

Pennsylvania Debt Collection Laws

Submitted by: Frederic I. Weinberg, Esquire of Gordon & Weinberg, P.C.

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Gordon & Weinberg, P.C., is a collection law firm specializing in commercial and consumer collections, providing statewide coverage in Pennsylvania and New Jersey. The firm's managing partner, Frederic I. Weinberg, is a graduate of the National Law Center of the George Washington University, class of 1984, and he is currently an attorney board member of the Board of Governors of the [Commercial Law League of America](#) (CLLA) and is an active member in the [National Association of Retail Collection Attorneys](#) (NARCA), the [International Association of Commercial Collectors](#) (IACC), [ACA International](#) and the [Debt Buyers Association](#) (DBA).

I. Overview of Pennsylvania Collection Laws

A. **Statute of Limitations** – Until recently, the statute of limitations applied in all collection matters (except federal student loans and subrogation) was four years, which is the statute for breach of contract claims. See [42 Pa. C.S.A. §5525](#). While many judges still uniformly apply the four year statute, one Federal Court judge has imposed a new two-step analysis in determining the applicable statute of limitations. In the case of [Hamid v. Stock & Grimes, LLP, PICS Case No. 12-1179 \(E.D. Pa. June 12, 2012\)](#), the U.S. District Court for the Eastern District of Pennsylvania applied the Pennsylvania Uniform Statute of Limitations on Foreign Claims Act, [42 Pa. Cons. Stat. §5521\(b\)](#), essentially applying a two-step analysis to determine the correct statute of limitations for filing debt collection suits in Pennsylvania. The Court first looked at the choice of law provision in the credit card agreement (contract) and then looked at the place where payments were to be **sent**. In the decision, the answer was Delaware law to both. The Court found that the failure of the creditor to receive the debtor payment in Delaware was the injury, triggering the Delaware statute of limitations (rather than the breach occurring in Pennsylvania where the debtor failed to issue the payment). Accordingly, until this issue is further resolved by the courts, the safe practice at this time is to make the analysis as to whether a shorter limitations period may apply. It is also a safe practice **not** to follow a longer limitations period, even if provided for in the choice of law provision.

The statute of limitations in subrogation files is two years, as it follows the limitations of actions for personal injury or damage to property. See [42 Pa. C.S.A. §5524](#).

B. **Bad Check Law** - It is a crime in Pennsylvania to pass a check knowing that it will not be honored by the underlying bank. In Pennsylvania, a person tendering a check is presumed to know that the check will not be paid, if payment was refused either because the issuer had no account with the bank at the time the check was issued, or payment was refused by the bank for lack of funds within 30 days,

and the person issuing the check fails to make good on it within 10 days after receiving notice of insufficient funds.

The severity of the criminal offense depends upon the amount of the underlying check. An offense under this section is:

- (i) a summary offense if the check or order is less than \$200;
- (ii) a misdemeanor of the third degree if the check or order is \$200 or more but less than \$500;
- (iii) a misdemeanor of the second degree if the check or order is \$500 or more but less than \$1,000;
- (iv) a misdemeanor of the first degree if the check or order is \$1,000 or more but is less than 75,000;
- (v) a felony of the third degree if the check or order is \$75,000 or more.

See [18 Pa. C.S.A. §4105](#).

C. **Garnishment Laws** – There is no wage garnishment in Pennsylvania, except in landlord tenant cases. However, bank garnishments are permitted. Following obtaining a judgment, finding a banking asset may be the best post judgment remedy available. Pennsylvania only has a \$300.00 statutory exemption, making this process more appealing. See [42 Pa. C.S.A. §8123](#). However, marital assets are exempt, and banks must notify the creditor of recurring electronic deposits, such as payroll, social security, disability payments, etc., that might be exempt if the account has less than \$10,000.00.

D. **Call Recording** – Call recordings can only be performed with the consent of all parties pursuant to the Pennsylvania Wiretapping Law, [18 Pa. C.S.A. §5704\(4\)](#).

E. **Fair Credit Extension Uniformity Act (FCEUA)** – for consumer claims, Pennsylvania has adopted the **Fair Debt Collection Practices Act** through the FCEUA, [73 Pa. C.S.A. §2270.4](#).

II. Licensing Requirements

Collection agencies, collectors and debt buyers do **not** need to be licensed in PA. Moreover, businesses do not need to be licensed in PA in order to collect a debt, provided that the company is not otherwise doing business in the state. See [15 Pa. C.S.A. §4122\(a\)](#), *et seq.*

III. Handling Different Types of Collection Claims in PA

A. **Commercial Claims** - In pursuing a commercial claim, the creditor must be sure to have the contract documents or invoices, payment ledgers, and a **legible copy** of any personal guaranty. Pennsylvania construes guaranty documents strictly and to the four corners of the document. Accordingly, it is best to have these types of documents reviewed by counsel before entering into any

sales or services transaction. Pennsylvania has adopted the Uniform Commercial Code, Articles 2 through 9.

B. **Bulk Sales** - An important note is the [Bulk Sales Act, 43 Pa. C.S.A. §788.3, 69 Pa. C.S.A. §529, and 72 Pa. C.S.A. §1403\(a\), 7240, 7321.1](#) (collectively the "Bulk Sales Transfers Laws"), with important tax implications. A "Bulk Sales Transfer" occurs when 51 percent or more of goods, merchandise, equipment, buildings or real estate are sold. The law is designed to ensure that the Commonwealth of Pennsylvania is paid the tax obligations of the seller. The Pennsylvania Department of Revenue must be placed on notice of the sale and the taxes paid. The Buyer is only protected if the Commonwealth issues a Bulk Sales Clearance Certificate. Otherwise, the Buyer may be obligated to pay the tax due.

C. **Consumer Collections** - Pennsylvania has adopted the Fair Debt Collection Practices Act in the "**Pennsylvania Fair Credit Extension Uniformity Act**", [73 Pa.C.S.A. §2270.4](#). This State statute incorporates the FDCPA in its entirety. **Call recordings** can only be done with consent of all parties pursuant to the Pennsylvania Wiretapping Law, [18 Pa.C.S.A. § 5704\(4\)](#).

Unfortunately, Pennsylvania has a very active consumer bar which actively pursues claims against clients and law firms alike. It is important to know who these consumer attorneys are and the issues they are pursuing in litigation.

D. **Secured Transactions (Article 9)** - The Uniform Commercial Code Modernization Act of 2001, was signed into law on June 8, 2001. This Act was effective on July 1, 2001.

The Commonwealth of Pennsylvania has adopted the National UCC Financing Statement, the National UCC Financing Statement Amendment, the Information Request and the Statement of Claim approved by the International Association of Commercial Administrators (IACA).

IV. Court Costs

A. **Filing Fees** - In deciding whether to litigate a claim, it is helpful to know about the court options, the costs of each and the evidentiary proofs necessary in each court. There are basically two court levels. The lower courts, District Justice Court (Municipal Court in Philadelphia) are small claims courts, for claims valued at \$12,000.00 or less. The filing fees are lower and cases can often proceed on the documents without a witness. The trial Court, or Court of Common Pleas, has no jurisdictional limit, but all claims under \$50,000.00 go to compulsory non-binding arbitration. A case can also proceed on the documents in arbitration, but proceeding without a witness is disadvantageous in many jurisdictions. Both the lower courts and the arbitration cases have automatic rights of appeal to a trial before a judge or a jury. For any claim over \$50,000.00, the case must proceed directly to a bench or jury trial. In the event that there is a claim above \$75,000.00 and there is diversity amongst the parties, the United States

District Court can be utilized. The Federal judiciary moves these cases through the system promptly and efficiently.

As set forth above, there are various court levels in Pennsylvania. As one would expect, filing fees are lower in the small claims courts – District Justice Courts throughout the Commonwealth and Municipal Court in Philadelphia. However, while there is a recommendation of uniform costs at this level, there is a variance from court to court and there are several hundred District Justice Courts in Pennsylvania. At the trial level – The Court of Common Pleas – costs also vary from county to county. If a claim is above arbitration limits (usually claims over \$50,000.00), costs increase dramatically, as do requests for jury trials. Costs range from \$56.00 to \$332.50, depending on the court level and jurisdiction. The average cost is approximately \$150.00.

B. **Service** – Except in Philadelphia, service is effectuated by the Sheriff or Constable for the court's jurisdiction. Accordingly, service costs are fixed. In Philadelphia, for both Municipal Court and the Court of Common Pleas, private process servers are used and cost should be negotiated. Unfortunately, some sheriff departments require a "cost deposit" of \$200.00 to \$400.00, depending on the document being served, and then return costs of the unused portion. This is the exception rather than the rule. The same is true for some departments that add a \$10.00 surcharge to service costs. The average cost to serve a complaint is less than \$50.00.

C. **Garnishments and Levies** – All garnishments and levies in Pennsylvania must be served by the sheriff. Typically, the cost for serving a bank garnishment is higher than the cost for serving a complaint. In commercial cases, where property is levied upon, the sheriff is entitled to poundage or fee since the property is sold at sheriff fee through a bid process.

Some sheriff departments will also attempt to collect poundage fees for bank garnishments. There is a divergence of opinion as to whether the sheriff is entitled to any fee, as all the sheriff does is serve the garnishment interrogatories upon the bank. There is no statutory basis for poundage fees to be assessed, as there is no sale or bid process. This must be navigated from department to department. Enforcement of Money Judgment is governed by P. R.C.P. §3101 et seq. Defendants are entitled to certain statutory exemptions, most notably a \$300.00 monetary exemption pursuant to [42 Pa. C.S.A. §8123](#). The first \$10,000.00 of recurring electronic deposits are also exempt in certain situations pursuant to Pa. R.C.P. 3111.1.

D. **Debtor Exams** – Debtor exams are available and should be used only when advantageous. The debtor examination or deposition does not need to be served by the sheriff and can be served by regular mail. The cost is in the transcript, so a cost benefit analysis must be made in each case.

V. Relevant Case Law and Government Oversight

A. **State Attorney General and the Better Business Bureau** – The Pennsylvania Attorney General's office is charged with investigating consumer complaints. The office has now overlapped with the Better Business Bureau since the formation of the Consumer Financial Protection Board. It is very important to timely respond to an investigation letter containing a consumer complaint. The office is very fair in its review of these complaints. Problems and violations can be avoided by giving a detailed response to the complaint and providing corrective action if an error was made.

B. **Relevant Case Law** – in addition to [Hamid v. Stock & Grimes, LLP](#) set forth above in the discussion as to statute of limitations, perhaps the most relevant case decided in the Third Circuit is the case of [Leshner v. Law Offices of Mitchell N. Kay, P.C., 650 F.3d 993 \(3d Cir. 2011\)](#). This case applies to initial validation letters sent by an attorney in a consumer collection case.

The [Leshner](#) court found that a [Greco](#)-type disclaimer (“...an attorney can, in fact, send a debt collection letter without being meaningfully involved as an attorney within the collection process, so long as that letter includes disclaimers that should make it clear even to the ‘least sophisticated consumer’ that the law firm or attorney sending the letter is not, at the time of the letter’s transmission, acting as an attorney. [Greco v. Trauner, Cohen & Thomas, LLP, 412 F.3d 360, 361 \(2d Cir. 2005\)](#).”), which appeared on the reverse of a collection letter, was insufficient to disclaim attorney involvement in the making and sending of a collection letter. The [Leshner](#) decision has become fodder for consumer attorneys. While one can discuss the efficacy of taking any such case on appeal that could result in an adverse opinion for the industry, [Leshner](#) certainly provides notice and guidance that Pennsylvania practitioners must be wary and cautious in how they proceed. Compliance is a mandatory requirement of the practice of law.

Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.

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