2005), Canon 2A...The question now raised concerns collection actions which fall within the Act, and this response is limited to such actions. On occasion, a judge will be presented with such a

claim, which appears to be time barred. The judge may be reviewing a complaint seeking judgment on affidavit or in a contested proceeding where the defendant *is pro se*. By its passage of the Act, Congress articulated a public policy to prevent collection of stale debts from unsophisticated debtors. This places on the debtor creditor the affirmative duty to document compliance with the statute of limitation. Essentially, this is part of the plaintiff's burden of proof as opposed to raising a defense. Accordingly, after a judge determines that the action is subject to the Act, the judge may query *sua sponte* the timeliness of the action and decline to enter judgment if the creditor does not meet its burden.

Judge may Query Sua Sponte Whether Collection Claim is Time Barred, 2006 WL 6849875

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.
- Committee note:** If there has been a charge-off, the amount of the "original consumer debt" is the same as the "charge-off balance."
- (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.

Committee note: This Rule is procedural only, and subsection (d)(2)(B)(iii) is not intended to address the substantive issue of whether interest in any amount may be charged on a part of the charge-off balance that, under applicable and enforceable Maryland law, may be regarded as interest.

Cross reference: See Federal Financial Institutions Examination Council Uniform Retail Credit Classification and Account Management Policy, 65 Fed–Reg. 36903--36906 (June 12, 2000).

(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.

Committee note: If a bill of sale or other document transferred debts in addition to the consumer debt upon which the action is based, the documentation required by subsection (d)(3)(B) of this Rule may be in the form of a redacted document that provides the general terms of the bill of sale or other document and the document's specific reference to the debt sued upon.

(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 charge-off 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.

Cross reference: See Code, Courts Article, § 5-1203 (b)(2), concerning the plaintiff's requirements if a judgment on affidavit under section (d) of this Rule is denied.

(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.

Cross reference: Rule 3-509.

(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.

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is derived from former M.D.R. 610 a.

Section (c) is derived from former M.D.R. 610 a.

Section (d) is new.

Section (e) is derived from former M.D.R. 610 b, c and d.

Section (f) is derived from former M.D.R. 610 e.

Section (g) is derived from former M.D.R. 610 d.

Credits

[Adopted April 6, 1984, eff. July 1, 1984. Amended May 25, 1984, eff. July 1, 1984; Sept. 8, 2011, eff. Jan. 1, 2012; Dec. 13, 2016, eff. Apr. 1, 2017.]

NOTES OF DECISIONS

In general

In an action by an assignee of consumer debt in which the plaintiff has filed a demand for judgment on affidavit, if the defendant files a notice of intention to defend and contests the case, the case proceeds to a trial on the merits, and the requirements of the rule governing requirements for obtaining judgment on affidavit on a claim arising from assigned consumer debt do not apply. *Bartlett v. Portfolio Recovery Associates, LLC*, 2014, 91 A.3d 1127, 438 Md. 255. Judgment 94; Judgment 105.1;

Judgment 121.1

In an action by an assignee of consumer debt in which the plaintiff has filed a demand for judgment on affidavit, if the defendant fails to respond by filing a timely notice of intention to defend, or the defendant files a timely notice of intention to defend but fails to appear at trial, the trial judge will evaluate the merits of the debt buyer plaintiff's case based on the affidavit and accompanying documents under the purview of the rule governing requirements for obtaining judgment on affidavit on a claim arising from assigned consumer debt; if the judge is satisfied that the plaintiff met its burden, the court may then grant judgment on affidavit in favor of the plaintiff. *Bartlett v. Portfolio Recovery Associates, LLC*, 2014, 91 A.3d 1127, 438 Md. 255. Judgment 105.1; Judgment 109; Judgment 126(1)

MD Rules, Rule 3-306, MD R RCP DIST CT Rule 3-306

Current with amendments received through December 15, 2019.

[MD R RCP DIST CT Rule 3-306](#)

RULE 3-509. TRIAL UPON DEFAULT

(a) Requirements of Proof. When a motion for judgment on affidavit has not been filed by the plaintiff, or has been denied by the court, and the defendant has failed to appear in court at the time set for trial:

(1) if the defendant did not file a timely notice of intention to defend, the plaintiff shall not be required to prove the liability of the defendant, but shall be required to prove damages; except that for claims arising from consumer debt, as defined in Rule 3-306 (a)(3), when the plaintiff is not the original creditor, as defined in Rule 3-306 (a)(5), the court (A) shall require proof of liability, (B) shall apply the requirements set forth in Code, Courts Article, § 5-1203 (b)(2), and (C) may also consider other competent evidence;

(2) if the defendant filed a timely notice of intention to defend, the plaintiff shall be required to introduce prima facie evidence of the defendant's liability and to prove damages. For claims arising from consumer debt, as defined in Rule 3-306 (a)(3), when the plaintiff is not the original creditor, as defined in Rule 3-306 (a)(5), the court shall require proof of liability and apply the requirements set forth in Code, Courts Article, § 5-1203 (b)(2). The court may also consider other competent evidence.

(b) Pro—rty Damage--Affidavit. When the defendant has failed to appear for trial in an action for property damage, prima facie proof of the damage may be made by filing an affidavit to which is attached an itemized repair bill, or an itemized estimate of the costs of repairing the damaged property, or an estimate of the fair market value of the property. The affidavit shall be made on personal knowledge of the person making such repairs or estimate, or under whose supervision such repairs or estimate were made, and shall include the name and address of the affiant, a statement showing the affiant's qualification, and a statement that the bill or estimate is fair and reasonable.

(c) Notice of Judgment. Upon entry of a judgment against a defendant in default, the clerk shall mail notice of the judgment to the defendant at the address stated in the pleadings and shall ensure that the docket or file reflects compliance with this requirement.

Cross reference: For default judgments relating to citations issued for certain record-keeping violations, see Code, Transportation Article, § 15-115.

Source: This Rule is derived from former M.D.R. 648.

[MD R RCP DIST CT Rule 3-509](#)

RULE 5-902. SELF-AUTHENTICATI

- (c) **(a) Generally.** As used in this Rule, "certifies," "certificate," or "certification" means, with respect to a domestic record or public document, a written declaration under oath subject to the penalty of perjury and, with respect to a foreign record or public document, a written declaration signed in a foreign country which, if falsely made, would subject the maker to criminal penalty under the laws of that country. The certificate relating to a foreign record or public document must be accompanied by a final certification as to the genuineness of the signature and official position (1) of the individual executing the certificate or (2) of any foreign official who certifies the genuineness of signature and official position of the executing individual or is the last in a chain of certificates that collectively certify the genuineness of signature and official position of the executing individual. A final certificate may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country who is assigned or accredited to the United States.

Except as otherwise provided by statute, extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

- (1) *Domestic Public Documents Under Seal.* A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the trust territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.
- (2) *Domestic Public Documents Not Under Seal.* A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in subsection (a)(1) of this Rule, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.
- (3) *Foreign Public Documents.* A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation and accompanied by a final certification. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that

they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) *Certified Copies of Public Records.* A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with this Rule or complying with any applicable statute or these rules.

(5) *Official Publications.* Books, pamphlets, or other publications purporting to be issued or authorized by a public agency.

(6) *Newspapers and Periodicals.* Printed materials purporting to be newspapers or periodicals.

(7) *Trade Inscriptions and the Like.* Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) *Acknowledged Documents.* Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) *Commercial Paper and Related Documents.* To the extent provided by applicable commercial law, commercial paper, signatures thereon, and related documents.

Cross reference: See, e.g., Code, Commercial Law Article, §§ 1-02, 3-308, and 3-505.

(10) *Presumptions Under Statutes or Treaties.* Any signature, document, or other matter declared by applicable statute or treaty to be presumptively genuine or authentic.

(11) *Items as to Which Required Objections Not Made.* Unless justice otherwise requires, any item as to which, by statute, rule, or court order, a written objection as to authenticity is required to be made before trial, and an objection was not made in conformance with the statute, rule, or order.

Committee note: As used in this Rule “document” is a generic term. It includes public records encompassed by Code, Courts Article, § 10-204.

(b) Certified Records of Regularly Conducted Business Activity.

(1) *Procedure.* Testimony of authenticity as a condition precedent to admissibility is not required as to the original or a duplicate of a record of regularly conducted business activity, within the scope of Rule 5-803 (b)(6) that has been certified pursuant to subsection (b)(2) of this Rule, provided that at least ten days prior to the commencement of the proceeding in which the record will be offered into evidence, (A) the proponent (i) notifies the adverse party of the proponent's intention to authenticate the record under this subsection and (ii) makes a copy of the certificate and record available to the adverse party and (B) the adverse party has not filed within five days after service of the proponent's notice written objection on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

Committee note: An objection to self-authentication under subsection (b)(1) of this Rule made in advance of trial does not constitute a waiver of any other ground that may be asserted as to admissibility at trial.

In a consumer debt collection action not resolved by judgment on affidavit, Code, Courts Article, § 5-1203 (b)(2) requires that a debt buyer or a collector acting on behalf of a debt buyer introduce specified documents “in accordance with the Rules of Evidence applicable to actions that are not small claims actions brought under § 4-405 of this Article.” Consequently, if the debt buyer or collector intends to offer business records into evidence in a small claim action without in-court testimony of a witness, the debt buyer must provide notice to the opposing party in conformance with Rule 5-902 (b).

(2) *Form of Certificate.* For purposes of subsection (b)(1) of this Rule, the original or duplicate of the business record shall be certified in substantially the following form:

Certification of Custodian of Records or Other Qualified Individual

I, _____, do hereby certify that:

(1) I am the Custodian of Records of or am otherwise qualified to administer the records for:
_____ (identify the organization that maintains the records), and

(2) The attached records

(a) are true and correct copies of records that were made at or near the time of the occurrence of the matters set forth by, or from the information transmitted by, a person with knowledge of these matters; and

(b) were kept in the course of regularly conducted activity; and

(c) were made and kept by the regularly conducted business activity as a regular practice.

I declare under penalty of perjury that the foregoing is true and correct.

Signature and Title:

Date:

Source: This Rule is in part derived from F.R.Ev. 902 and in part new.

[Md. Rule 5-902](#)

Massachusetts

7.03: Definitions

Communication or Communicating means conveying information directly or indirectly to any person through any medium excluding nonidentifying communications.

Creditor means any person and his or her agents, servants, employees, or attorneys engaged in collecting a debt owed or alleged to be owed to him or her by a debtor and shall also include a buyer of delinquent debt who hires a third party or an attorney to collect such debt provided, however, that a person shall not be deemed to be engaged in collecting a debt, for the purpose of 940 CMR 7.00, if his or her activities are solely for the purpose of serving legal process on another person in connection with the judicial enforcement of a debt.

Debt means money or its equivalent which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the debtor, under a single account as a result of a purchase, lease, or loan of goods, services, or real or personal property, for personal, family or household purposes

or as a result of a loan of money which is obtained for personal, family or household purposes whether or not the obligation has been reduced to judgment.

Debtor means a natural person, or his or her guardian, administrator or executor, present or residing in Massachusetts who is allegedly personally liable for a debt.

Nonidentifying Communication means any communication with any person other than the debtor in which the creditor does not convey any information except the name of the creditor and in which the creditor makes no inquiry other than to determine a convenient time and place to contact the debtor.

Person means any natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal entity; provided, however, that if a creditor comprises or employs more than one natural person, all such individuals shall be deemed to be one and the same "person" with respect to any debt owed or alleged to be owed to such a creditor.

Time-barred Debt means any debt that is not enforceable in a judicial proceeding because the applicable statute of limitations has run.

940 Mass. Code Regs. 7.03

[https://www.westlaw.com/Document/I459BF3133EC34C5B99BFBF664D53377F/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I459BF3133EC34C5B99BFBF664D53377F/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

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© 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.

Credits

Adopted May 22, 2018, effective January 1, 2019.

Mass. R. Civ. P. 8.1

[https://www.westlaw.com/Document/N1A1BC9B0790B11E8B63FF4DDA9E602C3/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/N1A1BC9B0790B11E8B63FF4DDA9E602C3/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

7.07: General Unfair or Deceptive Acts or Practices

It shall constitute an unfair or deceptive act or practice to engage in any of the following practices to collect or attempt to collect any debt:

- (1) Any false representation that the creditor has information in his or her possession or something of value for the debtor.
- (2) Any knowingly false or misleading representation in any communication as to the character, extent or amount of the debt, or as to its status in any legal proceeding, provided, however, that an incorrect or estimated bill submitted by a gas or electric utility company regulated by M.G.L. c. 164, and the Department of Public Utilities shall not be prohibited by 940 CMR 7.07.
- (3) Any false or misleading representation that a creditor is vouched for, bonded by, affiliated with, or is an instrumentality, agency, or official of the state, federal or local government.
- (4) Any false or misleading representation that a creditor is an attorney or any other officer of the court.
- (5) The use, distribution or sale of any written communication which simulates, or which is falsely represented to be, or which otherwise would reasonably create a false impression that it was, a document authorized, issued or approved by a court, a government official or other governmental authority.
- (6) Any representation that an existing obligation of a debtor may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges, if in fact such fees or charges may not legally be added to the existing obligation.
- (7) Any solicitation or obtaining of any written statement or acknowledgement in any form containing an affirmation of any obligation by a debtor who has been adjudicated bankrupt, without clearly and conspicuously disclosing the nature and consequences of such affirmation.
- (8) Any false, deceptive, or misleading representation, communication, or means in connection with the collection of any debt or to obtain information concerning a debtor.

- (9) Any false or misleading representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the debtor to:
- (a) lose any claim or defense to payment of the debt; or
 - (b) become subject to any practice prohibited by 940 CMR 7.00.
- (10) Any false or misleading representation or implication that the debtor committed any crime or other conduct in order to disgrace the debtor.
- (11) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false including, without limitation, the failure to communicate that a disputed debt is disputed.
- (12) Any false or misleading representation or implication that documents are legal processes.
- (13) Any false or misleading representation or implication that documents are not legal processes or do not require action by the debtor.
- (14) Any false or misleading representation or implication that a creditor operates or is employed by a consumer reporting agency.
- (15) Using any business, company or organization name other than the true name of the creditor's business, company or organization.
- (16) The collection of any amount (including interest, fees, charges or expenses incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (17) Requesting or demanding from a debtor a post dated check, draft, order for withdrawal or other similar instrument or method in payment for the debt or any portion thereof, or for a creditor to negotiate such instrument before the due date of the instrument.
- (18) Taking or threatening to take any non-judicial action to effect dispossession or disablement of property if:
- (a) there is no present right to possession of the property claimed as collateral through a court order or an enforceable security interest;
 - (b) there is no present intention to take possession of the property;
 - (c) the creditor knows or has reason to know that demands for payment and/or legal notices were not directed to the debtor's current address; or
 - (d) the property is exempt from seizure on execution because its value does not exceed the value for exemption set forth in M.G.L. c. 235, § 34, or the property is otherwise exempt by law from such dispossession or disablement; 940 CMR 7.07(18)(d) shall not apply to first mortgage foreclosures properly conducted in accordance with Massachusetts law.
- (19) Taking possession of or selling upon execution property that is exempt from seizure on execution because its value does not exceed the value for exemption set forth in M.G.L. c. 235, § 34, or the property is otherwise exempt by law from such dispossession or disablement; 940 CMR 7.07(19) shall not apply to first mortgage foreclosures properly conducted in accordance with Massachusetts law.
- (20) Communicating with a debtor regarding a debt by postcard.
- (21) Reporting to a consumer reporting agency on transactions or experiences with a debtor in a name other than that of the creditor.
- (22) Failing to disclose the telephone number and office hours of the creditor or his agents on all written communications to the debtor.

(23) Requesting any information about the debtor or the debtor's accounts or assets other than information the creditor, in good faith, believes will assist in the collection of the debt owed to the creditor.

(24) Collecting or attempting to collect from any person payment of any debt that the creditor knows, or has reason to know based on a good faith determination, is a time-barred debt, or seeking or obtaining from any person an admission, affirmation, acknowledgement of a new promise to pay, or any waiver of legal rights or defenses with regard to any debt that the creditor knows or has reason to know is a time-barred debt, unless the creditor discloses that the debt may be unenforceable through a lawsuit because the time for filing suit may have expired, and that the debtor is not required by law to sign any admission, affirmation, or acknowledgement of, or new promise to pay the debt, or to make any payment on the debt, or to waive any rights with regard to the effect of the running of the applicable statute of limitations.

(a) A creditor who makes the following disclosure shall be deemed to have complied with the requirements of 940 CMR 7.07(24) :

WE ARE REQUIRED BY REGULATION OF THE MASSACHUSETTS ATTORNEY GENERAL TO NOTIFY YOU OF THE FOLLOWING INFORMATION. THIS INFORMATION IS NOT LEGAL ADVICE: THIS DEBT MAY BE TOO OLD FOR YOU TO BE SUED ON IT IN COURT. IF IT IS TOO OLD, YOU CANNOT BE REQUIRED TO PAY IT THROUGH A LAWSUIT. TAKE NOTE: YOU CAN RENEW THE DEBT AND THE STATUTE OF LIMITATIONS FOR THE FILING OF A LAWSUIT AGAINST YOU IF YOU DO ANY OF THE FOLLOWING: MAKE ANY PAYMENT ON THE DEBT, SIGN A PAPER IN WHICH YOU ADMIT THAT YOU OWE THE DEBT OR IN WHICH YOU MAKE A NEW PROMISE TO PAY; SIGN A PAPER IN WHICH YOU GIVE UP OR WAIVE YOUR RIGHT TO STOP THE CREDITOR FROM SUING YOU IN COURT TO COLLECT THE DEBT. WHILE THIS DEBT MAY NOT BE ENFORCEABLE THROUGH A LAWSUIT, IT MAY STILL AFFECT YOUR ABILITY TO OBTAIN CREDIT OR AFFECT YOUR CREDIT SCORE OR RATING.

(b) In the case of written communications, the disclosures required by 940 CMR 7.07(24)(b) shall be clear and conspicuous by appearing in a type which is a minimum of eight-point type and said disclosure shall be placed on the front of the communication;

(c) In the case of oral communications, the disclosure required by 940 CMR 7.07(24)(c) shall be made immediately before or immediately after the first statement requesting payment, or, if no request for payment is made, no later than immediately after reference to the debt is first made.

940 Mass. Code Regs. 7.07

[https://www.westlaw.com/Document/I6AAB0BB8A0C940EBAA76C44F89A50C60/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cb1t1.0](https://www.westlaw.com/Document/I6AAB0BB8A0C940EBAA76C44F89A50C60/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cb1t1.0)

Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) Judgment. Judgment by default may be entered as follows:

(1) *By the Clerk.* When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due and affidavit that the defendant is not an infant or incompetent person, or an incapacitated person as defined in G. L. c. 190B shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear.

(2) *By the Court.* In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person or an incapacitated person as defined in G. L. c. 190B unless represented in the action by a guardian, conservator, or other such representative who has appeared therein. The court shall not conduct a hearing unless the party entitled to a judgment by default has provided notice to all other parties, including the party against whom a judgment by default is sought, of the date, time, and location of the hearing. Such notice must include a statement setting forth the nature and type of all damages requested and the amount of any damages that are a sum certain or a sum which can by computation be made certain. The notice shall be sent at least fourteen days prior to the date of hearing by first-class mail to the last known address or by other means approved by the court. If, in order to enable the court to enter judgment or to carry it into effect, it is 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 or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by statute.

(3) The provisions of subparagraph (b)(2) supplement, but do not supersede, any other requirements of notice established by law.

(4) *Affidavit Required.* Notwithstanding the foregoing, no judgment by default shall be entered until the filing of an affidavit made by any competent person, on the affiant's own knowledge, setting forth facts showing that the defendant is not a person in military service as defined in the "Servicemembers Civil Relief Act," as set forth in 50 U.S.C. §§ 3901 et seq., except upon order of the court in accordance with the Act.

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment has been entered, may likewise set it aside in accordance with Rule 60(b).

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

Appendix D. Selected Massachusetts Rules of Civil Procedure, 48A Mass. Prac. Collection Law Appendix D (4th ed.)

Rule 55.1. Special Requirements for Defaults and Default Judgments for Certain Consumer Debts

(a) Applicability. In addition to the requirements of Rule 55, the provisions of this rule shall apply to the entry of default for failure to appear or otherwise defend and to the entry of judgment after default in all actions subject to the requirements of Rule 8.1.

(b) Default.

(1) *Affidavit required.* When requesting a default, or upon request of the clerk for the purpose of entering a default, counsel for the plaintiff shall sign, serve, and file an affidavit stating that (i) counsel has

personally reviewed the documentation filed and served pursuant to Rule 8.1; (ii) the documentation meets all requirements of Rule 8.1(c)-(f) (with any exceptions specifically stated); and (iii) the documentation establishes the plaintiff's entitlement to judgment in the amount claimed by the plaintiff. A self-represented plaintiff shall sign, serve, and file an affidavit with the same content. In entering a default, the clerk may rely upon the affidavit.

(2) *Non-entry of default.* If the plaintiff has not complied with the requirements of Rule 8.1 and subdivision (b)(1) of this rule, the clerk shall not enter a default against the defendant and shall so notify the parties. The court shall dismiss the complaint without prejudice on or after the 30th day after the date of notice by the clerk unless the plaintiff shows cause, with notice to the defendant, why the complaint should not be dismissed.

(c) Judgment. No default judgment against the defendant shall enter unless the clerk (if under Rule 55(b)(1)) or court (if under Rule 55(b)(2)) determines that the documentation filed and served by the plaintiff pursuant to Rule 8.1 and the affidavit pursuant to subdivision (b)(1) of this rule establish the plaintiff's entitlement to judgment in the amount claimed by the plaintiff. In entering a default judgment, the clerk or court may rely upon the affidavit pursuant to subdivision (b)(1) of this rule.

(d) Service. The plaintiff's request for entry of default judgment must be served on the defendant in accordance with Rule 5(b). The plaintiff must file proof of service of the request with the clerk or court. If service is to be made by mailing the request to the defendant's residential address, the plaintiff shall, within three months prior to the request, reverify the defendant's current residential address and shall file a new address verification affidavit pursuant to Rule 8.1(e).

Mass. R. Civ. P. 55.1

Michigan

339.918. Notice of debt; dispute and verification of debt amount

Sec. 918. (1) Within 5 days after the initial communication with a consumer in connection with a collection of a debt, a collection agency shall send the consumer, unless the following information is contained in the initial communication or the consumer has paid the debt, a written notice containing all of the following information:

- (a) The amount of the debt owed.
 - (b) The date the communication was sent to the debtor.
 - (c) The name of the creditor to whom the debt is owed.
 - (d) A statement specifying that unless the consumer, within 30 days after receipt of this notice, disputes the validity of the debt, or a portion of the debt, the debt will be assumed to be valid.
 - (e) A statement specifying that, if the consumer notifies the collection agency in writing within 30 days after receipt of this notice, that the debt, or any portion of the debt, is disputed, the collection agency shall obtain verification of the debt or a copy of a judgment against the consumer and that a copy of the verification or judgment shall be mailed to the consumer by the collection agency.
- (2) If the consumer notifies the collection agency in writing, within 30 days after receiving the written notice, that the debt, or any portion of the debt, is disputed, collection of the debt or any disputed portion of the debt shall cease until the collection agency obtains verification of the debt and a copy of

the verification or judgment is mailed to the consumer by the collection agency. Verification of the debt or any disputed portion of the debt shall include the number and amount of previously made payments and the name and address of the original creditor, if different from the current creditor, or a copy of the judgment against the debtor.

(3) The failure of a consumer to dispute the validity of a debt under this section shall not be construed as an admission of liability by the consumer.

[Mich. Comp. Laws Ann. § 339.918 \(West\)](#)

Minnesota

332.37. Prohibited practices

No collection agency or collector shall:

(1) in collection letters or publications, or in any communication, oral or written threaten wage garnishment or legal suit by a particular lawyer, unless it has actually retained the lawyer;

(2) use or employ sheriffs or any other officer authorized to serve legal papers in connection with the collection of a claim, except when performing their legally authorized duties;

(3) use or threaten to use methods of collection which violate Minnesota law;

(4) furnish legal advice or otherwise engage in the practice of law or represent that it is competent to do so;

(5) communicate with debtors in a misleading or deceptive manner by using the stationery of a lawyer, forms or instruments which only lawyers are authorized to prepare, or instruments which simulate the form and appearance of judicial process;

(6) exercise authority on behalf of a creditor to employ the services of lawyers unless the creditor has specifically authorized the agency in writing to do so and the agency's course of conduct is at all times consistent with a true relationship of attorney and client between the lawyer and the creditor;

(7) publish or cause to be published any list of debtors except for credit reporting purposes, use shame cards or shame automobiles, advertise or threaten to advertise for sale any claim as a means of forcing payment thereof, or use similar devices or methods of intimidation;

(8) refuse to return any claim or claims and all valuable papers deposited with a claim or claims upon written request of the creditor, claimant or forwarder after tender of the amounts due and owing to the agency within 30 days after the request; refuse or intentionally fail to account to its clients for all money collected within 30 days from the last day of the month in which the same is collected; or, refuse or fail to furnish at intervals of not less than 90 days upon written request of the claimant or forwarder, a written report upon claims received from the claimant or forwarder;

(9) operate under a name or in a manner which implies that the agency is a branch of or associated with any department of federal, state, county or local government or an agency thereof;

(10) co'mingle money collected for a customer with the 'gency's operating funds or use any p'rt of a customer's money in the conduct of the agency's business⁸⁰blige⁸⁰ransact business or hold itself out as a debt prorater, debt adjuster, or any person who settles, adjusts, prorates, pools, liquidates or pays the indebtedness of a debtor, unless there is no charge to the debtor, or the pooling or liquidation is done pursuant to court order or under the supervision of a creditor's committee;

- (12) violate any of the provisions of the Fair Debt Collection Practices Act of 1977, Public Law 95-109, while attempting to collect on any account, bill or other indebtedness;
- (13) communicate with a debtor by use of a recorded message utilizing an automatic dialing announcing device unless the recorded message is immediately preceded by a live operator who discloses prior to the message the name of the collection agency and the fact the message intends to solicit payment and the operator obtains the consent of the debtor to hearing the message;
- (14) in collection letters or publications, or in any communication, oral or written, imply or suggest that health care services will be withheld in an emergency situation;
- (15) when a debtor has a listed telephone number, enlist the aid of a neighbor or third party to request that the debtor contact the licensee or collector, except a person who resides with the debtor or a third party with whom the debtor has authorized the licensee or collector to place the request. This clause does not apply to a call back message left at the debtor's place of employment which is limited to the licensee's or collector's telephone number and name;
- (16) when attempting to collect a debt, fail to provide the debtor with the full name of the collection agency as it appears on its license;
- (17) collect any money from a debtor that is not reported to a creditor or fail to return any amount of overpayment from a debtor to the debtor or to the state of Minnesota pursuant to the requirements of chapter 345;
- (18) accept currency or coin as payment for a debt without issuing an original receipt to the debtor and maintaining a duplicate receipt in the debtor's payment records;
- (19) attempt to collect any amount of money from a debtor or charge a fee to a creditor that is not authorized by agreement with the client;
- (20) falsify any collection agency documents with the intent to deceive a debtor, creditor, or governmental agency;
- (21) when initially contacting a Minnesota debtor by mail, fail to include a disclosure on the contact notice, in a type size or font which is equal to or larger than the largest other type of type size or font used in the text of the notice. The disclosure must state: "This collection agency is licensed by the Minnesota Department of Commerce"; or
- (22) commence legal action to collect a debt outside the limitations period set forth in section 541.053.

[Minn. Stat. Ann. § 332.37 \(West\)](#)

541.053. Limitation of actions based on consumer debt

Notwithstanding section 541.31, subdivision 1, actions upon an obligation arising out of a consumer debt primarily for personal, family, or household purposes shall be commenced within six years. After its expiration, the statute of limitations is not revived by the collection of a payment on an account, a discharge in a bankruptcy proceeding, or an oral or written reaffirmation of the debt.

[Minn. Stat. Ann. § 541.053 \(West\)](#)

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 'was 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, 'roof 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 'he 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:

Not—ce of Intent to Apply for

Default Judgment

Case Type - Consumer CreditContract

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF

..... JUDICIAL DISTRICT

NOTICE OF INTENT TO APPLY

Plaintiff,

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. Ann. § 548.101 \(West\)](#)

Mississippi
Missouri
Montana
Nebraska
Nevada

649.370. Violation of federal Fair Debt Collection Practices Act

A violation of any provision of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1682 et seq., or any regulation adopted pursuant thereto, shall be deemed to be a violation of this chapter.

[Nev. Rev. Stat. Ann. § 649.370 \(West\)](#)

649.375. Prohibited practices

A collection agency, or its manager, agents or employees, shall not:

1. Use any device, subterfuge, pretense or deceptive means or representations to collect any debt, nor use any collection letter, demand or notice which simulates a legal process or purports to be from any local, city, county, state or government authority or attorney.
2. Collect or attempt to collect any interest, charge, fee or expense incidental to the principal obligation unless:
 - (a) Any such interest, charge, fee or expense as authorized by law or as agreed to by the parties has been added to the principal of the debt by the creditor before receipt of the item of collection;
 - (b) Any such interest, charge, fee or expense as authorized by law or as agreed to by the parties has been added to the principal of the debt by the collection agency and described as such in the first written communication with the debtor; or
 - (c) The interest, charge, fee or expense has been judicially determined as proper and legally due from and chargeable against the debtor.
3. Assign or transfer any claim or account upon termination or abandonment of its collection business unless prior written consent by the customer is given for the assignment or transfer. The written consent must contain an agreement with the customer as to all terms and conditions of the assignment or transfer, including the name and address of the intended assignee. Prior written consent of the Commissioner must also be obtained for any bulk assignment or transfer of claims or accounts, and any assignment or transfer may be regulated and made subject to such limitations or conditions as the Commissioner by regulation may reasonably prescribe.
4. Operate its business or solicit claims for collection from any location, address or post office box other than that listed on its license or as may be prescribed by the Commissioner.
5. Harass a debtor's employer in collecting or attempting to collect a claim, nor engage in any conduct that constitutes harassment as defined by regulations adopted by the Commissioner.
6. Advertise for sale or threaten to advertise for sale any claim as a means to enforce payment of the claim, unless acting under court order.
7. Publish or post, or cause to be published or posted, any list of debtors except for the benefit of its stockholders or membership in relation to its internal affairs.
8. Conduct or operate, in connection with its collection agency business, a debt counseling or proration service for a debtor who has incurred a debt primarily for personal, family or household purposes whereby the debtor assigns or turns over to the counselor or prorationer any of the debtor's earnings or other money for apportionment and payment of the debtor's debts or obligations. This section does not prohibit the conjunctive operation of a business of commercial debt adjustment with a collection agency if the business deals exclusively with the collection of commercial debt.

New Hampshire

RULE 4.1. FILING SMALL CLAIM COMPLAINT

(a) The Claim

- (1) Small claim cases shall be filed electronically as required under the New Hampshire Circuit Court Electronic Filing Pilot Rules unless an exemption to electronic filing as allowed under the Rules is requested and granted.
- (2) A small claim shall be set forth on a court generated Small Claim Complaint form. It shall not be considered filed until the fee has been paid or a properly supported motion to waive filing fee has been submitted. (*See* District Division Rule 3.3 for filing fees.)
- (3) The small claims filing fee shall not be waived except upon presentation of facts which demonstrate extraordinary circumstances.
- (4) The claim must include:
 - (A) The business or other relationship between the plaintiff and defendant and a description setting forth with specificity the reason(s) the plaintiff believes that the defendant owes money to the plaintiff;
 - (B) The amount that the plaintiff claims that the defendant owes. NOTE: If the plaintiff claims to be owed more than \$10,000, the filing of the small claim complaint will waive any amount due beyond the small claims limit of \$10,000. If the plaintiff does not want to waive the amount over \$10,000, a civil writ must be filed instead of a small claim;
 - (C) If the basis for recovery asserted in the small claim complaint is the extension of consumer credit, the plaintiff shall file a Statement of Consumer Debt which provides the following:
 - (i) If the plaintiff is a person or entity *other than* the original creditor, a statement that the plaintiff has a right to assert the claim and a listing of all prior owners of the claim commencing with the original creditor;
 - (ii) The account number/account identifier, if any, assigned to the obligation. The account number/account identifier shall be redacted to show only the last four digits;
 - (iii) The date of the last payment made, if any;
 - (iv) A designation of principal, interest, charges and fees calculated either in accordance with the laws applicable to the obligation or in accordance with the practice in credit card cases of treating the charge off balance as principal and itemizing any additional interest or fees after that date.

(b) The Parties

- (1) The following information shall be included in the small claim filing:
 - (A) Name, address (residence and mailing) and date of birth of the plaintiff(s). The date of birth shall be submitted on the Small Claim Confidential Information Sheet and shall be confidential as to non-parties to comply with the New Hampshire Circuit Court Electronic Filing Pilot Rules. Access to these documents shall be pursuant to District Division Rule 1.26;
 - (B) Name, address (residence and mailing) of the defendant(s);
 - (C) If the plaintiff is a business entity, the nature of the business entity;

(D) If the defendant is a business entity:

(i) The nature of the business entity; and

(ii) The individual who is to be served with the small claim and the capacity in which that individual is to be served (e.g. agent for service, corporate officer, member, manager, owner) and that individual's address (physical and mailing) if different from that of the business entity.

(2) A person who files or responds to a small claim on behalf of another individual or entity must file the statement required by District Division Rule 1.3(D). In addition, one of the following authorizations must be filed with the court:

(A) For an individual acting on behalf of another, a power of attorney or other valid authorizing document authorizing the filing of legal actions; or

(B) For an individual acting on behalf of an entity:

(i) For a corporation, a resolution adopted by the board of directors;

(ii) For a partnership, an authorization signed by a general partner;

(iii) For a trust, an authorization signed by a trustee;

(iv) For a limited liability company, an authorization signed by a member with management authority. (See also RSA 503:11.)

(C) The requirements of this paragraph (2) do not apply to attorneys who are licensed to practice law in the State of New Hampshire.

NH R DIST CT Rule 4.1

New Jersey New Mexico

12.2.12. COLLECTION OF TIME-BARRED DEBT HISTORY OF 12.2.12

NMAC: [RESERVED]

12.2.12. COLLECTION OF TIME-BARRED DEBT

12.2.12.1 ISSUING AGENCY: Office of the New Mexico Attorney General.

[12.2.12.1 NMAC - N, 12/5/10]

12.2.12.2 SCOPE: Disclosure of time-barred debt.

[12.2.12.2 NMAC - N, 12/15/10]

12.2.12.3 STATUTORY AUTHORITY: The New Mexico Unfair Practices Act, NMSA 1978, Section 57-12-1, et seq. (1967).

[12.2.12.3 NMAC - N, 12/15/10]

12.2.12.4 DURATION: Permanent.

[12.2.12.4 NMAC - N, 12/15/10]

12.2.12.5 EFFECTIVE DATE: December 15, 2010— unless a later date is cited at the end of a section.

[12.2.12.5 NMAC - N, 12/15/10]

12.2.12.6 OBJECTIVE: The purpose of this rule is to ensure a uniform understanding and practice within the debt collection industry regarding what information is required to be provided to consumers when a debt that the debt collector, acting in the regular course of his or her trade or commerce, is attempting to collect is unenforceable in judicial proceedings due to the running of the applicable statute of limitation. The implementation of the notices required in this rule will obviate an industry-wide practice that tends to or does mislead or deceive by failing to provide material information to consumers. NMSA 1978, Section 57-12-2(D)(14).

[12.2.12.6 NMAC - N, 12/15/10]

12.2.12.7 DEFINITIONS:

A. "Collection of debt" means any effort by any person acting in the regular course of his or her trade or commerce, including, but not limited to, the original lender or obligee, or any assignee of the original lender or obligee, or any owner of the debt other than the original lender or obligee, or any third party attempting to collect the debt on behalf of the debt owner, to obtain payment of all or any part of the debt from the person who owes the debt.

B. "Clear and conspicuous" has the same meaning as the term "conspicuous" defined at NMSA 1978, Section 55-1-201(b)(10) (1961), of the New Mexico Commercial Code; EXCEPT that it shall exclude the requirement that all words be in capitalized lettering.

C. "Debt" means any obligation owed or alleged to be owed by one person to another.

D. "Debt collector" means any person who, in the regular course of the person's trade or commerce, collects or attempts to collect a debt owed or alleged to be owed by any person in New Mexico, including, but not limited to, the original lender or obligee, any assignee of the original owner, and third party collectors who are "debt collectors" as defined by the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692a(6).

E. "Good faith" means an honest, fair and reasonable belief that rests on a reasonable assessment of those facts reasonably and fairly available, and not necessarily limited only to those facts actually in possession. "Good faith" may require a fair and reasonable inquiry of others in possession of information known or believed to be relevant to the matter at issue. See, in part, State v. Sanchez, 88 N.M. 378, 382, 540 P.2d 858 (Ct.App. 1975); rev'd, other grounds, 88 N.M. 402, 540 P.2d 1291 (1975); NMSA 1978, Section 55-1-201(b)(20) (1961).

F. "Least sophisticated consumer" means the standard for evaluating truth and deception under the federal Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq., as summarized in Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985).

G. "Person" means natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates.

H. "Statute of limitation" means the time period established by law in which an aggrieved party may bring a cause of action in judicial proceedings; e.g., NMSA 1978, Sections 37-1-3 (six years for written contracts), 37-1-4 (four years for unwritten contracts and accounts), or 55-2-725 (four years for breach of contract for sale of goods).

I. "Time-barred debt" means any debt that is not enforceable in a judicial proceeding because the applicable statute of limitation has run.

[12.2.12.7 NMAC - N, 12/15/10]

12.2.12.8 DUTY TO DETERMINE IF DEBT IS TIME-BARRED: Every debt collector attempting to collect a debt in the state of New Mexico has a duty to determine, in good faith, whether each debt it is attempting to collect is or is not time-barred.

[12.2.12.8 NMAC - N, 12/15/10]

12.2.12.9 UNFAIR OR DECEPTIVE PRACTICES; REQUIRED DISCLOSURES:

A. It is an unfair or deceptive trade practice for any debt collector acting in the regular course of his or her trade or commerce, whether directly or indirectly, by letter, telephone, electronically or by any other means, to collect or to attempt to collect from any person any payment of any debt that the debt collector knows or has reason to know is a time-barred debt, or to seek or obtain from any person any payment, admission, affirmation, acknowledgement of a debt, or new promise to pay, or any waiver of legal rights or defenses with regard to any debt, that the debt collector knows or has reason to know is a time-barred debt unless the debt collector discloses the following information:

- (1) the disclosure is prefaced with the following statement: "We are required by New Mexico Attorney General rule to notify you of the following information. This information is not legal advice.";
- (2) either that the debt is unenforceable through a lawsuit because the time for filing has expired, or that it may be unenforceable through a lawsuit because the time for filing may have expired;
- (3) if the debt is time-barred, the person cannot be required to pay the debt through a lawsuit;
- (4) the person is not required by the law: to sign any admission, affirmation or acknowledgement of, or new promise to pay the debt; or to make any payment on the debt; or to waive any of his or her rights with regard to the effect of the running of the applicable statute of limitation;
- (5) an explanation of the consequences pursuant to NMSA 1978, Section 37-1-16, with regard to the revival of the statute of limitation resulting from: any payment on the debt; any signed admission, affirmation or acknowledgement of the debt; any signed new promise to pay the debt; any waiver of the debtor's legal rights resulting from the unenforceability of the debt due to the running of the applicable statute of limitation.

B. A debt collector who makes the following disclosure shall be deemed to have complied with the requirements of Subsection A of 12.2.12.9 NMAC: "We are required by New Mexico Attorney General rule to notify you of the following information. This information is not legal advice: This debt may be too old for you to be sued on it in court. If it is too old, you can't be required to pay it through a lawsuit. You can renew the debt and start the time for the filing of a lawsuit against you to collect the debt if you do any of the following: make any payment of the debt; sign a paper in which you admit that you owe the debt or in which you make a new promise to pay; sign a paper in which you give up ('waive') your right to stop the debt collector from suing you in court to collect the debt."

C. The disclosures required by Subsection A of 12.2.12.9 NMAC shall be in plain language, and shall be designed to reasonably and fairly inform the least sophisticated consumer.

D. If the demand for payment is in a language other than English, the debt collector shall give the disclosures required by Subsection A of 12.2.12.9 NMAC in that language.

E. In the case of written communications, the disclosures required by Subsection A of 12.2.12.9 NMAC or Subsection B of 12.2.12.9 NMAC shall be clear and conspicuous and shall be placed on the front page.

F. In the case of oral communications, the disclosures required by Subsection A of 12.2.12.9 NMAC or Subsection B of 12.2.12.9 NMAC shall be made immediately before or immediately after the first statement requesting payment, or, if no request for payment is made, no later than immediately after reference to the debt is first made.

G. The disclosures required by Subsection A of 12.2.12.9 NMAC shall be given only to those debtors whom the debt collector reasonably and in good faith determines owes a debt that is time-barred.

H. It is a defense to the requirements of Subsection A of 12.2.12.9 NMAC, Subsection B of 12.2.12.9 NMAC, and Subsection G of 12.2.12.9 NMAC if, in making the erroneous determination, the debt collector exercised reasonable efforts to determine whether the debt was time-barred or not and made the error in good faith, as supported by the debt collector's documentation. The absence of any documentation creates a rebuttal presumption of the lack of reasonable efforts and good faith.

[12.2.12.9 NMAC - N, 12/15/10]

12.2.12.10 VIOLATION OF THE UNFAIR PRACTICES ACT: Violation of this rule constitutes a violation of the New Mexico Unfair Practices Act, NMSA 1978, Section 57-12-1 et seq.

[12.2.12.10 NMAC - N, 12/15/10]

12.2.12.11 SEVERABILITY: If any portion of this rule is held invalid, the remainder of the rule—and the applications thereof shall remain unaffected.

[12.2.12.11 NMAC - N, 12/15/10]

Current with amendments included in the New Mexico Register, Volume XXXI, Issue Number 1, dated January 14, 2020.

N.M. Admin Code 12.2.12, NM ADC 12.2.12

N.M. Admin. Code 12.2.12

[https://www.westlaw.com/Document/NA45997104C5911E0AEDB97699BD1EC9D/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/NA45997104C5911E0AEDB97699BD1EC9D/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

RULE 1-009. PLEADING SPECIAL MATTERS

A. Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, that party shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

B. Fraud, mistake, and condition of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

C. Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

D. Official document or act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

E. Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

F. Time and place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

G. Special damage. When items of special damage are claimed, they shall be specifically stated.

H. Statutes. It shall not be necessary in any pleading to set forth any statute, public or private or any special matter thereof, but it shall be sufficient for the party to allege that the act was done by authority

of the statute, or contrary to the provisions of the statute, naming the subject matter of the statute, or referring thereto in some general term with convenient certainty.

I. Copy to be served. When any instrument of writing on which the action or defense is founded is referred to in the pleadings, the original or a copy of the instrument shall be served with the pleading, if within the power or control of the party wishing to use the same. A copy of the instrument of writing need not be filed with the district court.

J. 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 Rule 1-009(J)(2), Rule 1-017(E), 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.

Credits

[Amended effective Jan. 1, 1987; July 1, 2017.]

Editors' Notes

COMMITTEE COMMENTARY

Paragraph J of this rule was added in 2016 to provide additional protections to consumers in consumer debt collection cases. Rules 1-017(E), 1-055(B), and 1-060(B)(6) NMRA were also amended, and Form 4-226 NMRA created, for the same purpose. After consulting with the New Mexico Attorney General's Office Consumer Protection Division and creditor and debtor rights representatives, and researching concerns identified by the Federal Trade Commission in its report issued in July of 2010, "*Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*," the Committee concluded, and the Court agreed, that amendments to the rules are necessary to alleviate systemic problems and abuses that currently exist in the litigation of consumer debt cases. These include pleadings and judgments based on insufficient or unreliable evidence, "robo-signing" of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an alarmingly high percentage of default judgments (often caused in part by a lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity).

For an interpretation of the phrase, "acting in the ordinary course of business," see *Wilson v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 32, 135 N.M. 506, 90 P.3d 525, *overruled on other grounds by Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't*, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259 (interpreting course of business as "business practice that is routine, regular, usual, or normally done"). Medical bills, subject to relevant Health Insurance Portability and Accountability Act (HIPAA) regulations, and student loans, are considered consumer debt claims for the purposes of this rule; foreclosure actions are not

[NMRA, Rule 1-009](#)

RULE 1-017. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

A. Real party in interest. Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the state so provides, an action for the use or benefit of another shall be brought in the name of the state. Where it appears that an action, by reason of honest mistake, is not prosecuted in the name of the real party in interest, the court may allow a reasonable time for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

B. Wrongful death actions; personal representative. An action for wrongful death brought under Section 41-2-1 NMSA 1978 shall be brought by the personal representative appointed by the district court for that purpose under Section 41-2-3 NMSA 1978. A petition to appoint a personal representative may be brought before the wrongful death action is filed or with the wrongful death action itself.

C. Capacity to sue or be sued. The capacity of an individual, including those acting in a representative capacity, to sue or be sued shall be determined by the law of this state. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized, unless some statute of this state provides to the contrary.

D. Infants or incompetent persons. When an infant or incompetent person has a representative, such as a general guardian, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make any other order as it deems proper for the protection of the infant or incompetent person.

E. 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.

'redits

[Amended effective Jan. 1, 1997; Dec. 31, 2014; July 1, 2017.]

Editors' Notes

COMMITTEE COMMENTARY

2014 amendment

NMSA 1978, Section 41-2-3 provides that an action for wrongful death brought under NMSA 1978, Section 41-2-1 "shall be brought by and in the name of the personal representative of the deceased person." The Court of Appeals has ruled that the personal representative referenced in Section 41-2-3 is

distinguishable from the personal representative of the estate of the deceased as defined in the Probate Code. *See In re Estate of Sumler*, 2003-NMCA-030, ¶ 8, 133 N.M. 319, 62 P.3d 776 (“[I]t is improper to equate a personal representative under the Wrongful Death Act with a personal representative as defined by the Probate Code.”). To maintain the distinction between a traditional personal representative and one appointed to maintain a wrongful death action, Paragraph B now provides that only a personal representative appointed by the district court may bring a wrongful death action. A personal representative as defined by the Probate Code may seek appointment from the district court under Section 41-2-3 as the personal representative for the purpose of filing and maintaining a wrongful death action under Section 41-2-1.

Paragraph B also provides that the person seeking to become the personal representative may petition the court for appointment either before the filing of the wrongful death action or in the wrongful death action itself. *See In re Estate of Sumler*, 2003-NMCA-030, ¶ 10 n.1 (“[W]e see no reason why a petition for appointment of a Section 41-2-3 personal representative may not be brought with the wrongful death action itself, assuming that all necessary parties are subject to joinder in the forum where the wrongful death action is brought.” (internal citations omitted)). Failure to appoint a personal representative before the filing of a wrongful death action is not a jurisdictional defect and, under proper circumstances, may be accomplished after the action is filed. *See Chavez v. Regents of University of New Mexico*, 1985-NMSC-114, 103 N.M. 606, 711 P.2d 883.

2016 amendment

Paragraph E of this rule provides additional protections to consumers’ consumer debt collection cases. *See* Comment to ©e 1-009 NMRA. Paragraph (E)(2)’s affidavit requirements derive from Rule 1-056(E) NMRA. A proper affidavit can support the introduction of business records. *See Nader v. Blair*, 549 F.3d 953, 963 (4th Cir. 2008) (stating that “employees who are familiar with the record-keeping practices of a business are qualified to speak from personal knowledge that particular documents are admissible business records, and affidavits sworn by such employees constitute appropriate summary judgment evidence.”). In like manner, an affidavit from the “custodian or another qualified witness” or “a certification that complies with Rule 11-902(11) or (12) NMRA” that demonstrates compliance with Rule 11-803(6) NMRA suffice, if the business records accompany the affidavit or certification.

The business records exception allows the records themselves to be admissible but not simply statements about the purported contents of the records. *See State v. Cofer*, 2011-NMCA-085, ¶ 17, 150 N.M. 483, 261 P.3d 1115 (holding that, based on the plain language of Rule 11-803(F) NMRA (2007) (now Rule 11-803(6) NMRA), “it is clear that the business records exception requires some form of document that satisfies the rule’s foundational elements to be offered and admitted into evidence and that testimony alone does not qualify under this exception to the hearsay rule,” and concluding that “testimony regarding the contents of business records, unsupported by the records themselves, by one without personal knowledge of the facts constitutes inadmissible hearsay”) (internal quotation marks and citation omitted); *Bank of New York v. Romero*, 2014-NMSC-007, ¶ 33, 320 P.3d 1.

[Commentary adopted effective December 31, 2014. Amended effective July 1, 2017; December 31, 2017.]

[NMRA, Rule 1-017](#)

FORM 4-226. CIVIL COMPLAINT PROVISIONS; CONSUMER DEBT CLAIMS

[For use with Rule 1-009(J) 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) shall include, at a minimum, the following provisions:

STATE OF NEW MEXICO

COUNTY OF

JUDICIAL DISTRICT

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:

[W]

The Plaintiff in this action IS the original creditor; OR

[W]

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)

is \$

itdue:

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, 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 [W] IS or [W] 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:

[W]

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.

[W]

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:

[W]

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.

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

WHEREFORE, Plaintiff demands judgment in the amount of \$

and costs and such further relief as the court deems proper.

Date

Signature
Name (print)
Address (print)
City, State, and Zip Code (print)
Telephone Number

USE NOTE

Rule 1-008(A)(3) NMRA bars asking for damages in any specific amount “unless it is a necessary allegation of the complaint.” Rule 1-054(C) NMRA bars default judgments exceeding the amount stated in the demand for judgment. Consistent with Rule 1-008(A)(3) and Rule 1-054(C), and in order to provide notice to the defendant of the consequences of a default judgment, the demand for judgment in a specific amount is here made a necessary part of the complaint.

[NM R CIV Form 4-226](#)

TITLE 12 TRADE, COMMERCE, AND BANKING

CHAPTER 2 CONSUMER PROTECTION

PART 12 COLLECTION OF TIME-BARRED DEBT

12.2.12.1 ISSUING AGENCY: Office of the New Mexico Attorney General. [12.2.12.1 NMAC - N, 12/15/10]

12.2.12.2 SCOPE: Disclosure of time-barred debt. [12.2.12.2 NMAC - N, 12/15/10]

12.2.12.3 STATUTORY AUTHORITY: The New Mexico Unfair Practices Act, NMSA 1978, Section 57-12-1, et seq. (1967). [12.2.12.3 NMAC - N, 12/15/10]

12.2.12.4 DURATION: Permanent. [12.2.12.4 NMAC - N, 12/15/10]

12.2.12.5 EFFECTIVE DATE: December 15, 2010, unless a later date is cited at the end of a section. [12.2.12.5 NMAC - N, 12/15/10] 12.2.12.6

OBJECTIVE: The purpose of this rule is to ensure a uniform understanding and practice within the debt collection industry regarding what information is required to be provided to consumers when a debt that the debt collector, acting in the regular course of his or her trade or commerce, is attempting to collect is unenforceable in judicial proceedings due to the running of the applicable statute of limitation. The implementation of the notices required in this rule will obviate an industry-wide practice that tends to or does mislead or deceive by failing to provide material information to consumers. NMSA 1978, Section 57-12-2(D)(14). [12.2.12.6 NMAC - N, 12/15/10] 12.2.12.7

DEFINITIONS:

A. “Collection of debt” means any effort by any person acting in the regular course of his or her trade or commerce, including, but not limited to, the original lender or obligee, or any assignee of the original lender or obligee, or any assignee of any owner of the debt other than the original lender or obligee, or any third party attempting to collect the debt on behalf of the debt owner, to obtain payment of all or any part of the debt from the person who owes the debt.

B. “Clear and conspicuous” has the same meaning as the term “conspicuous” defined at NMSA 1978, Section 55-1-201(b)(10) (1961), of the New Mexico Commercial Code; EXCEPT that it shall exclude the requirement that all words be in capitalized lettering.

C. “Debt” means any obligation owed or alleged to be owed by one person to another.

D. "Debt collector" means any person who, in the regular course of the person's trade or commerce, collects or attempts to collect a debt owed or alleged to be owed by any person in New Mexico, including, but not limited to, the original lender or obligee, any assignee of the original owner, and third party collectors who are "debt collectors" as defined by the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692a(6).

E. "Good faith" means an honest, fair and reasonable belief that rests on a reasonable assessment of those facts reasonably and fairly available, and not necessarily limited only to those facts actually in possession. "Good faith" may require a fair and reasonable inquiry of others in possession of information known or believed to be relevant to the matter at issue. See, in part, *State v. Sanchez*, 88 N.M. 378, 382, 540 P.2d 858 (Ct.App. 1975); rev.'d, other grds., 88 N.M. 402, 540 P.2d 1291 (1975); NMSA 1978, Section 55-1-201(b)(20) (1961).

F. "Least sophisticated consumer" means the standard for evaluating truth and deception under the federal Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq., as summarized in *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168 (11th Cir. 1985).

G. "Person" means natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates.

H. "Statute of limitation" means the time period established by law in which an aggrieved party may bring a cause of action in judicial proceedings; e.g., NMSA 1978, Sections 37-1-3 (six years for written contracts), 37-1-4 (four years for unwritten contracts and accounts), or 55-2-725 (four years for breach of contract for sale of goods). 12.2.12 NMAC 2

I. "Time-barred debt" means any debt that is not enforceable in a judicial proceeding because the applicable statute of limitation has run. [12.2.12.7 NMAC - N, 12/15/10] 12.2.12.8

DUTY TO DETERMINE IF DEBT IS TIME-BARRED: Every debt collector attempting to collect a debt in the state of New Mexico has a duty to determine, in good faith, whether each debt it is attempting to collect is or is not time-barred. [12.2.12.8 NMAC - N, 12/15/10] 12.2.12.9

UNFAIR OR DECEPTIVE PRACTICES; REQUIRED DISCLOSURES:

A. It is an unfair or deceptive trade practice for any debt collector acting in the regular course of his or her trade or commerce, whether directly or indirectly, by letter, telephone, electronically or by any other means, to collect or to attempt to collect from any person any payment of any debt that the debt collector knows or has reason to know is a time-barred debt, or to seek or obtain from any person any payment, admission, affirmation, acknowledgement of a debt, or new promise to pay, or any waiver of legal rights or defenses with regard to any debt, that the debt collector knows or has reason to know is a time-barred debt unless the debt collector discloses the following information:

(1) the disclosure is prefaced with the following statement: "We are required by New Mexico Attorney General rule to notify you of the following information. This information is not legal advice.";

(2) either that the debt is unenforceable through a lawsuit because the time for filing has expired, or that it may be unenforceable through a lawsuit because the time for filing may have expired;

(3) if the debt is time-barred, the person cannot be required to pay the debt through a lawsuit;

(4) the person is not required by the law: to sign any admission, affirmation or acknowledgement of, or new promise to pay the debt; or to make any payment on the debt; or to waive any of his or her rights with regard to the effect of the running of the applicable statute of limitation;

(5) an explanation of the consequences pursuant to NMSA 1978, Section 37-1-16, with regard to the revival of the statute of limitation resulting from: any payment on the debt; any signed admission, affirmation or acknowledgement of the debt; any signed new promise to pay the debt; any waiver of the debtor's legal rights resulting from the unenforceability of the debt due to the running of the applicable statute of limitation.

C. Setting aside default; suspending execution. Only the assigned judge shall hear a motion to set aside a default judgment. In exigent circumstances, if the assigned judge is unavailable, any judge may suspend execution on a default judgment.

[NM R 2 DIST LR2-123](#)

DISTRICT COURT CIVIL

Supreme Court Approved

RULE 1–055

Novemeber 1, 2019

<< NM R DIST CT RCP Rule 1–055 >>

RULE 1–055. DEFAULT

A. Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

B. Judgment. Judgment by default may be entered as follows: in all cases the party entitled to a judgment by default shall apply to the court for judgment by default; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared in the action. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on the application; provided, however, that the filing of an appearance and disclaimer of interest shall not be construed as requiring the service of written notice of application for judgment under the terms of this rule. In cases controlled by Rule 1–009(J) NMRA, prior to entry of default judgment the court shall determine that the party seeking relief has stated a claim on which relief can be granted, has complied with Rules 1–009(J)(2) and 1–017(E) NMRA, and has substantially complied with the requirements of Form 4–226 NMRA. If, in order to enable the court to enter judgment or to carry it into effect, it is 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 those hearings or order those references as it deems necessary and proper and shall accord a right of trial by jury to the parties entitled thereto.

C. Setting aside default. For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 1–060 NMRA.

D. Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 1–054(C) NMRA.

E. Limitations. No judgment by default shall be entered against the state or an officer or agency of the state or against a party in any case based on a negotiable instrument, unless the original negotiable instrument is filed with the court and merged with the judgment, or where the damages claimed are unliquidated unless the claimant establishes the claimant's claim or right to relief by evidence satisfactory to the court.

[As amended, effective August 27, 1999; as amended by Supreme Court Order 16–8300–031, effective for all cases pending or filed on or after July 1, 2017.]

Committee commentary

Paragraph B of this rule was revised in 2016 to provide additional protections to consumers in consumer debt collection cases. *See* Comment to Rule 1–009 NMRA. Paragraph B references Rule 1–009(J)(2) NMRA, under which, if the party seeking relief in a consumer debt claim has not served and filed with the district court the instrument of writing on which the party's claim is based, the district court shall not enter a default judgment without the court's finding of the party's good cause failure to do so. For cases involving a negotiable instrument which is not part of a consumer debt claim, Paragraph E of this rule requires that the original negotiable instrument be filed with the court unless the party seeking default judgment provides sufficient alternative evidence to demonstrate the party's right to relief.

[As adopted by Supreme Court Order No. 16–8300–031, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 19–8300–017, effective for all cases pending or filed on or after December 31, 2019.]

[2019 NEW MEXICO COURT ORDER 0023 \(C.O. 0023\)](#)

New York

Section 202.27-b Additional Mailing of Notice on an Action Arising from a Consumer Credit Transaction (Uniform Civil Rules for the Supreme Court and the County Court)

(a) Additional mailing of notice on an action arising from a consumer credit transaction.

(1) At the time of filing with the clerk the proof of service of the summons and complaint in an action arising from a consumer credit transaction, or at any time thereafter, the plaintiff shall submit to the clerk a stamped unsealed envelope addressed to the defendant together with a written notice, in both English and Spanish, containing the following language:

SUPREME/DISTRICT/CITY COURT. COUNTY/CITY OF _____

COUNTY OF _____ INDEX NO. _____

Plaintiff _____ Defendant _____

ATTENTION: A lawsuit has been filed against you claiming that you owe money for an unpaid consumer debt. You should respond to the lawsuit as soon as possible by filing an "answer." You may wish to contact an attorney. 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 will 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 on the court system's website at: www.nycourts.gov

PRECAUCIÓN: Se ha presentado una demanda en su contra reclamando que usted debe dinero por una deuda al consumidor no saldada. Usted debe, tan pronto como le sea posible, responder a la demanda presentando una "contestación." Quizás usted quiera comunicarse con un abogado. Si usted no presenta

una contestación, el tribunal puede emitir un fallo monetario en contra suya. Una vez emitido, ese fallo es válido y puede ser utilizado contra usted por un período de veinte años, y contra su propiedad personal y su dinero, incluyendo una porción de su salario y/o su cuenta bancaria, los cuales pueden ser embargados. Además, un fallo monetario afecta su crédito y puede afectar su capacidad de alquilar una casa, encontrar trabajo o solicitar un préstamo para comprar un automóvil. Usted no puede ser arrestado ni apresado por adeudar dinero. Puede obtener información adicional en el sitio web del sistema: www.nycourts.gov.

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 contain, in the form of a return address, the appropriate address of the clerk's office to which the defendant should be directed. These addresses are:

[INSERT APPROPRIATE COURT ADDRESS OR ADDRESSES]

(2) The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in paragraph (1). No default judgment based on defendant's failure to answer shall be entered unless there has been compliance with this subdivision and at least 20 days have elapsed from the date of mailing by the clerk. No default judgment based on defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable, unless the address at which process was served matches the address of the defendant on a Certified Abstract of Driving Record issued from the New York State Department of Motor Vehicles. Receipt of the additional notice by the defendant does not confer jurisdiction on the court in the absence of proper service of process.

Historical Note

Added Sept. 15, 2014, eff. [Oct. 1, 2014](#)

22 NYCRR 208.6 Summons

Section 208.6. Summons

(a) The summons shall state the county division and location of the court in which the action is brought, as well as the names of the parties, and shall comply with all the provisions of the NYCCCA applicable to summonses.

(b) The following form is to be used in all cases:

CIVIL COURT OF THE CITY OF NEW YORK

Index No.

COUNTY OF

Plaintiff,) SUMMONS

)

) Plaintiff's Residence

) Address:

)

-against-)

)

Defendant,) The basis of the venue
) designated is:

To the above named defendant:

YOU ARE HEREBY SUMMONED to appear in the Civil Court of the City of New York,
County of..... at the office of the Clerk of the said Court at in the
County of City and State of New York, within the time provided by law as
noted below and to file your answer to the (endorsed summons) (annexed
complaint) ^{a1} with the Clerk; upon your failure to answer, judgment will
be taken against you for the sum of \$..... with interest thereon from
the day of 19....., together with the costs of this action.
Dated, the..... day of 19.....

Clerk or Attorney(s) for Plaintiff

Post-Office Address

Telephone Number

^{a1}If the cause of action is for money only and a formal complaint
is not attached to the summons, strike the words "annexed complaint."
If a formal complaint is attached to the summons, strike the words
"endorsed summons."

NOTE: The law provides that:

(a) if this summons is served by its delivery to you personally within the City of New York, you must
appear and answer within TWENTY days after such service; or

(b) if this summons is served by delivery to any person other than you personally, or is served outside
the City of New York, or by publication, or by any means other than personal delivery to you within the
City of New York, you are allowed THIRTY days after the proof of service thereof is filed with the Clerk of
this Court within which to appear and answer.

(c) Where a defendant appears by an attorney, a copy of his answer shall be served upon the plaintiff's
attorney, or upon the plaintiff if the plaintiff appears in person, at or before the time of filing the original
answer with proof of service thereof.

(d) In any action arising from a consumer credit transaction, if the form of summons provided for in
subdivision (b) of this section is used:

(1) The summons shall have prominently displayed at the top thereof the words **CONSUMER CREDIT
TRANSACTION** and the following additional legend or caveat printed in not less than 12-point bold
upper case type:

IMPORTANT!! YOU ARE BEING SUED!!

THIS IS A COURT PAPER—A SUMMONS

**DON'T THROW IT AWAY!! TALK TO A LAWYER RIGHT AWAY!! PART OF YOUR PAY CAN BE
TAKEN FROM YOU (GARNISHEED). IF YOU DO NOT BRING THIS TO COURT, OR SEE A**

LAWYER, YOUR PROPERTY CAN BE TAKEN AND YOUR CREDIT RATING CAN BE HURT!! YOU MAY HAVE TO PAY OTHER COSTS TOO!! IF YOU CAN'T PAY FOR YOUR OWN LAWYER, BRING THESE PAPERS TO THIS COURT RIGHT AWAY. THE CLERK (PERSONAL APPEARANCE) WILL HELP YOU!!

(2) Where a purchaser, borrower or debtor is a defendant, the summons shall have set forth beneath the designation of the basis of venue the county of residence of a defendant, if one resides within the State, and the county where the consumer credit transaction took place, if it is within the State.

(3) The summons also shall contain a translation in Spanish as follows:

TRANSACCION DE CREDITO DEL CONSUMIDOR

!IMPORTANTE! UD. HA SIDO DEMANDADO!

ESTE ES UN DOCUMENTO LEGAL—UNA CITACION

!NO LA BOTE! !CONSULTE CON SU ABOGADO ENSEGUIDA! LE PUEDEN QUITAR PARTE DE SU SALARIO (EMBARGARLO). !SI UD. NO SE PRESENTA EN LA CORTE CON ESTA CITACION LE PUEDEN CONFISCAR SUS BIENES (PROPIEDAD) Y PERJUDICAR SU CREDITO! !TAMBIEN ES POSIBLE QUE TENGA QUE PAGAR OTROS GASTOS LEGALES (COSTAS)! SI UD. NO TIENE DINERO PARA UN ABOGADO TRAIGA ESTOS PAPELES A LA CORTE INMEDIATAMENTE. VENGA EN PERSONA Y EL SECRETARIO DE LA CORTE LE AYUDARA.

Corte Civil de La Ciudad de Nueva York No. de Epigrafe

Condado de CITACION

) Residencia de Demandante

) Direccion:

Demandante,) La Razon de haber designado

) esta Corte es:

-Vs.-) El Demandado vive en el

) Condado de

Demandado.) La transaccion de credito

) tuvo lugar en el

_____ Condado de

Al demandado arriba mencionado:

USTED ESTA CITADO a comparecer en la Corte Civil de la Ciudad de Nueva York,

Condado de..... a la oficina del Jefe Principal de dicha Corte en en el

Condado de Ciudad y Estado de Nueva York, dentro del tiempo provisto por

la ley segun abajo indicado y a presentar su respuesta a la (citacion

endorsada) (demanda) ^{a1} al Jefe de la Corte; si usted no comparece a

contestar, se rendira sentencia contra usted en la suma de \$... con

intereses en dicha cantidad desde el diade 19..... , incluyendo las

costas de esta causa.

Fechado, el dia..... de 19.....

Jefe de la Corte Abogado(s) del Demandante

Direccion

Telefono

*Si la causa de accion es para dinero solamente y no esta una demanda formal junto a la citacion, tache las palabras "demanda anexada." Si una demanda formal esta junto a la citacion, tache las palabras "citacion endorsada."

NOTA: La Ley provee que:

(a) Si esta citacion es entregada a usted personalmente en la Ciudad de Nueva York, usted debe comparecer y responderia dentro de VIENTE dias despues de la entrega; o

(b) Si esta citacion es entregada a otra persona que no fuera usted personalmente, o si fuera entregada afuera de la Ciudad de Nueva York, o por medio de publicacion, o por otros medios que no fueran entrega personal a usted en la Ciudad de Nueva York, usted tiene TREINTA dias para comparacer y responder la demanda, despues de haberse presentado prueba de entrega de la citacion al Jefe de esta Corte.

(e) In a case in which a notice of motion for summary judgment in lieu of a complaint (pursuant to CPLR 3213 and NYCCCA 1004) is annexed to the summons, the following form of summons is to be used:

Civil Court of the City of New York Index No.

County of.....

) SUMMONS

) Plaintiff's Residence

Plaintiff,) Address:

)

-against-) The basis of the venue

) designated is:

Defendant,)

)

To the above named defendant:

YOU ARE HEREBY SUMMONED and required to submit to plaintiff's attorney your answering papers on this motion within the time provided in the notice of motion annexed hereto. In the case of your failure to submit answering papers, summary judgment will be taken against you by default for the relief demanded in the notice of motion.

Dated, the..... day of, 19

Attorney(s) for Plaintiff

Post-office Address

Telephone Number

(f) In any action arising from a consumer credit transaction, if the form of summons provided for in subdivision (e) of this section is used:

(1) The summons shall have prominently displayed at the top thereof the words **CONSUMER CREDIT TRANSACTION** and the following additional legend or caveat printed in not less than 12-point bold upper case type:

IMPORTANT!! YOU ARE BEING SUED!!

THIS IS A COURT PAPER—A SUMMONS

DON'T THROW IT AWAY!! TALK TO A LAWYER RIGHT AWAY!! PART OF YOUR PAY CAN BE TAKEN FROM YOU (GARNISHEED). IF YOU DO NOT BRING THIS TO COURT, OR SEE A LAWYER, YOUR PROPERTY CAN BE TAKEN AND YOUR CREDIT RATING CAN BE HURT!! YOU MAY HAVE TO PAY OTHER COSTS TOO!! IF YOU CAN'T PAY FOR YOUR OWN LAWYER, BRING THESE PAPERS TO THIS COURT RIGHT AWAY. THE CLERK (PERSONAL APPEARANCE) WILL HELP YOU!!

(2) Where a purchaser, borrower or debtor is a defendant, the summons shall have set forth beneath the designation of the basis of venue the county of residence of a defendant, if one resides within the State, and the county where the consumer credit transaction took place, if it is within the State.

(3) The summons also shall contain a translation in Spanish as follows:

TRANSACCION DE CREDITO DEL CONSUMIDOR

!IMPORTANTE! !UD. HA SIDO DEMANDADO!

ESTE ES UN DOCUMENTO LEGAL—UNA CITACION

!NO LA BOTE! !CONSULTE CON SU ABOGADO ENSEGUIDA! LE PUEDEN QUITAR PARTE DE SU SALARIO (EMBARGARLO). !SI UD. NO SE PRESENTA EN LA CORTE CON ESTA CITACION LE PUEDEN CONFISCAR SUS BIENES (PROPIEDAD) Y PERJUDICAR SU CREDITO! !TAMBIEN ES POSIBLE QUE TENGA QUE PAGAR OTROS GASTOS LEGALES (COSTAS)! SI UD. NO TIENE DINERO PARA UN ABOGADO TRAIGA ESTOS PAPELES A LA CORTE IMMEDIATAMENTE. VENGA EN PERSONA Y EL SECRETARIO DE LA CORTE LE AYUDARA.

Corte Civil de La Ciudad de Nueva York No. de Epigrafe....

Condado de..... CITACION

) Residencia de Demandante

) Direccion:

Demandante,) La Razon de haber designado

) esta Corte es:

-Vs.-) El Demandado vive en el

) Condado de.....

Demandado.) La transaccion de credito

) tuvo lugar en el

_____ Condado de

Al demandado arriba mencionado:

USTED ESTA CITADO y obligado a entregar al abogado del Demandante su contestacion a esta peticion dentro del tiempo indicado en el aviso adjunto.

En el caso que usted no entregue su contestacion, se dictara sentencia sumaria contra usted por incumplimiento por la suma demandada en la peticion de demanda.

Fechado, el dia..... de 19.....

Abogado(s) del Demandante

Direccion

Telefono

(g) In any action arising from a consumer credit transaction, a default judgment shall not be entered against the defendant unless the plaintiff first shall have submitted to a judge or to the clerk of the court proof, by affidavit or otherwise, that the summons served upon the defendant had displayed and set forth on its face the words and added legend or caveat required by subdivisions (d) and (f) of this section.

(h) Additional mailing of notice on an action arising from a consumer credit transaction. (Uniform Civil Rules for the New York City Civil Court).

(1) At the time of filing with the clerk the proof of service of the summons and complaint in an action arising from a consumer credit transaction, or at any time thereafter, the plaintiff shall submit to the clerk a stamped unsealed envelope addressed to the defendant together with a written notice, in both English and Spanish, containing the following language:

CIVIL COURT. CITY OF NEW YORK _____

COUNTY OF _____ INDEX NO. _____

Plaintiff _____ Defendant _____

ATTENTION: A lawsuit has been filed against you claiming that you owe money for an unpaid consumer debt. You should go to the court clerk's office at the address listed on the face of the envelope as soon as possible to respond to the lawsuit by filing an "answer." You may wish to contact an attorney. 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 will 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.

It is important that you go to the court clerk's office listed above as soon as possible. You should bring this notice and any legal papers you may have received. Additional information can be found on the court system's website at: www.nycourts.gov

PRECAUCION: Se ha presentado una demanda en su contra reclamando que usted debe dinero por una deuda al consumidor no saldada. Usted debe dirigirse a las ventanillas del secretario del tribunal, localizada en la direccion enumerada en el frente del sobre que recibio, tan pronto como le sea posible, para responder a la demanda presentando una "contestacion." Quizas usted quiera comunicarse con un abogado. Si usted no presenta una contestacion, el tribunal puede emitir un fallo monetario en contra suya. Una vez emitido, ese fallo es valido y puede ser utilizado contra usted por un periodo de veinte anos, y contra su propiedad personal y su dinero, incluyendo una porcion de su salario y/o su cuenta bancaria, los cuales pueden ser embargados. Ademas, un fallo monetario afecta su credito y puede

afectar su capacidad de alquilar una casa, encontrar trabajo o solicitar un préstamo para comprar un automóvil. Usted no puede ser arrestado ni apresado por adeudar dinero.

Es importante que se dirija a las ventanillas del secretario judicial antes mencionado tan pronto como pueda. Usted debe presentar esta notificación y cualesquiera documentos legales que haya recibido. Puede obtener información adicional en el sitio web del sistema: www.nycourts.gov.

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 contain, in the form of a return address, the appropriate address of the clerk's office to which the defendant should be directed. These addresses are:

[INSERT APPROPRIATE COURT ADDRESS OR ADDRESSES]

(2) The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in paragraph (1) of this subdivision. No default judgment based on defendant's failure to answer shall be entered unless there has been compliance with this subdivision and at least 20 days have elapsed from the date of mailing by the clerk. No default judgment based on defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable, unless the address at which process was served matches the address of the defendant on a Certified Abstract of Driving Record issued from the New York State Department of Motor Vehicles. Receipt of the additional notice by the defendant does not confer jurisdiction on the court in the absence of proper service of process.

[N.Y. Comp. Codes R. & Regs. tit. 22, § 208.6](#)

Section 208.14-a Proof of Default Judgment in Consumer Credit Matters (Uniform Civil Rules for the New York City Civil Court)

(a) Definitions.

(1) For purposes of this section a consumer credit transaction means a revolving or open-end credit transaction wherein credit is extended by a financial institution, which is in the business of extending credit, to an individual primarily for personal, family or household purposes, the terms of which include periodic payment provisions, late charges and interest accrual. A consumer credit transaction does not include debt incurred in connection with, among others, medical services, student loans, auto loans or retail installment contracts.

(2) Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. Charged-off consumer debt means a consumer debt that has been removed from an original creditor's books as an asset and treated as a loss or expense.

(3) 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 for collection litigation.

(4) Credit agreement means a copy of a contract or other document governing the account provided to the defendant evidencing the defendant's agreement to the debt, the amount due on the account, the name of the original creditor, the account number, and the name and address of the defendant. The charge-off statement or the monthly statement recording the most recent purchase transaction, payment or balance transfer shall be deemed sufficient evidence of a credit agreement.

§ 601. Prohibited practices

No principal creditor, as defined by this article, or his agent shall:

1. Simulate in any manner a law enforcement officer, or a representative of any governmental agency of the state of New York or any of its political subdivisions; or
2. Knowingly collect, attempt to collect, or assert a right to any collection fee, attorney's fee, court cost or expense unless such charges¹ are justly due and legally chargeable against the debtor; or
3. Disclose or threaten to disclose information affecting the debtor's reputation for credit worthiness with knowledge or reason to know that the information is false; or
4. Communicate or threaten to communicate the nature of a consumer claim to the debtor's employer prior to obtaining final judgment against the debtor. The provisions of this subdivision shall not prohibit a principal creditor from communicating with the debtor's employer to execute a wage assignment agreement if the debtor has consented to such an agreement; or
5. Disclose or threaten to disclose information concerning the existence of a debt known to be disputed by the debtor without disclosing that fact; or
6. Communicate with the debtor or any member of his family or household with such frequency or at such unusual hours or in such a manner as can reasonably be expected to abuse or harass the debtor; or
7. Threaten any action which the principal creditor in the usual course of his business does not in fact take; or
8. Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist; or
9. Use a communication which simulates in any manner legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, governmental agency, or attorney at law when it is not; or
10. Remotely disable a vehicle using a payment assurance device defined in paragraph sixty-a of subsection (a) of section 9-102 of the uniform commercial code or by any other means in order to repossess a debtor's vehicle without first having given written notice of the possible remote disabling of a vehicle in the method and timetable agreed upon by the consumer and the creditor in the initial contract for services. The notice shall be mailed by registered or certified mail to the address at which the debtor will be residing on the expected date of the remote disabling of the vehicle. The notice shall be postmarked no later than ten days prior to the date on which the principal creditor or his agent obtains the right to remotely disable the vehicle; or
11. If such principal creditor or agent sends more than fifty information subpoenas per month, fail to keep complete records concerning all information subpoenas sent by such principal creditor or agent. Such records shall be maintained for five years. Contemporaneous records shall be kept that set forth with specificity the grounds for such principal creditor or agent's reasonable belief, which must be certified and accompany each information subpoena pursuant to rule fifty-two hundred twenty-four of the civil practice law and rules, that the party receiving the subpoena has in its possession information about the debtor that will assist the creditor in collecting his or her judgement. In addition to any other penalty that may be imposed, failure to maintain records in accordance with this subdivision shall subject such principal creditor or agent to a civil penalty of not more than fifty dollars per subpoena, up to a maximum of five thousand dollars per violation, in an action brought by the attorney general; or²

N.Y. Gen. Bus. Law § 601 (McKinney)

2019 New York Assembly Bill No. 679, New York Two Hundred Forty-Second Legislative Session

NEW YORK BILL TEXT

TITLE: Relates to standing for persons affected by prohibited or unlawful business practices.

VERSION: Amended/Substituted

June 16, 2019

Niou, Yuh-Line

Image 1 within document in PDF format.

SUMMARY: NIOU, STECK, BARRON, KIM, DINOWITZ, EPSTEIN, FRONTUS, RICHARDSON, D'URSO, FALL, REYES, SIMOTAS; M-S: Sayegh Amd ii349 & 389-c, Gen Bus L Relates to standing for persons affected by prohibited or unlawful business practices and expands prohibited acts to include unfair, deceptive or abusive acts.

TEXT:

STATE OF NEW YORK

679--C

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019 _____

Introduced by M. of A. NIOU, STECK, BARRON, KIM, DINOWITZ, EPSTEIN, FRONTUS, RICHARDSON, D'URSO, FALL, REYES, SIMOTAS, MOSLEY, SIMON, QUART, SOLAGES, BICHOTTE, BARNWELL, GOTTFRIED, JACOBSON, L. ROSENTHAL, ABBATE, OTIS, CRUZ, BLAKE, MONTESANO, DeSTEFANO, JAFFEE, WEPRIN, LAWRENCE, ORTIZ, TAYLOR, WALKER, REILLY, DICKENS, RIVERA -- Multi- Sponsored by -- M. of A. ENGLEBRIGHT, LENTOL, SAYEGH -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the general business law, in relation to standing for persons affected by prohibited or unlawful business practices

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 349 of the general business law, as added by chapter 43 of the laws of 1970, subdivision (h) as amended by chapter 157 of the laws of 1984, and subdivision (j) as added by section 6 of part HH of chapter 55 of the laws of 2014, is amended to read as follows:

§ 349. Prohibited acts and practices unlawful. (a) This section prohibits any unfair, deceptive or abusive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service .

(1) For the purposes of this section, an act or practice is unfair when:

(i) it causes or is likely to cause substantial injury, the injury is not reasonably avoidable, and the injury is not outweighed by countervailing benefits; or

(ii) it takes unreasonable advantage of the inability of a person to protect his or her interests because of the person's infirmity, illiteracy or inability to understand the language of an agreement.

(2) For the purposes of this section, an act or practice is deceptive when the act or practice misleads or is likely to mislead a person and the person's interpretation is reasonable under the circumstances.

(3) For the purposes of this section, an act or practice is abusive when:

(i) it materially interferes with the ability of a person to understand a term or condition of a product or service; or

(ii) takes unreasonable advantage of:

(A) a person's lack of understanding of the material risks, costs, or conditions of the product or service;

(B) a person's inability to protect his or her interests in selecting or using a product or service; or

(C) a person's reasonable reliance on a person covered by this section to act in his or her interests.

(b) Whenever the attorney general shall believe from evidence satisfactory to him or her that any person, firm, corporation or association or agent or employee thereof has engaged in or is about to engage in any of the acts or practices stated to be unfair, unlawful, deceptive or abusive, he or she may bring an action in the name and on behalf of the people of the state of New York to enjoin such unlawful acts or practices and to obtain restitution of any moneys or property obtained directly or indirectly by any such unlawful acts or practices. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules. Such actions may be brought regardless of whether or not the underlying violation is directed at individuals or businesses, is consumer-oriented, or involves the offering of goods, services, or property for personal, family or household purposes.

(c) Before any violation of this section is sought to be enjoined, the attorney general shall be required to give the person against whom such proceeding is contemplated notice by certified mail and an opportunity to show in writing within five business days after receipt of notice why proceedings should not be instituted against him or her, unless the attorney general shall find, in any case in which he or she seeks preliminary relief, that to give such notice and opportunity is not in the public interest.

(d) In any such action it shall be a complete defense that the act or practice is, or if in interstate commerce would be, subject to and complies with the rules and regulations of, and the statutes administered by, the federal trade commission or any official department, division, commission or agency of the United States as such rules, regulations or statutes are interpreted by the federal trade commission or such department, division, commission or agency or the federal courts.

(e) Nothing in this section shall apply to any television or radio broadcasting station or to any publisher or printer of a newspaper, magazine or other form of printed advertising, who broadcasts, publishes, or prints the advertisement.

(f) In connection with any proposed proceeding under this section, the attorney general is authorized to take proof and make a determination of the relevant facts, and to issue subpoenas in accordance with the civil practice law and rules.

(g) This section shall apply to all prohibited acts and practices , whether or not subject to any other law of this state, and shall not supersede, amend or repeal any other law of this state under which the attorney general is authorized to take any action or conduct any inquiry.

(h) (1) In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages and statutory damages of one thousand dollars, or both such actions. Such actions may be brought regardless of whether or not the underlying violation is consumer-oriented or has a public impact. The court may, in its discretion, increase the award of damages if the court finds the defendant willfully or knowingly violated this section. The court shall award reasonable attorney's fees and costs to a prevailing plaintiff.

(i) For purposes of this section, a "person" is defined as an individual, firm, corporation, partnership, cooperative, association, coalition or any other organization's legal entity, or group of individuals however organized;

(ii) For purposes of this section "non-profit organization" is defined as an organization that is (1) not an individual; and (2) is neither organized nor operating in whole, or in significant part, for profit;

(iii) Given the remedial nature of this section, standing to bring an action under this section, including but not limited to organizational standing and third-party standing, shall be liberally construed and shall be available to the fullest extent otherwise permitted by law.

(2) Any individual or non-profit organization entitled to bring an action under this article may, if the prohibited act or practice has caused damage to others similarly situated, bring an action on behalf of himself or herself and such others to recover actual, statutory and/or punitive damages or obtain other relief as provided for in this article. Statutory damages under this section will be limited to (i) such amount for each named plaintiff as could be recovered under paragraph one of this subdivision; and (ii) such amount as the court may allow for all other class members without regard to a minimum individual recovery, not to exceed the lesser of one million dollars or two per centum of the net worth of the business. Thus, any action brought under this subdivision shall comply with article nine of the civil practice law and rules.

(3) A non-profit organization may bring an action under this section, on behalf of itself or any of its members, or on behalf of those members of the general public who have been injured by reason of any violation of this section, including a violation involving goods or services that the non-profit organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes. A non-profit organization may seek the same remedies and damages that a person may seek under paragraph one of this subdivision.

(4) Before any violation of this section is sought to be enjoined, the person bringing the action shall be required to give the person against whom such action is contemplated notice by certified mail, to the place where the transaction occurred or to the principal place of business within the state of the person against whom such action is contemplated, and an opportunity to show in writing within ten business days after mailing of notice why proceedings should not be instituted against him or her, unless, in any case in which the person seeks preliminary relief, the giving of such notice and opportunity would cause immediate and irreparable injury, loss or damages.

(i) Notwithstanding any law to the contrary, all monies recovered or obtained under this article by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law.

2019 New York Assembly Bill No. 679, New York Two Hundred Forty-Second Legislative Session, 2019
New York Assembly Bill No. 679, New York Two Hundred Forty-Second Legislative Session

IN THE MATTER OF THE INVESTIGATION BY ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL OF NEW YORK, OF ENCORE CAPITAL GROUP, INC.

Since April 2010, the New York City Department of Consumer Affairs ("DCA") has required debt collectors to disclose in all communications with consumers who reside in New York City about a Time-Barred Debt, the fact that the debt is outside of the legal time limit to sue on the debt

2015 N.Y. Op. Att'y Gen. 238 (2015)

Section 20-488

Legislative declaration. The council hereby finds the presence of consumer related problems with respect to the practices of debt collection agencies whose sole concern is the collection of debts owed to their clients. While the majority of those engaged in this business are honest and ethical in their dealings, there is a minority of unscrupulous collection agencies in operation that practice abusive tactics such as threatening delinquent debtors, or calling such people at outrageous times of the night. These actions constitute tactics which would shock the conscience of ordinary people. Due to the sensitive nature of the information used in the course of such agency's everyday business, and the vulnerable position consumers find themselves in when dealing with these agencies, it is incumbent upon this council to protect the interests, reputations and fiscal well-being of the citizens of this city against those agencies who would abuse their privilege of operation. It is herein declared that the city should license debt collection agencies.

N.Y.C. Admin. Code § 20-488

<https://nycadmincode.readthedocs.io/t20/c02/sch30/#section-20-492>

Section 20-489

§ 20-489 Definitions. a. "Debt collection agency" shall mean a person engaged in business the principal purpose of which is to regularly collect or attempt to collect debts owed or due or asserted to be owed or due to another and shall also include a buyer of delinquent debt who seeks to collect such debt either directly or through the services of another by, including but not limited to, initiating or using legal processes or other means to collect or attempt to collect such debt. The term does not include:

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

(2) any officer or employee of a debt collection agency;

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

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

(5) any attorney-at-law or law firm collecting a debt in such capacity on behalf of and in the name of a client solely through activities that may only be performed by a licensed attorney, but not any attorney-at-law or law firm or part thereof who regularly engages in activities traditionally performed by debt collectors, including, but not limited to, contacting a debtor through the mail or via telephone with the purpose of collecting a debt or other activities as determined by rule of the commissioner;

(6) any person employed by a utility regulated under the provisions of the public service law, acting for such utility;

(7) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow agreement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person as a secured party in a commercial credit transaction involving the creditor;

(8) any officer or employee of the United States, any state thereof or any political subdivision of any state to the extent that collecting or attempting to collect any debt owed is in the performance of his or her official duties;

(9) any non-profit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists customers in the liquidation of their debts by receiving payments from such customers and distributing such amounts to creditors.

b. The term "child support" means a sum to be paid by either or both parents pursuant to court order or decree or pursuant to a valid agreement between the parties for care, maintenance and education of a child.

c. The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

d. The term "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 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, or any obligation or alleged obligation arising out of a judgment or valid agreement for the payment of child support.

N.Y.C. Admin. Code § 20-489

<https://nycadmincode.readthedocs.io/t20/c02/sch30/#section-20-492>

Section 20-490

§ 20-490 License required. It shall be unlawful for any person to act as a debt collection agency without first having obtained a license in accordance with the provisions of this subchapter, and without first being in compliance with all other applicable law, rules and regulations.

N.Y.C. Admin. Code § 20-490

<https://nycadmincode.readthedocs.io/t20/c02/sch30/#section-20-492>

Section 20-491

§ 20-491 License term; fees. a. All licenses issued pursuant to this subchapter shall be valid for two years unless sooner suspended or revoked. The commissioner shall establish by regulation the expiration date of such licenses.

b. The annual fee for a license or renewal thereof shall be seventy-five dollars.

N.Y.C. Admin. Code § 20-491

<https://nycadmincode.readthedocs.io/t20/c02/sch30/#section-20-492>

Section 20-492

§ 20-492 Applications. a. Each person applying for a debt collection agency license or renewal thereof shall file an application in such form and detail as the commissioner may prescribe and shall pay the fee required by this subchapter.

b. In addition to any other information required, the commissioner shall require the following information:

1. The name and address of the applicant.

2. The applicant who is a non-resident of the city shall provide the name and address of a registered agent within the city or designate the commissioner as his or her agent upon whom process or other notification may be served.

c. Any debt collection agency subject to the provisions of section 20-494.1 shall furnish to the commissioner a current version of the disclosure form required under section 20-494.1 (e) together with a copy of such agency's standard contract for child support payment debt collection services upon applying for a debt collection agency license or renewal thereof. Any contract for child support payment debt collection services shall not be deemed valid or in force and effect until the department has completed a review of and approved a debt collection agency's standard contract, which review shall be completed and approval or disapproval provided within ninety days after submission of such contract to the department. Any amendment or modification of such standard contract or disclosure form shall be provided to the commissioner within sixty days following such amendment or modification.

N.Y.C. Admin. Code § 20-492

<https://nycadmincode.readthedocs.io/t20/c02/sch30/#section-20-492>

Section 20-493

§ 20-493 Powers and duties of the commissioner. a. The commissioner may make and promulgate such rules and regulations as may be necessary for the proper implementation and enforcement of subchapter.

b. In addition to any other powers of the commissioner, not in limitation thereof, the commissioner shall have the power to enforce the provisions of this subchapter, to investigate any violation thereof, and to investigate the business, business practices and business methods of any debt

collection agency, if in the opinion of the commissioner, such investigation is warranted. Each debt collection agency shall be obliged upon the request of the commissioner to supply such information as may be required concerning its business practices or methods or its proposed business practices or methods.

c. For the purpose of enforcing the provisions of this subchapter, and in conducting investigations relating to any violation thereof, and for the purpose of investigating the business or business practices or methods of any debt collection agency, the commissioner, or the commissioner's designee, shall have the power to compel the attendance of witnesses and the production of books and records, in accordance with the provisions of chapter one of this title.

d. For the purpose of this subchapter, licensees may be held responsible for statements, representations, promises or acts of their employees or their agents within the scope of their authority; provided, however, that licensees shall not be held responsible for the statements, representations, promises or acts which are contrary to instructions or which constitute gross negligence or intentional torts unless specifically authorized by the licensee.

N.Y.C. Admin. Code § 20-493

<https://nycadmincode.readthedocs.io/t20/c02/sch30/#section-20-492>

Section 20-493.1

20-493.1 Required collection practices. In addition to any practices required under any federal, state or local law, a debt collection agency shall:

a. In any permitted communication with the consumer, provide:

- i. a call-back number to a phone that is answered by a natural person,
- ii. the name of the agency,
- iii. the originating creditor of the debt,
- iv. the name of the person to call back, and
- v. the amount of the debt at the time of the communication.

b. Confirm in writing to the consumer, within five business days, any debt payment schedule or settlement agreement reached regarding the debt.

N.Y.C. Admin. Code § 20-493.1

<https://nycadmincode.readthedocs.io/t20/c02/sch30/#section-20-492>

Section 20-493.2

20-493.2 Prohibited collection practices. In addition to any practices prohibited under any federal, state or local law, a debt collection agency shall not:

a. Attempt to collect or contact a consumer regarding a debt after such consumer requests verification for such debt until such agency furnishes such consumer written documentation identifying the creditor

who originated the debt and itemizing the principal balance of the debt that remains or is alleged to remain due and all other charges that are due or alleged to be due;

b. Contact a consumer about or seek to collect a debt on which the statute of limitations for initiating legal action has expired unless such agency first provides the consumer such information about the consumer's legal rights as the commissioner prescribes by rule.

N.Y.C. Admin. Code § 20-493.2.

<https://nycadmincode.readthedocs.io/t20/c02/sch30/#section-20-492>



Section 20-494

§ 20-494 Penalties. a. Any person who, after notice and hearing shall be found guilty of violating any provision of this subchapter, shall be punished in accordance with the provisions of chapter one of this title and shall be subject to a penalty of not less than seven hundred dollars nor more than one thousand dollars for each violation provided further, however, that any such person found guilty of having acted as a debt collection agency in violation of section 20-490 of this subchapter shall be subject to an additional penalty of one hundred dollars for each instance in which contact is made with a consumer in violation of such section.

b. In addition to any other penalties, if a person is found to have committed repeated, multiple or persistent violations of any provision of this subchapter, such person may be responsible for the cost of the department's investigation.

N.Y.C. Admin. Code § 20-494

<https://nycadmincode.readthedocs.io/t20/c02/sch30/#section-20-492>



Default Judgment Procedure--Denise Cote, United States District Judge

1. Obtain a Certificate of Default for each defaulting defendant from the Clerk's Office pursuant to Federal Rule of Civil Procedure Rule 55(a) and Local Civil Rule 55.1.

2. File a Motion for Default Judgment on ECF pursuant to Federal Rule of Civil Procedure 55(b)(2) and Local Civil Rule 55.2(b). A plaintiff seeking a default judgment should not proceed by order to show cause.

3. In connection with the Motion for Default Judgment, file the following on ECF (and mail or hand deliver a courtesy copy to chambers):

a. An attorney's declaration or affidavit setting forth the basis for entering a default judgment, including:

(i) a description of the method and date of service of the summons and complaint;

(ii) the procedural history beyond service of the summons and complaint, if any;

(iii) whether, if the default is applicable to fewer than all of the defendants, the Court may appropriately order a default judgment on the issue of damages prior to resolution of the entire action;

(iv) the proposed damages and the basis for each element of damages, including interest, attorney's fees, and costs;

(v) evidence in support of the proposed damages, including contemporaneous records and other such documentation; and

(vi) legal authority for why an inquest into damages is or is not necessary.

b. A proposed default judgment.

c. Copies of all of the pleadings.

d. A copy of the affidavit of service of the summons and complaint.

e. A Certificate of Default from the Clerk of Court.

4. The Court will review the motion for default judgment and, if appropriate, issue an Order setting a date and time for a default judgment hearing. If the Court issues such an order, the plaintiff must then serve on the party against whom default judgment is sought: (1) the motion for default judgment and supporting papers; and (2) the Court's order setting a date and time for the default judgment hearing. The plaintiff must file proof of such service on the docket in the manner and date specified in the Court's Order setting the default judgment hearing.

5. Prior to the return date, take the proposed judgment, separately backed, to the Orders and Judgments Clerk (500 Pearl Street, Room 200) for the Clerk's approval. The proposed judgment, including all damage and interest calculations, must be approved by the Clerk prior to the conference and then brought to the conference for the Judge's signature.

[NY R USDCTSD Cote-Default Judgment](#)

North Carolina

§ 58-70-115. Unfair practices

No collection agency shall collect or attempt to collect any debt by use of any unfair practices. Such practices include, but are not limited to, the following:

- (1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver.
- (2) Collecting or attempting to collect from the consumer all or any part of the collection agency's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge.
- (3) Communicating with a consumer whenever the collection agency has been notified by the consumer's attorney that he represents said consumer.
- (4) When the collection agency is a debt buyer or is acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor or otherwise attempting to collect on a debt when

the collection agency knows, or reasonably should know, that such collection is barred by the applicable statute of limitations.

- (5) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor, or otherwise attempting to collect on the debt without (i) valid documentation that the debt buyer is the owner of the specific debt instrument or account at issue and (ii) reasonable verification of the amount of the debt allegedly owed by the debtor. For purposes of this subdivision, reasonable verification shall include documentation of the name of the original creditor, the name and address of the debtor as appearing on the original creditor's records, the original consumer account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, including all fees and charges.
- (6) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor to collect on a debt without first giving the debtor written notice of the intent to file a legal action at least 30 days in advance of filing. The written notice shall include the name, address, and telephone number of the debt buyer, the name of the original creditor and the debtor's original account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of all amounts claimed to be owed.
- (7) Failing to comply with Part 5 of this Article.

[N.C. Gen. Stat. Ann. § 58-70-115](#)

North Dakota
Northern Mariana Is.
Ohio
Oklahoma
Oregon

[UTCR 15.030. Consumer debt collection--small claims](#)

(1) If a small claims action qualifies as a debt-buyer collection action under UTCR 5.180(2)(a), then the requirements set out in UTCR 5.180(2) apply.

(2) If a small claims action qualifies as a consumer debt collection action under UTCR 5.180(3)(a), then the requirement set out in UTCR 5.180(3)(b) applies.

[UTCR 15.030](#)

[UTCR 5.180. Consumer debt collection](#)

(1) Definitions. As used in this rule, unless otherwise indicated:

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

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

(2) Debt-Buyer Collection Actions.

(a) This subsection applies to an action for collection of a debt under ORS 646A.670, when the plaintiff is either a debt-buyer as defined in ORS 646.639(1)(g) or is a debt collector as defined in ORS 646.639(1)(h) bringing the action on a debt-buyer's behalf.

(b) The initiating pleading in an action described in subsection (a) must:

(i) In the title, contain the words, "SUBJECT TO ORS 646A.670(1) and UTCR 5.180(2)";

(ii) In the body, include a statement to the following effect: "See the Oregon Judicial Department's website for information about debt-collection cases"; and

(iii) Attach and incorporate by reference a completed Consumer Debt Collection Disclosure Statement in substantially the form as set out on the Oregon Judicial Department website (<http://www.courts.oregon.gov/Pages/default.aspx>), including a statement that the plaintiff has complied with ORS 646A.670(1).

(c) If the initiating pleading does not comply with subsection (2)(b)(iii) of this rule, written notice shall be given to the plaintiff that the case will be dismissed 30 days from the date of mailing of the notice, unless the plaintiff complies with subsection (2)(b)(iii) by that time.

(d) If the plaintiff moves for entry of a judgment of default, the motion must include a declaration, under penalty of perjury, that the initial pleading complied with ORS 646A.670(1).

(3) Other Consumer Debt Collection Actions.

(a) This subsection applies to an action for collection of a consumer debt, when the action otherwise does not satisfy the requirements of subsection (2)(a).

(b) The initiating pleading must, in the title, contain the words, "SUBJECT TO UTCR 5.180(3)".

[UTCR 5.180](#)



646.639. Unlawful debt collection practices; definitions

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

(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.

(2) A debt collector engages in an unlawful collection practice if the debt collector, while collecting or attempting to collect a debt, does any of the following:

(a) Uses or threatens to use force or violence to cause physical harm to a debtor or to the debtor's family or property.

(b) Threatens arrest or criminal prosecution.

(c) Threatens to seize, attach or sell a debtor's property if doing so requires a court order and the debt collector does not disclose that seizing, attaching or selling the debtor's property requires prior court proceedings.

(d) Uses profane, obscene or abusive language in communicating with a debtor or the debtor's family.

(e) Communicates with a debtor or any member of the debtor's family repeatedly or continuously or at times known to be inconvenient to the debtor or any member of the debtor's family and with intent to harass or annoy the debtor or any member of the debtor's family.

(f) Communicates or threatens to communicate with a debtor's employer concerning the nature or existence of the debt.

(g) Communicates without a debtor's permission or threatens to communicate with the debtor at the debtor's place of employment if the place of employment is other than the debtor's residence, except that the debt collector may:

(A) Write to the debtor at the debtor's place of employment if a home address is not reasonably available and if the envelope does not reveal that the communication is from a debt collector other than the person that provided the goods, services or credit from which the debt arose.

(B) Telephone a debtor's place of employment without informing any other person of the nature of the call or identifying the caller as a debt collector but only if the debt collector in good faith has made an unsuccessful attempt to telephone the debtor at the debtor's residence during the day or during the evening between the hours of 6 p.m. and 9 p.m. The debt collector may not contact the debtor at the debtor's place of employment more frequently than once each business week and may not telephone the

debtor at the debtor's place of employment if the debtor notifies the debt collector not to telephone at the debtor's place of employment or if the debt collector knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication. For the purposes of this subparagraph, any language in any agreement, contract or instrument that creates or is evidence of the debt and that purports to authorize telephone calls at the debtor's place of employment does not give permission to the debt collector to call the debtor at the debtor's place of employment.

(h) Communicates with a debtor in writing without clearly identifying the name of the debt collector, the name of the person, if any, for whom the debt collector is attempting to collect the debt and the debt collector's business address, on all initial communications. In subsequent communications involving multiple accounts, the debt collector may eliminate the name of the person, if any, for whom the debt collector is attempting to collect the debt and substitute the term "various" in place of the person's name.

(i) Communicates with a debtor orally without disclosing to the debtor, within 30 seconds after beginning the communication, the name of the individual who is initiating the communication and the true purpose of the communication.

(j) Conceals the true purpose of the communication so as to cause any expense to a debtor in the form of long distance telephone calls, telegram fees, additional charges for wireless communication or other charges the debtor might incur by using a medium of communication.

(k) Attempts or threatens to enforce a right or remedy while knowing or having reason to know that the right or remedy does not exist, or threatens to take any action that the debt collector in the regular course of business does not take.

(L) Uses any form of communication that simulates legal or judicial process or that appears to be authorized, issued or approved by a governmental agency, governmental official or an attorney at law if the corresponding governmental agency, governmental official or attorney at law has not in fact authorized or approved the communication.

(m) Represents that an existing debt may be increased by the addition of attorney fees, investigation fees or any other fees or charges if the fees or charges may not legally be added to the existing debt.

(n) Collects or attempts to collect interest or other charges or fees that exceed the actual debt unless the agreement, contract or instrument that creates the debt expressly authorizes, or a law expressly allows, the interest or other charges or fees.

(o) Threatens to assign or sell a debtor's account and misrepresents or implies that the debtor would lose any defense to the debt or would be subjected to harsh, vindictive or abusive collection tactics.

(p) Uses the seal or letterhead of a public official or a public agency, as those terms are defined in ORS 171.725.

(q) Collects or attempts to collect any debt that the debt collector knows, or after exercising reasonable diligence would know, arises from medical expenses that qualify for reimbursement under the Oregon Health Plan or under Medicaid, except that:

(A) The debt collector does not engage in an unlawful collection practice if the debt collector can produce an affidavit or certificate from the original creditor that shows that the original creditor complied with Oregon Health Authority rules barring payments for services that Medicaid fee-for-service plans or contracted health care plans cover; and

(B) For purposes of this paragraph, a prepaid managed care health services organization, a coordinated care organization or a public body, as defined in ORS 174.109, or an agent or assignee of the organization or public body, is not a debt collector if the organization or public body seeks to collect a debt that arises under ORS 416.540.

(r) Files a legal action to collect or files a legal action to attempt to collect a debt if the debt collector knows, or after exercising reasonable diligence would know, that an applicable statute of limitations bars the collection or the collection attempt.

(s) Knowingly collects 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.

(t) Collects or attempts to collect a debt if the debt collector is a debt buyer, or is acting on a debt buyer's behalf, and collects or attempts to collect purchased debt before providing to a debtor, within 30 days after the date of the debtor's request, all of the documents listed in subsection (4)(b) of this section.

(u) Collects or attempts to collect a debt without complying with the requirements of section 4 of this 2019 Act.

(3) A debt collector engages in an unlawful collection practice if the debt collector, by use of any direct or indirect action, conduct or practice, enforces or attempts to enforce an obligation made void and unenforceable by the provisions of ORS 759.720 (3) to (5).

(4) A debt buyer or debt collector acting on behalf of a debt buyer engages in an unlawful collection practice if the debt buyer or debt collector:

(a) Files legal action against a debtor or files legal action to attempt to collect a debt if the debt buyer or debt collector knows or after exercising reasonable diligence would know that an applicable statute of limitations bars the legal action to collect or the legal action to attempt to collect the debt;

(b) Brings a legal action against a debtor or otherwise brings a legal action to attempt to collect a debt without possessing business records that satisfy the requirements of ORS 40.460 (6), or of ORS 24.115, if the record is a foreign judgment, that establish the nature and the amount of the debt and that include:

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

(B) The name and address of the debtor;

(C) 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;

(D) 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;

(E) A detailed and itemized statement of:

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

(ii) 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;

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

(iv) 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;

(v) 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;

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

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

(F) Evidence that the debt buyer and only the debt buyer owns the debt;

(G) The date on which the debt buyer purchased the debt; and

(H) A copy of the agreement between the original creditor and the debtor that is either:

- (i) The contract or other writing the debtor signed that created and is evidence of the original debt; or
 - (ii) A copy of the most recent monthly statement that shows a purchase transaction or balance transfer or the debtor's last payment, if the debtor made a payment, if the debt is a credit card debt or other debt for which a contract or other writing that is evidence of the debt does not exist;
 - (c) Fails to provide to a debtor, after the debt buyer or debt collector receives payment in cash or the debtor requests the receipt, a receipt that:
 - (A) Shows the name of the creditor or creditors for whom the debt buyer or debt collector received the payment and, if the creditor is not the original creditor, the account number that the original creditor assigned; and
 - (B) States clearly whether the debt buyer or debt collector accepts the payment as payment in full or as a full and final compromise of the debt and, if not, the balance remaining on the debt after the payment;
 - (d) Collects or attempts to collect a debt before providing, in response to a debtor's request, the documents required under paragraph (b) of this subsection. A debt buyer or a debt collector that acts on the debt buyer's behalf does not engage in an unlawful collection practice under this paragraph if the debt buyer or debt collector collects or attempts to collect a debt after providing the required documents to the debtor; or
 - (e) Uses any direct or indirect action, conduct or practice to violate a provision of this section or ORS 646A.670.
- (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.

[Or. Rev. Stat. Ann. § 646.639 \(West\)](#)



646.641. Unlawful debt collection practice; action for damages

- (1) Any person injured as a result of willful use or employment by another person of an unlawful collection practice may bring an action in an appropriate court to enjoin the practice or to recover actual damages or \$200, whichever is greater. The court or the jury may award punitive damages, and the court may provide such equitable relief as it deems necessary or proper.
- (2) In any action brought by a person under this section, the court may award reasonable attorney fees to the prevailing party.
- (3) Actions brought under this section shall be commenced within one year from the date of the injury.

[Or. Rev. Stat. Ann. § 646.641 \(West\)](#)

Pennsylvania

§ 2270.4. Unfair or deceptive acts or practices

(a) By debt collectors.--It shall constitute an unfair or deceptive debt collection act or practice under this act if a debt collector violates any of the provisions of the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et seq.).

(b) By creditors.--With respect to debt collection activities of creditors in this Commonwealth, it shall constitute an unfair or deceptive debt collection act or practice under this act if a creditor violates any of the following provisions:

(1) Any creditor communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

(i) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(ii) not state that such consumer owes any debt;

(iii) not communicate with any such person more than once unless requested to do so by such person or unless the creditor reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(iv) not communicate by postcard;

(v) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the communication relates to the collection of a debt; and

(vi) after the creditor knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney unless the attorney fails to respond within a reasonable period of time to communication from the creditor.

(2) Without the prior consent of the consumer given directly to the creditor or the express permission of a court of competent jurisdiction, a creditor may not communicate with a consumer in connection with the collection of any debt:

(i) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a creditor shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location;

(ii) if the creditor knows the consumer is represented by an attorney with respect to such debt and has knowledge of or can readily ascertain such attorney's name and address unless the attorney fails to respond within a reasonable period of time to a communication from the creditor or unless the attorney consents to direct communication with the consumer; or

(iii) at the consumer's place of employment if the creditor knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(3) Except as provided in paragraph (1), without the prior consent of the consumer given directly to the creditor or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a postjudgment judicial remedy, a creditor may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, a debt collector, the attorney of the debt collector or the attorney of the creditor.

(4) A creditor may not engage in any conduct the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:

- (i) The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person.
 - (ii) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
 - (iii) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(a)(3) of the Fair Credit Reporting Act (Public Law 91-508, 15 U.S.C. § 1681 et seq.).
 - (iv) The advertisement for sale of any debt to coerce payment of the debt.
 - (v) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass any person at the called number.
 - (vi) Except as provided in paragraph (1), the placement of telephone calls without meaningful disclosure of the caller's identity.
- (5) A creditor may not use any false, deceptive or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:
- (i) The false representation or implication that the creditor is vouched for, bonded by or affiliated with the United States or any state, including the use of any badge, uniform or facsimile thereof.
 - (ii) The false representation of the character, amount or legal status of any debt.
 - (iii) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
 - (iv) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, attachment or sale of any property of any person unless such action is lawful and the creditor intends to take such action.
 - (v) The threat to take any action that cannot legally be taken or that is not intended to be taken.
 - (vi) The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the consumer to lose any claim or defense to payment of the debt or become subject to any practice prohibited by this act.
 - (vii) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
 - (viii) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a debt is disputed.
 - (ix) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by any court, official or agency of the United States or any state or which creates a false impression as to its source, authorization or approval.
 - (x) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
 - (xi) The false representation or implication that accounts have been turned over to innocent purchasers for value.
 - (xii) The false representation or implication that documents are legal process.
 - (xiii) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(6) A creditor may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:

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

(ii) The acceptance by a creditor from any person of a check or other payment instrument postdated by more than five days unless such person will be notified in writing of the creditor's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(iii) The solicitation by a creditor of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(iv) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(v) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(vi) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(vii) Communicating with a consumer regarding a debt by postcard.

(viii) Using any language or symbol, other than the creditor's address, on any envelope when communicating with a consumer by use of the mails or by telegram, provided that a creditor may use its business name.

(c) Definition.--For the purpose of subsection (b)(2) and (3), the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor or administrator.

[73 Pa. Stat. Ann. § 2270.4 \(West\)](#)

231 PA Code Rule 237.3. Relief from Judgment of Non Pros or by Default. (Proposed Legislation)

(a) A petition for relief from a judgment of non pros or [of] by default entered pursuant to Rule 237.1 shall have attached thereto a copy of the complaint, preliminary objections, [or] and/or answer which the petitioner seeks leave to file. All grounds for relief shall be raised in a single petition.

(b)(1) If the petition is filed within ten days after the entry of a judgment of non pros on the docket, the court shall open the judgment if the proposed complaint states a meritorious cause of action.

(2) If the petition is filed within ten days after the entry of a default judgment on the docket, the court shall open the judgment if one or more of the proposed preliminary objections has merit or the proposed answer states a meritorious defense.

Official Note: Rule 236 requires the prothonotary to give notice of the entry of any judgment and to note in the docket the giving of the notice.

The petitioner must act with reasonable diligence to see that the petition is promptly presented to the court if required by local practice.

See *Schultz v. Erie Insurance Exchange*, 477 A.2d 471 (Pa. 1984) for the requirements for opening a judgment by default and Rule 3051 as to a judgment of non pros. Rule 237.3 does not change the law of opening judgments. Rather, the rule supplies two of the three requisites for opening such judgments by presupposing that a petition filed as provided by the rule is timely and with reasonable explanation or legitimate excuse for the inactivity or delay resulting in the entry of the judgment. The requirement of this rule for proceeding within ten days is not intended to set a standard for timeliness in circumstances outside this rule.

See Rules 206.1 through 206.7 governing petition practice.

* * * * *

Explanatory Comment—2010

The 1994 Explanatory Comment to Rule 237.3 provides several illustrations of the application of the rule. A discrepancy exists between Illustration 1 and Rule 237.1(a)(2)(ii) governing notice of praecipe to enter judgment of non pros or by default. The 1994 Explanatory Comment provides that the defendant may plead within the time of receiving the notice of praecipe plus ten days. Rule 237.1(a)(2)(ii) states that the ten-day period shall be calculated forward from the date of the mailing or delivery of the notice. The 1994 Explanatory Comment has been amended to conform with the text of Rule 237.1(a)(2)(ii).

Explanatory Comment—2019

In 2016, Rule 237.3 was amended by adding preliminary objections as a type of pleading that may be attached to a petition for relief from a default judgment. By allowing the use of preliminary objections, the 2016 amendment was intended to give a defendant the same right to file a responsive pleading after the entry of a default judgment that is afforded to him or her prior to entry of a default judgment. In practice, however, litigants have interpreted this provision to permit the filing of a petition for relief with proposed preliminary objections attached, and then, when that petition is denied, to then file an additional petition for relief by attaching the proposed answer, notwithstanding the requirement that a petition for relief must be filed within 10 days of the entry of a default judgment. To promote procedural efficiency, Rule 237.3 has been amended to require a litigant to raise all grounds for relief in a single petition.

2020 PA REG TEXT 515060 (NS), 2020 PA REG TEXT 515060 (NS)

Puerto Rico Rhode Island

§ 19-14.9-7. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Such false or misleading means shall include, but not be limited to:

(a) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any state, including the use of any badge, uniform, or facsimile thereof;

(b) The false representation of:

(1) The character, amount, or legal status of any debt;

(2) Any services rendered or compensation that may be lawfully received by any debt collector for the collection of a debt;

(c) The false representation or implication that any individual is an attorney or that any communication is from an attorney;

(d) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action;

(e) The threat to take any action that cannot legally be taken or that is not intended to be taken;

(f) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(1) Lose any claim or defense to payment of the debt;

(2) Become subject to any practice prohibited by this chapter;

(g) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer;

(h) The communicating, or threatening to communicate, to any person credit information that is known or that should be known to be false, including the failure to communicate that a disputed debt is disputed;

(i) The use of distribution of any written communication that simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state, or that creates a false impression as to its source, authorization, or approval;

(j) The use of any false representation or deceptive means to collect, or attempt to collect, any debt or to obtain information concerning a consumer;

(k) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action;

(l) The false representation or implication that accounts have been turned over to innocent purchasers for value;

(m) The false representation or implication that documents are legal process;

(n) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization;

(o) The false representation or implication that documents are not legal process forms or do not require action by the consumer;

(p) Communicating by telephone without disclosure of the name of the debt collector and without disclosure of the personal name of the individual making such communication; provided, however, that any such individual utilizing an alias shall use only one such alias at all times and provided that a mechanism is established by the debt collector to identify the person using such alias; the debt collector shall submit a list of all such aliases and the persons using same to the director;

(q) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency.

§ 19-14.9-8. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Such unfair or unconscionable means shall include, but not be limited to:

- (a) Collecting any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;
- (b) Publishing, or causing to be published, for general circulation, the name of a consumer or any lists of consumers, or threatening to do so;
- (c) Requesting or demanding from a consumer a postdated check, draft, order for withdrawal, or other similar instrument in payment for the debt or any portion thereof, or negotiating such instrument before the due date of the instrument;
- (d) Depositing, or threatening to deposit, any postdated check or other postdated payment instrument prior to the date on such check or instrument;
- (e) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and fees. However, this section shall not prohibit a debt collector from communicating with a consumer by way of a consumer's wireless telephone;
- (f) Taking, or threatening to take, any nonjudicial action to effect dispossession or disablement of property if:
 - (1) There is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - (2) There is no present intention to take possession of the property;
 - (3) The property is exempt by law from such dispossession or disablement;
- (g) Communicating with a consumer regarding a debt by post card;
- (h) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his/her business name if such name does not indicate that he/she is in the debt collection business;
- (i) Representing that an existing obligation of a consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges, if in fact such fees or charges may not legally be added to the existing obligation;
- (j) Soliciting or obtaining any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been adjudicated bankrupt, without clearly and conspicuously disclosing the nature and consequences of such affirmation;
- (k) Reporting to a consumer reporting agency on its transactions or experiences with a consumer in the debt collector's name. However, a debt collector may, with the express written authorization of the creditor, report to a consumer reporting agency in the creditor's name.

§ 19-14.9-9. Validation of debts

(1) Within five (5) days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication, or the consumer has paid the debt, send the consumer a written notice containing:

(a) The amount of the debt;

(b) The name of the creditor to whom the debt is owed;

(c) A statement that unless the consumer, within thirty (30) days after receipt of the notice, disputes that validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(d) A statement that if the consumer notifies the debt collector in writing within the thirty-day (30) period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(e) A statement that, upon the consumer's written request within the thirty-day (30) period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(2) If the consumer notifies the debt collector in writing within the thirty-day (30) period described in subsection (1)(d) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(3) The failure of a consumer to dispute the validity of a debt under this section shall not be construed by any court as an admission of liability by the consumer.

South Carolina
South Dakota
Tennessee
Texas

§ 68:44. Form—Default judgment in debt collection suit—Certificate of last-known address

Correlation Table

CAUSE NO. *[CAUSE NUMBER]*

[Name of plaintiff], IN THE *[NAME OF COURT]* Plaintiff, OF *[NAME OF COUNTY]*, TEXAS v. *[OPTIONAL: DESIGNATION [Name of defendant], OF DISTRICT] JUDICIAL* Defendant. *DISTRICT]*

CERTIFICATE OF LAST-KNOWN MAILING ADDRESS

I, the attorney for Plaintiff, hereby certify that based upon a review of Plaintiff's records and records of the public domain, the last-known mailing address of *[name of defendant]*, Defendant in the above-entitled cause is *[last-known address of defendant]*.

Respectfully submitted,

[Name of plaintiff's attorney]

Attorney for Plaintiff

[Name of law firm]

[Address of attorney]

[Telephone number of attorney]

[Fax number of attorney]

[State bar number of attorney]

[4 Texas Legal Practice Forms § 68:44 \(2d ed.\)](#)



§ 68:39. Checklist—Default judgment

Correlation Table

CHECKLIST

- 1. The defendant must have been properly served.
- 2. If service has been effected through the Secretary of State, the court file must contain proof that the citation was actually forwarded to the defendant. Furthermore, the appropriate certificate from the Secretary of State's office should also be included in the court file.
- 3. If the defendant was served by substituted service instead of by personal service, the record must show that the officer used "due diligence" in attempting to serve the defendant. A proper motion and order for substituted service should be obtained and placed in the court file prior to the use of substituted service.
- 4. If the defendant has been served by publication, the attorney must have secured an "attorney ad litem" to represent the defendant.
- 5. The citation must be on file with the clerk for at least 10 days prior to the judgment.
- 6. If the defendant is in the armed services, special service of citation procedures must be used. If the defendant is not in the armed services, the default judgment should contain an affidavit attached to the judgment stating that the defendant is not in the armed services.

- 7. If the damages are liquidated, the petition and the contract on which the action is based should be sufficient to prove damages. If however, the damages are unliquidated, the damages must be proved during an evidentiary hearing. An example of unliquidated damages is a reasonable amount of attorney's fees for breach of contract.

[4 Texas Legal Practice Forms § 68:39 \(2d ed.\)](#)



[§ 392.304. Fraudulent, Deceptive, or Misleading Representations](#)

(a) Except as otherwise provided by this section, in debt collection or obtaining information concerning a consumer, a debt collector may not use a fraudulent, deceptive, or misleading representation that employs the following practices:

(1) using a name other than the:

(A) true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection; or

(B) name appearing on the face of the credit card while engaged in the collection of a credit card debt;

(2) failing to maintain a list of all business or professional names known to be used or formerly used by persons collecting consumer debts or attempting to collect consumer debts for the debt collector;

(3) representing falsely that the debt collector has information or something of value for the consumer in order to solicit or discover information about the consumer;

(4) failing to disclose clearly in any communication with the debtor the name of the person to whom the debt has been assigned or is owed when making a demand for money;

(5) in the case of a third-party debt collector, failing to disclose, except in a formal pleading made in connection with a legal action:

(A) that the communication is an attempt to collect a debt and that any information obtained will be used for that purpose, if the communication is the initial written or oral communication between the third-party debt collector and the debtor; or

(B) that the communication is from a debt collector, if the communication is a subsequent written or oral communication between the third-party debt collector and the debtor;

(6) using a written communication that fails to indicate clearly the name of the debt collector and the debt collector's street address or post office box and telephone number if the written notice refers to a delinquent consumer debt;

(7) using a written communication that demands a response to a place other than the debt collector's or creditor's street address or post office box;

(8) misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt's status in a judicial or governmental proceeding;

(9) representing falsely that a debt collector is vouched for, bonded by, or affiliated with, or is an instrumentality, agent, or official of, this state or an agency of federal, state, or local government;

(10) using, distributing, or selling a written communication that simulates or is represented falsely to be a document authorized, issued, or approved by a court, an official, a governmental agency, or any other

governmental authority or that creates a false impression about the communication's source, authorization, or approval;

(11) using a seal, insignia, or design that simulates that of a governmental agency;

(12) representing that a consumer debt may be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if a written contract or statute does not authorize the additional fees or charges;

(13) representing that a consumer debt will definitely be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if the award of the fees or charges is subject to judicial discretion;

(14) representing falsely the status or nature of the services rendered by the debt collector or the debt collector's business;

(15) using a written communication that violates the United States postal laws and regulations;

(16) using a communication that purports to be from an attorney or law firm if it is not;

(17) representing that a consumer debt is being collected by an attorney if it is not;

(18) representing that a consumer debt is being collected by an independent, bona fide organization engaged in the business of collecting past due accounts when the debt is being collected by a subterfuge organization under the control and direction of the person who is owed the debt; or

(19) using any other false representation or deceptive means to collect a debt or obtain information concerning a consumer.

(b) Subsection (a)(4) does not apply to a person servicing or collecting real property first lien mortgage loans or credit card debts.

(c) Subsection (a)(6) does not require a debt collector to disclose the names and addresses of employees of the debt collector.

(d) Subsection (a)(7) does not require a response to the address of an employee of a debt collector.

(e) Subsection (a)(18) does not prohibit a creditor from owning or operating a bona fide debt collection agency.

Tex. Fin. Code Ann. § 392.304 (West)

[https://www.westlaw.com/Document/NAEF89230BE7411D9BDF79F56AB79CECB/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cb1t1.0](https://www.westlaw.com/Document/NAEF89230BE7411D9BDF79F56AB79CECB/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cb1t1.0)

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.

[Tex. R. Civ. P. 508.2](#)



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.

[Tex. R. Civ. P. 508.3](#)



§ 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.

[Tex. Fin. Code Ann. § 392.307 \(West\)](#)

Utah
Vermont
Virgin Islands
Virginia
Washington

LCRLJ 55. Default

(a) Entry of Default Judgment.

(5) All necessary papers required for entry of a default judgment shall be filed at the same time as the motion for default judgment, unless extended by court order to correct a clerical error or omission or for furnishing of any proof required by the court. Default judgments shall be subject to the following:

(6) No default judgment shall be granted except upon motion by plaintiff's counsel of record, or if none, by motion of plaintiff.

(7) No default judgment shall be granted except upon proof satisfactory to the court. The court shall require at least the following to be on file with the motion for default judgment, unless otherwise excused by the court for good cause:

(i) On assigned causes of action, the assignment instrument;

(ii) On causes of action based on a negotiable instrument, the original negotiable instrument;

(iii) On causes of action based on a retail sales contract, chattel mortgage, or conditional sales contract, the original contract (or a copy if the original has been filed with a government agency). Where applicable, an automobile title or bill of sale must be filed;

(iv) on causes of action based on open account where the complaint is not specific, a written statement of account setting forth all charges and credits and the dates thereof, the nature of merchandise or services furnished, and a statement of any interest or surcharges which are included;

(v) on causes of action for rent based on an oral lease, a statement of account setting forth the dates of accrued rent, dates of delinquency, late charges and any other costs. If any claim is made for damages or repairs to premises, such claim must be itemized separately;

(vi) on causes of action for rent based on a written lease, a copy of the lease and a statement of account setting forth the dates of accrued rent, dates of delinquency, late charges and any other costs allowed by the lease;

(vii) on causes of action based on all other contracts, oral testimony to prove performance may be required, together with filing of a copy of the contract, if written; and filing or proving the items of account and any credits;

(viii) On causes of action for tort, the proof required shall be the same as required above for proving contract balances except that the following additional proof of the amount of damage shall be required:

Property damage may be proved by repair bills or estimates;

Loss of use claims, loss of wages, and pain and suffering shall be proved by oral testimony;

Hospital and doctor bills may be proved by written bills, whether paid or not.

(8) No judgment for interest shall be allowed unless citation to applicable authority is presented and there is on file proof of the factors necessary for computation of interest including applicable dates, rate of interest, amounts subject to interest, and a computation of the total interest claimed due.

(9) Default Judgments must be accompanied by:

(i) Affidavit of Service if not previously filed.

(ii) Proof of inquiry into military status of all defendants against who judgment is sought in compliance with the Service Members Civil Relief Act (SCRA).

(g) Collection and handling charges and attorney's fees on actions brought to collect dishonored checks shall not be allowed unless proof of the following is provided:

(1) The statutory form of notice of dishonor has been sent as required by RCW chapter 62.A-3 and a copy is filed with the court.

(2) An accounting statement, or some reasonable alternate means of determining the plaintiff's collection costs is filed with the court.

[WA R JEFFERSON DIST CT LCRLJ 55](#)

19.16.250. Prohibited practices

No licensee or employee of a licensee shall:

(1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: PROVIDED, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so. For purposes of this chapter, a "bad debt list" means any list of natural persons alleged to fail to honor their lawful debts. However, nothing herein shall be construed to prohibit a licensee from communicating to its customers or clients by means of a coded list, the existence of a check dishonored because of insufficient funds, not sufficient funds or closed account by the financial institution servicing the debtor's checking account: PROVIDED, That the debtor's identity is not readily apparent: PROVIDED FURTHER, That the licensee complies with the requirements of subsection (10)(e) of this section.

(4) Have in his or her possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.

(5) Perform any act or acts, either directly or indirectly, constituting the unauthorized practice of law.

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has

acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or her or its current license issued hereunder.

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form, other than through proper legal action, process, or proceedings, which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he or she is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall provide this name to the debtor or cease efforts to collect on the debt until this information is provided;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or her or its first notice to the debtor, an itemization of the claim asserted must be made including:

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;

(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or her or its behalf or on the behalf of a customer or assignor; and

(vi) Any other charge or fee that the licensee is attempting to collect on his or her or its own behalf or on the behalf of a customer or assignor;

(d) If the notice, letter, message, or form concerns a judgment obtained against the debtor, no itemization of the amounts contained in the judgment is required, except postjudgment interest, if claimed, and the current account balance;

(e) If the notice, letter, message, or form is the first notice to the debtor, an itemization of the claim asserted must be made including the following information:

(i) The original account number or redacted original account number assigned to the debt, if known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee must make a reasonable effort to obtain this information or cease efforts to collect on the debt until this information is provided; and

(ii) The date of the last payment to the creditor on the subject debt by the debtor, if known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee must make a reasonable effort to obtain this information or cease efforts to collect on the debt until this information is provided.

(9) Communicate in writing with a debtor concerning a claim through a proper legal action, process, or proceeding, where such communication is the first written communication with the debtor, without providing the information set forth in subsection (8)(c) of this section in the written communication.

(10) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) Except as provided in subsection (28)(c) of this section, a licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim. If the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall, upon receipt of written notice from the debtor that any part of the claim is disputed, notify the credit reporting bureau of the dispute by written or electronic means and create a record of the fact of the notification and when the notification was provided;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his or her last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: PROVIDED, That the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his or her last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(e) A licensee may communicate the existence of a claim to its customers or clients if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee has notified or attempted to notify the debtor in writing at his or her last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(11) Threaten the debtor with impairment of his or her credit rating if a claim is not paid: PROVIDED, That advising a debtor that the licensee has reported or intends to report a claim to a credit reporting agency is not considered a threat if the licensee actually has reported or intends to report the claim to a credit reporting agency.

(12) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney: PROVIDED, That if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or she or it again receives notification in writing that an attorney is representing the debtor.

(13) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if:

(a) It is made with a debtor or spouse in any form, manner, or place, more than three times in a single week, unless the licensee is responding to a communication from the debtor or spouse;

(b) It is made with a debtor at his or her place of employment more than one time in a single week, unless the licensee is responding to a communication from the debtor;

(c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m. A call to a telephone is presumed to be received in the local time zone to which the area code of the number called is assigned for landline numbers, unless the licensee reasonably believes the telephone is located in a different time zone. If the area code is not assigned to landlines in any specific geographic area, such as with toll-free telephone numbers, a call to a telephone is presumed to be received in the local time zone of the debtor's last known place of residence, unless the licensee reasonably believes the telephone is located in a different time zone.

(14) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.

(15) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

(16) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.

(17) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made: PROVIDED, That:

(a) This subsection does not prohibit a licensee from attempting to communicate by way of a cellular telephone or other wireless device: PROVIDED, That a licensee cannot cause charges to be incurred to the recipient of the attempted communication more than three times in any calendar week when the licensee knows or reasonably should know that the number belongs to a cellular telephone or other wireless device, unless the licensee is responding to a communication from the debtor or the person to whom the call is made.

(b) The licensee is not in violation of (a) of this subsection if the licensee at least monthly updates its records with information provided by a commercial provider of cellular telephone lists that the licensee in good faith believes provides reasonably current and comprehensive data identifying cellular telephone numbers, calls a number not appearing in the most recent list provided by the commercial provider, and does not otherwise know or reasonably should know that the number belongs to a cellular telephone.

(c) This subsection may not be construed to increase the number of communications permitted pursuant to subsection (13)(a) of this section.

(18) Call, or send a text message or other electronic communication to, a cellular telephone or other wireless device more than twice in any day when the licensee knows or reasonably should know that the number belongs to a cellular telephone or other wireless device, unless the licensee is responding to a communication from the debtor or the person to whom the call, text message, or other electronic communication is made. The licensee is not in violation of this subsection if the licensee at least monthly updates its records with information provided by a commercial provider of cellular telephone lists that the licensee in good faith believes provides reasonably current and comprehensive data identifying cellular

telephone numbers, calls a number not appearing in the most recent list provided by the commercial provider, and does not otherwise know or reasonably should know that the number belongs to a cellular telephone. Nothing in this subsection may be construed to increase the number of communications permitted pursuant to subsection (13)(a) of this section.

(19) Intentionally block its telephone number from displaying on a debtor's telephone.

(20) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.

(21) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs. A licensee may collect or attempt to collect collection costs and fees, including contingent collection fees, as authorized by a written agreement or contract, between the licensee's client and the debtor, in the collection of a commercial claim. The amount charged to the debtor for collection services shall not exceed thirty-five percent of the commercial claim.

(22) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, except as noted in subsection (21) of this section, and, in the case of suit, attorney's fees and taxable court costs.

(23) Bring an action or initiate an arbitration proceeding on a claim when the licensee knows, or reasonably should know, that such suit or arbitration is barred by the applicable statute of limitations.

(24) Upon notification by a debtor that the debtor disputes all debts arising from a series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, initiate oral contact with a debtor more than one time in an attempt to collect from the debtor debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (a) Within the previous one hundred eighty days, in response to the licensee's attempt to collect the initial debt assigned to the licensee and arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, the debtor in writing notified the licensee that the debtor's checkbook or other series of preprinted written instruments was stolen or fraudulently created; (b) the licensee has received from the debtor a certified copy of a police report referencing the theft or fraudulent creation of the checkbook, automated clearinghouse transactions on a demand deposit account, or series of preprinted written instruments; (c) in the written notification to the licensee or in the police report, the debtor identified the financial institution where the account was maintained, the account number, the magnetic ink character recognition number, the full bank routing and transit number, and the check numbers of the stolen checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, which check numbers included the number of the check that is the subject of the licensee's collection efforts; (d) the debtor provides, or within the previous one hundred eighty days provided, to the licensee a legible copy of a government-issued photo identification, which contains the debtor's signature and which was issued prior to the date of the theft or fraud identified in the police report; and (e) the debtor advised the licensee that the subject debt is disputed because the identified check, automated clearinghouse transaction on a demand deposit account, or other preprinted written instrument underlying the debt is a stolen or fraudulently created check or instrument.

The licensee is not in violation of this subsection if the licensee initiates oral contact with the debtor more than one time in an attempt to collect debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (i) The licensee acted in good faith and relied on their established practices and procedures for batching, recording, or packeting debtor accounts, and the licensee inadvertently initiates oral contact with the debtor in an attempt to collect debts in the identified series subsequent to the initial debt assigned to the licensee; (ii) the licensee is following up on collection of a debt assigned to the licensee, and the debtor has previously requested more information from the licensee regarding the

subject debt; (iii) the debtor has notified the licensee that the debtor disputes only some, but not all the debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, in which case the licensee shall be allowed to initiate oral contact with the debtor one time for each debt arising from the series of identified checks, automated clearinghouse transactions on a demand deposit account, or written instruments and initiate additional oral contact for those debts that the debtor acknowledges do not arise from stolen or fraudulently created checks or written instruments; (iv) the oral contact is in the context of a judicial, administrative, arbitration, mediation, or similar proceeding; or (v) the oral contact is made for the purpose of investigating, confirming, or authenticating the information received from the debtor, to provide additional information to the debtor, or to request additional information from the debtor needed by the licensee to accurately record the debtor's information in the licensee's records.

(25) Bring an action or initiate an arbitration proceeding on a claim for any amounts related to a transfer of sale of a vehicle when:

(a) The licensee has been informed or reasonably should know that the department of licensing transfer of sale form was filed in accordance with RCW 46.12.650 (1) through (3);

(b) The licensee has been informed or reasonably should know that the transfer of the vehicle either (i) was not made pursuant to a legal transfer or (ii) was not voluntarily accepted by the person designated as the purchaser/transferee; and

(c) Prior to the commencement of the action or arbitration, the licensee has received from the putative transferee a copy of a police report referencing that the transfer of sale of the vehicle either (i) was not made pursuant to a legal transfer or (ii) was not voluntarily accepted by the person designated as the purchaser/transferee.

(26) Submit an affidavit or other request pursuant to chapter 6.32 RCW asking a superior or district court to transfer a bond posted by a debtor subject to a money judgment to the licensee, when the debtor has appeared as required.

(27) Serve a debtor with a summons and complaint unless the summons and complaint have been filed with the court and bear the case number assigned by the court.

(28) If the claim involves medical debt:

(a) Fail to include, with the first written notice to the debtor, a statement that informs the debtor of the debtor's right to request the original account number or redacted original account number assigned to the debt, the date of the last payment, and an itemized statement as provided in (b) of this subsection (28);

(b)(i) Fail to provide to the debtor, upon written or oral request by the debtor for more information than is contained in a general balance due letter, an itemized statement free of charge. Unless and until the licensee provides the itemized statement, the licensee must cease all collection efforts. The itemized statement must include:

(A) The name and address of the medical creditor;

(B) The date, dates, or date range of service;

(C) The health care services provided to the patient as indicated by the health care provider in a statement provided to the licensee;

(D) The amount of principal for any medical debt or debts incurred;

(E) Any adjustment to the bill, such as negotiated insurance rates or other discounts;

(F) The amount of any payments received, whether from the patient or any other party;

(G) Any interest or fees; and

(H) Whether the patient was found eligible for charity care or other reductions and, if so, the amount due after all charity care and other reductions have been applied to the itemized statement;

(ii) In the event the debtor has entered into a voluntary payment agreement, the debtor shall give notice if he or she wants the payment plan discontinued. If no notice is given, the payment arrangement may continue.

(iii) Properly executed postjudgment writs, including writs of garnishment and execution, are not required to be ceased and second or subsequent requests for information already provided do not require the cessation of collection efforts;

(c) Report adverse information to consumer credit reporting agencies or credit bureaus until at least one hundred eighty days after the original obligation was received by the licensee for collection or by assignment.

(29) If the claim involves hospital debt:

(a) Fail to include, with the first written notice to the debtor, a notice that the debtor may be eligible for charity care from the hospital, together with the contact information for the hospital;

(b) Collect or attempt to collect a claim related to hospital debt during the pendency of an application for charity care sponsorship or an appeal from a final determination of charity care sponsorship status. However, this prohibition is only applicable if the licensee has received notice of the pendency of the application or appeal.

[Wash. Rev. Code Ann. § 19.16.250 \(West\)](#)

West Virginia **Wisconsin**

806.02. Default judgment

(1) A default judgment may be rendered in favor of any party as provided in subs. (1) to (4) if no issue of law or fact has been joined on any claim asserted in a complaint, counterclaim, or cross claim and if the time for joining issue has expired. Any defendant appearing in an action shall be entitled to notice of motion for judgment.

(2) After filing the complaint, counterclaim, or cross claim and proof of service thereof and after filing an affidavit that the party against whom judgment is sought is in default for failure to join issue, a party may move for judgment according to the demand of the complaint, counterclaim, or cross claim. If the amount of money sought was excluded from the demand for judgment, as required under s. 802.02(1m), the court shall require the moving party to specify the amount of money claimed and provide that information to the court and to the other parties appearing in the action prior to the court rendering judgment. If proof of any fact is necessary for the court to render judgment, the court shall receive the proof.

(3) If a defendant fails to appear in an action within the time fixed in s. 801.09 the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by s. 801.10 and, in addition, shall require further proof as follows:

(a) Where a personal claim is made against the defendant, the court shall require proof by affidavit or other evidence, to be made and filed, of the existence of any fact not shown by the complaint which is

needed to establish grounds for personal jurisdiction over the defendant. The court may require such additional proof as the interests of justice require.

(b) Where no personal claim is made against the defendant, the court shall require such proofs, by affidavit or otherwise, as are necessary to show the court's jurisdiction has been invoked over the status, property or thing which is the subject of the action. The court may require such additional proof as the interests of justice require.

(4) In an action on express contract for recovery of a liquidated amount of money only, the plaintiff may file with the clerk proof of personal service of the summons on one or more of the defendants and an affidavit that the defendant is in default for failure to join issue. The clerk shall render and enter judgment against the defendants who are in default for the amount demanded in the complaint. Leaving the summons at the abode of a defendant is not personal service within the meaning of this subsection.

(5) A default judgment may be rendered against any party who has appeared in the action but who fails to appear at trial. If proof of any fact is necessary for the court to render judgment, the court shall receive the proof.

[Wis. Stat. Ann. § 806.02 \(West\)](#)

Form 70-7. Affidavit of default

[Caption]

AFFIDAVIT OF DEFAULT

State of Wisconsin))ss.

County of

)

I, *[name]*, having been sworn, state:

1. I am the attorney for the plaintiff in the above-entitled action.
2. The summons and complaint were served *[describe]*, as appear by the proof of service on file herein.
3. The time for answering or otherwise responding to the complaint has expired and no answer or other response has been served upon or received by plaintiff or me, except that *[name]* has filed a notice of appearance, and defendant is now in default for failure to so answer.
4. Upon information and belief, defendant is not a member of the Armed Forces of the United States within the meaning of the Servicemembers Civil Relief Act (formerly known as the Soldiers and Sailors Civil Relief Act of 1940) and has not been at any time related hereto.

Subscribed and sworn to before me this *[date]*. My commission expires on *[date]*.

Notary Public *[Seal]*

[Form 70-7. Affidavit of default, 2 Wis. Prac., Methods of Practice Form 70-7 \(5th ed.\)](#)

Wyoming

Law Review Articles

1. Marc C. McAllister, Ending Litigation and Financial Windfalls on Time-Barred Debts, 75 Wash. & Lee L. Rev. 449 (2018)

- a. "most courts agree that a statute of limitations bar does not actually extinguish the debt itself.⁴⁷ According to most courts, the debtor still owes the *459 debt; however, he has a complete legal defense against having to pay it, which, when asserted, would simply prevent a debt owner or collector from enforcing the debt in court.⁴⁸

Because the debtor still owes a time-barred debt, most courts agree that the statute of limitations does not prevent a debt owner or collector from seeking to collect even the entire amount of the debt outside of court, and that it is appropriate to do so.⁴⁹

Marc C. McAllister, Ending Litigation and Financial Windfalls on Time-Barred Debts, 75 Wash. & Lee L. Rev. 449, 458–59 (2018)

b.

2. Conor P. Duffy, A Sum Uncertain: Preserving Due Process and Preventing Default Judgments in Consumer Debt Buyer Lawsuits in New York, 40 Fordham Urb. L.J. 1147 (2013)

- a. Consumers also often fail to respond to suits because they lack sufficient notice. There are several reasons why consumers lack notice in debt collection lawsuits. First, the debt buyer may not have *1172 accurate contact information for the consumer.¹⁷¹ Second, lack of notice is often the fault of process servers who fail to serve consumers properly.¹⁷² For example, process servers have been accused of engaging in so-called "sewer service" and of filing false affidavits with the court.¹⁷³ Third, even when consumer defendants receive a summons and complaint, they may not recognize the plaintiff and they may be puzzled by the allegations in the complaint.¹⁷⁴ The FTC has found that debt buyer complaints filed in court "often do not contain sufficient information about the debt(s) to allow consumers in their answers to admit or deny the allegations and to assert affirmative defenses."¹⁷⁵

To remedy the widespread problems endemic in these suits, a 2010 FTC report recommended that debt collection complaints contain:

- (1) the name of the original creditor and the last four digits of the original account number; (2) the date of default or charge off and the amount due at that time; (3) the name of the current owner of the debt; (4) the total amount currently due on the debt; and (5) a breakdown of the total amount currently due by principal, interest, and fees.¹⁸⁴

In addition, the report encouraged states to require plaintiffs in debt collection lawsuits to attach contracts or other documentation on the debt to the complaint.

Conor P. Duffy, A Sum Uncertain: Preserving Due Process and Preventing Default Judgments in Consumer Debt Buyer Lawsuits in New York, 40 Fordham Urb. L.J. 1147, 1171–72 (2013)

b.

3. Young Walgenkim, Killing "Zombie Debt" Through Clarity and Consistency in the Fair Debt Collection Practices Act, 24 Loy. Consumer L. Rev. 65 (2011)
- 4.