

Tennessee Debt Collection Law

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Since our inception in the 1930s, [Finkelstein, Kern, Steinberg, & Cunningham, P.C.](#) (FKSC) has had many different areas of expertise. FKSC's main focus is retail and commercial debt collection. They also practice in the fields of corporate law, family law, insurance subrogation, wills and estate matters and personal injury litigation. Our firm has been a recognized leader in the legal collection industry for over fifty years. Located in Knoxville, TN, FKSC handles a high volume of debt collection matters across the states of Tennessee, Alabama, and Mississippi. FKSC continually endeavors to handle all matters involving clients, employees and customers with integrity and respect, while always striving towards excellence in our work product. Our firm offers experienced and highly trained in-house collections, skip tracing, compliance, audit, and paralegal teams that handle all phases of the legal collection process. The firm is active in the [Commercial Law League of America](#) (CLLA), the [National Association of Retail Collection Attorneys](#) (NARCA), and the [Debt Buyers Association](#) (DBA). Ron Cunningham, President of FKSC, also founded the Tennessee Creditors' Bar Association and serves as the current President.

Kelly Dicken has been an attorney at Finkelstein, Kern, Steinberg & Cunningham, P.C. for seven years and practices in the areas of retail collections, commercial litigation, and juvenile law. She attained her J.D. degree from the University of Tennessee. Kelly is Executive Vice President of FKSC, and additionally, she serves as Secretary for the Tennessee Creditor's Bar Association and Director of the Legislative Committee for the Tennessee Creditor's Bar Association.

Statute of Limitations

As with other states, Tennessee's credit statute of limitations begins on the date of the last recorded payment against the debt or the contract date, if there has been no payment. Creditors may still contact non-consumers with open accounts after the statute of limitations has passed. IF suit is brought after the statute has expired, the defendant may raise he statute of limitations as an affirmative defense and have the case dismissed. With consumer debt, most courts across the country have held that it is a violation of the FDCPA to knowingly pursue a debt collection case after the statute of limitation has expired, and Tennessee has adopted such rulings. *Kimber [v. Fed. Fin. Corp.](#), 668 F. Supp. 1480, 1487 (M.D. Ala. 1987)*. Tennessee Statutes of Limitations are as follows:

- a. Breach of contract: Six (6) years. [Tenn. Code Ann. §28-3-109.](#)
- b. Open accounts: Six (6) years. [Tenn. Code Ann. §28-3-109.](#)
- c. Domestic and foreign judgments: Ten (10) years. [Tenn. Code Ann. §28-3-110.](#)

- d. Retail Installment Sales Contracts for Sale of Goods: Four (4) years. [U.C.C §2-725](#) adopted in Tennessee.

Bad Check Laws

In Tennessee, several statutes govern the collection of bad checks. A handling charge not to exceed \$30.00 is allowed to any payee, if the payor did not have an account, there were insufficient funds, or if there was an incorrect or insufficient signature. [Tenn. Code Ann. §47-29-102](#). Further, a person who, having executed and delivered to another person a check or draft drawn on or payable at a bank or other financial institution, with fraudulent intent, stops payment, fails to have an account, or lacks authorized signature, can be held liable in a civil action. If found liable, the payee can be liable for the 1) face amount of the check dishonored; 2) ten percent (10%) interest per annum on the face amount or unpaid balance; 3) any reasonable service charges incurred by the payee; 4) court costs incurred by the payor for any civil action brought to collect the check; and 5) reasonable attorney fees. [Tenn. Code Ann. §47-29-101\(a\)](#). It is important to note that if the payor does not pay the full amount of the check or draft within thirty (30) days following certified mailing of written notice that the check or draft has not been paid and that treble damages will be sought, upon finding of fraudulent intent, the payee can be liable for treble the face amount of the check or draft. However, the amount awarded in addition to the face amount of the check or draft cannot exceed five hundred dollars (\$500). [Tenn. Code Ann. §47-29-101\(d\)](#).

Exemptions

Although other means of collections are available, the most common forms of post-judgment collections in Tennessee are bank levies, wage garnishments, and judgment liens. Wage garnishment exemptions in Tennessee are primarily patterned after federal guidelines. In keeping with the federal wage exemptions standards, Tennessee Law exempts 75 percent of disposable earnings per week, or the amount by which the garnishee's disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage at the time the earnings for any pay period become due and payable. "Disposable earnings" are part of the earnings of an individual remaining after the deduction from those earnings of any amounts required by law to be withheld. [Tenn.Code Ann. § 26-2-106](#). Tennessee law adds to the federal exemption an exemption of two dollars and fifty cents (\$2.50) for each of the garnishee's dependent children under sixteen (16) years of age who resides in the state of Tennessee as provided in §26-2-107. Costs for such wage garnishments can be taxed to the defendant. [Tenn. Code Ann. § 26-2-106\(c\)](#). Personal property can be selectively exempted from seizure in the aggregate value of ten thousand dollars (\$10,000). [Tenn. Code Ann. §26-2-103](#).

Homestead exemptions are as follows: \$5,000 for a single owner; \$7,500 for joint owners; \$25,000 if at least one dependent is a minor child. It should be noted that each individual debtor spouse with custody of a minor child can claim the \$25,000 exemption for a combined exemption of \$50,000. [In re: Milburn](#)

[Hogue and Melanie Hogue. LEXIS. No. M2008-01700-SC-R23-CQ. July, 2009.](#) If the resident is sixty-two (62) years or older, the exemption is \$12,500 for a single owner, \$20,000 if married, and \$25,000 if spouse is also 62 or older. [Tenn. Code Ann. §§26-2-301](#) and [§26-2-302](#).

Additional exemptions, which typically come into play when a bank levy has been issued, are (for an extensive list see [Tenn. Code Ann. §26-2-111](#)):

1. Social Security, unemployment compensation, Families First program benefit or a local public assistance benefit;
2. A veteran's benefit;
3. A disability, illness, or unemployment benefit, or a pension that vests as a result of disability;
4. To the same extent that earnings are exempt pursuant to [§26-2-106](#), a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of death, age or length of service (with contingencies listed in [§26-2-111\(d\)i-iii](#)).
5. Alimony to the extent that payment becomes due more than thirty (30) days after the debtor asserts a claim to such exemption in any judicial proceeding; and
6. Child support payments to the extent that payment becomes due more than thirty (30) days after the debtor asserts a claim to such exemption in any judicial proceeding.

Creditor/Lender Licensing Requirements

In Tennessee, there are few rules regulating collection by a creditor or first-party lender. Tennessee does not treat creditors who are actively collecting their own debt as debt collectors, unless there is an implication of a third party attempting to collect this debt, such as outsourcing. [Tenn. Code Ann. §62-20-103\(b\)](#) excludes parties that collect their own debt from "submit[ting] to licensure or regulation by the collection service board."

Collection Agency Licensing Requirements

[The Tennessee Collections Services Act \(TCSA\) controls collection activity in the state of Tennessee. Tenn. Code Ann. §§62-20-101-127.](#) The TCSA created the Tennessee Collection Service Board, which governs collection agency licensing and bonding in Tennessee. A bond is required, as are several fees. The licensing process requires a trust account and resident office in Tennessee. Further, the agency must have a licensed location manager. Any willful violations of these statutes are considered a Class C Misdemeanor. Please see the rules of the Tennessee Collection Services Board for the complete requirements on licensing of debt collectors.

Debt Buyers and/or Third Party Collectors Licensing Requirements

It is currently the opinion of the Tennessee Collections Service Board that entities that purchase forms of indebtedness will be deemed a “collection service” if the entity collects or attempts to collect the indebtedness subsequent to the purchase of the debt. However, entities that purchase debt but do not collect or attempt to collect the purchased debt, but instead assign the collection activity to a licensed collection agency or law firm shall not be considered a “collection service.” Note: The “passive” rule language promulgated by the TCSA has preliminarily been addressed by the Sixth Circuit District Court in Greenville, TN, pursuant to Rule 12(B) Motions to Dismiss, and the Court has questioned the rule as to the requirement for “passive” debt buyers being exempt from the licensure requirements. The Court is questioning whether the “passive” rule conflicts with the plain language of the statute. The State Attorney General has issued an opinion that appears to support the requirement that Debt Buyers need to be licensed. The Bankruptcy Court in *In re Rogers* held that the simple purchasing of accounts that are in default and are due for the purpose of collection does not subject the purchaser to the licensing requirements of the TCSA. *In re Rogers* 2008 WL 1902050 (Bankr. E.D. Tenn. Apr. 25, 2008). At this point the question remains unanswered.

Tennessee’s attorney exemption statute exempts attorneys at law from complying with the TCSA. However, the board has recently made an informal ruling that limited the scope of this exemption to extend only to attorneys that are licensed to practice in Tennessee as well as acting in a representative or advisory capacity on behalf of a client that is owed a debt. [Tenn.Code Ann. §62-20-103\(a\)](#). See *Board Clarifying Statements & Informal Rulings* on the Collection Service Board website <http://tn.gov/commerce/boards/collect/index.shtml>.

Unlicensed Practice of Law

An attorney can only collect in Tennessee if he/she is licensed to practice in Tennessee. An attorney from another state can, on an individual case-by-case basis, be admitted before the court to practice in this state for that individual case. However, an attorney cannot actively practice law or collections in this state without a Tennessee law license.

Additionally, there are penalties for an attorney practicing in Tennessee if he/she is not licensed to do so in accordance with the Tennessee Supreme Court Rule 7, the Licensing of Attorneys. Specifically, the penalties for the unauthorized practice of law per the Rules of Professional Responsibility are that the person could be found guilty of a crime, could be responsible for damages suffered by his/her “client” or, if the person is an attorney, could be disciplined by the Board of Professional Responsibility. Rules of Prof. Resp. Rule 8 TSCR, Section 5.5.

Commercial Collections

A commercial claim/debt generally means a liability or obligation on the part of a business. Commercial collections are exempt from the Fair Debt Collection Practices Act (FDCPA). [15 U.S.C. §1692](#). However, commercial collections are under Section 5 of the Federal Trade Commission (FTC) Act in regard to avoidance of unfair or deceptive acts and practices in commercial collection efforts. [15 U.S.C. §45](#). If the obligation exceeds \$25,000, it must be filed in a court of record, either Circuit or Chancery Court. This increases court costs but allows for more pre- and post-judgment discovery. It should be noted that a default judgment can be obtained on a sworn account on commercial claims. [Tenn. Code Ann. §24-5-107](#).

Consumer Collections

A consumer claim is governed by the FDCPA. [15 U.S.C. §1692](#). In Tennessee, a warrant may be filed against a debtor upon “sworn account,” which is an affidavit in which the owner of the debt swears to the indebtedness of the defendant. [Tenn. Code Ann. § 24-5-107\(a\)](#). If a warrant is filed and personally served upon the defendant with an appropriate sworn account attached, it is conclusive proof against the party charged, unless that party denies the account in writing or under oath orally. Should a defendant fail to appear in court after being personally served with a warrant and sworn account giving him or her notice of the claim and the court date, a default judgment may be taken against the defendant. Conversely, if the defendant does appear and denies the debt orally or in writing, then “upon such denial, on the plaintiff’s motion, or in the interest of justice, the judge shall continue the action to a date certain for trial.” [Tenn. Code Ann. § 24-5-107\(b\)](#). It should be noted that some judges are demanding more supporting documentation before awarding judgment, particularly underlying documentation of the debt and, in the case of debt buyers, legal chain of title. It is becoming common practice of many collection attorneys to attach such documentation at the time of suit.

Most consumer collection cases are filed in the Tennessee General Sessions Courts, which are not courts of record but have jurisdiction over disputes up to \$25,000. A few benefits for filing a collection case in the Tennessee General Sessions Courts include: a) court costs are typically less in Sessions; b) pre-judgment discovery is discretionary with the court; c) hearings are expedited in comparison to the courts of record; and d) appeals are de novo to Circuit Court.

Tennessee is an “appearance” state that requires the presence of an attorney at all legal proceedings. Tennessee law also allows the Plaintiff to take a voluntary dismissal, commonly referred to as a nonsuit, up to two times on the same cause of action. Tenn. R. Civ. P. 41.01. Personal service is required either through the Sheriff’s Department or Private Process Server. Sessions Courts are uniquely adapted to handle collection cases and the time to judgment is significantly less than in Circuit or Chancery.

Secured Versus Unsecured Debt

Secured debt is debt that is collateralized (e.g., a car loan with the car as collateral). If the collateral is personal property, the creditor must deal with the collateral under the terms of the UCC, unless there were other provisions in the contract. Typically, there is a repossession and a commercially reasonable sale after the debtor has been given proper notice and the opportunity to cure.

If the secured debt is real property, the creditor must proceed under the terms of the contract, which typically allows for the liquidation of the collateral to determine if there is a deficiency. Proper notice of default and the opportunity to cure the default must be given to the debtor. If there is a deficiency after liquidation, the creditor may proceed with debt collection on the deficiency.

In the case of a judgment lien, the creditor can move the court to liquidate the property to satisfy the lien if there is equity in the property.

Unsecured debt (e.g., credit card debt) is not collateralized. When there is default in payments under the terms of the agreement, the creditor may begin collection actions in accord with the contract terms and all other applicable laws governing the collection of debt.

Suit Fees by County

Tennessee has ninety-five (95) counties that each have their own General Sessions court for jurisdiction over matters of \$25,000 and less. The Tennessee Rules of Civil Procedure do not apply in General Sessions, as it is not a court of record. Circuit and Chancery Court have concurrent jurisdiction in most matters and have unlimited monetary jurisdiction. All three courts have jurisdiction over collection matters. In Tennessee, each county will have all three courts, and court costs differ from county to county as well as from court to court within a county. Costs typically change annually. Currently, filing fee costs for one defendant without service are:

1. Circuit or Chancery Courts - \$80.00 to \$337.50
2. General Sessions Courts - \$80.50 to \$188.50

Process Serving Options and Other Costs

Service can be executed by sheriffs in all counties and private process servers in most counties. Private process is typically preferred by collection firms. Rates vary based on amount of defendants, county, sheriff and/or process server. Rates for one defendant vary from \$22.00 - \$47.00.

Garnishment/execution fees differ by county although the majority of counties charge the same rate. Court costs are typically awarded at judgment. Post judgment garnishment costs are awarded by statute.

[Tenn. Code Ann. § 26-2-106\(c\)](#). The average costs are:

1. Garnishment: \$25.00
2. Garnishment Service (Sheriff): \$22.00
3. Bank Levy: \$25.00
4. Bank Levy Service (Sherrif): \$47.00

Debtors in Tennessee can be subpoenaed to appear in General Sessions Court for a post-judgment debtor's exam. In Circuit and Chancery Court, debtors can be compelled by a court order to appear for a post-judgment debtor's exam as well as for depositions. There is typically no cost for post-judgment discovery outside of the court reporter fee, if a court reporter is necessary.

Other costs to note are fees for motions, orders, and court date resets. Motion fees statewide range from \$0.00 - \$25.00. Order fees range statewide from \$0.00 - \$25.00. Reset fees range statewide from \$0.00 - \$10.00.

State Attorney General

Unlike other states, the Tennessee State Attorney General has not brought any significant cases in relation to debt collection in Tennessee.

Tennessee Case Law

Debt collection in Tennessee is experiencing litigation under the FDCPA primarily in the federal courts. A particular area with heavy litigation involves the issue of debt buyers and the legal chain of title showing ownership of the debt, as well as necessary underlying documentation of the debt. In Tennessee, all that is needed for an uncontested judgment is a sworn account; however, if a debtor denies the debt, either by filing a sworn denial or by oral testimony, then the burden shifts to the Plaintiff. [Tenn.Code Ann. §24-5-107](#). Once the burden shifts, the Plaintiff debt collector will need to enter evidence at trial under the Tennessee Rules of Evidence. The Tennessee Rules of Evidence contain an exception to the hearsay rule for business records of a regularly conducted activity. Rule 803(6) provides that regularly kept business records may be admitted to prove the truth of the matters asserted therein because they are presumed to be exceptionally reliable. If a witness is available to testify as to the business records of the owner of the debt, Rule 803(6) requires that the following three criteria be met to admit a business record:

1. the document must be prepared in the normal course of business;
2. it must be made at or near the time of the events it records; and
3. it must be based on the personal knowledge of the entrant or on the personal knowledge of an informant having a business duty to transmit the information to the entrant.

Further, a business record admitted under Rule 803(6) may be authenticated by a qualified witness or through an accompanying affidavit, with the requirements listed under Tenn. R. Evid. Rule 902(11). The affidavit, with the records attached thereto, will provide for admissibility of the records at trial without the necessity of a witness. It is important to note that a party intending to offer a record into evidence under 902(11) must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them. Tenn. R. Evid. Rule 902(11). Tennessee Courts have concluded that a party interested in introducing a business record as an exception to the hearsay rule must satisfy five criteria:

1. The document must be made at or near the time of the event recorded;
2. The person providing the information in the document must have firsthand knowledge of the recorded events or facts;
3. The person providing the information in the document must be under a business duty to record or transmit the information;
4. The business involved must have a regular practice of making such a document; and
5. The manner in which the information was provided or the document was prepared must not indicate that the document lacks trustworthiness. *Arias v. Duro Standard Products Co.*, 303 S.W.3d 256, 262 (Tenn. 2010); *Sloan v. Poff*, LEXIS No. M2009-018390COA-R3-JV, at *9 (Tenn. Ct. App. Mar. 29, 2011); *Alexander v. Inman*, 903 S.W.2d 686, 700 (Tenn. Ct. App. 1995).

An issue that is commonly faced by debt buyers is the ability to prove up the business records of the seller. The federal courts have addressed this issue and have ruled that “Rule 803(6) allows business records to be admitted ‘if witnesses testify that the records are integrated into a company’s records and relied upon in its day to day operations.’” [Matter of Ollag Constr. Equip. Corp.](#), 665 F.2d 43, 46 (2d Cir. 1981). While there is not a case on point in Tennessee regarding this argument, the Tennessee Rules of Evidence are patterned after the Federal Rules of Evidence, and thus cases that interpret the federal rules guide the application of the Tennessee rules unless language of the rule clearly departs from its federal counterpart.

It should be noted that the Consumer Financial Protection Bureau (“CFPB”) has been created and will begin auditing those in the debt collection industry in the near future. The regulations that will be implemented by the CFPB in the upcoming years will affect all parties involved in debt collections, both in Tennessee and nationwide. The effect the CFBP will have in Tennessee debt collections is yet to be determined, but many believe the resulting reform on debt collections will surpass that of the FDCPA.

Tennessee Ethics Opinions

There are currently no ethics opinions passed down from the State Supreme Court involving attorneys involved in debt collections in Tennessee.

Miscellaneous

Historically, Tennessee has adopted a ten percent (10%) default post-judgment rate unless the contract interest rate was awarded. However, beginning July 1, 2012, any judgment entered will have the interest set at two percent (2%) below the formula rate published by the [Tennessee Department of Financial Institutions](#) as set in Public [Chapter 1043](#). The rate does not fluctuate and remains in effect when judgment is entered. The current rate, as of the date of this writing, is 5.25 percent.

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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