

## Washington Debt Collection Laws

Submitted by Robert C. Scanlon, of Dellwo Roberts & Scanlon, P.S.

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*The firm of Dellwo, Roberts & Scanlon, P.S. has represented clients in Eastern Washington for over 50 years. The firm practices in all areas of civil litigation including commercial and consumer matters, insurance subrogation and the collection of other types of debt.*

*Robert C. Scanlon has been a member of the firm since 1984. He is admitted to practice in all Courts in the State of Washington, as well as the United States District and Bankruptcy Courts for the Eastern and Western Districts of Washington. He is a member of the Spokane County and Washington State Bar Associations, as well as the [Commercial Law League of America](#) (CLLA).*

### I. Debt Collection Laws

#### A. Statutes of Limitation

The statute of limitations in the State of Washington for a debt arising from an open account is six years from the date of the last payment ([RCW 4.16.040](#)). The statute of limitations for a claim based upon a written contract is also six years ([RCW 4.16.040](#)). A judgment entered by a court in the State of Washington has a "life" of ten years from the date of entry of the judgment ([RCW 6.17.020](#)). The judgment can be extended for an additional ten-year period by filing an application with the court that entered the judgment within ninety days of the expiration of the ten year period. The "life" of a foreign judgment (a judgment entered in a state other than the State of Washington) is based upon the "life" of the judgment under the law of the state where the judgment was entered. If the law of the state where the judgment was entered allows the judgment's "life" to exceed ten years, then the life of the foreign judgment in the State of Washington can also be extended beyond the initial ten year period by filing an application in the court where the judgment has been filed within ninety days of the expiration of the initial ten year period ([RCW 6.17.020](#)).

#### B. Dishonored Checks

The law of the State of Washington provides a remedy for checks that are dishonored, by either non-acceptance or non-payment, when presented for payment to the bank upon which the check has been drawn. [RCW 62A.3-520](#) contains a statutory notice of dishonor. If the check is not made "good" within fifteen days after the date that the notice of dishonor is mailed, then if a lawsuit is filed, the holder of the check, in addition to the face amount of the check, is allowed to collect:

- a. Interest at the rate of 12% per annum (simple interest) from the date of dishonor;
- b. A collection cost not to exceed the lesser of \$40.00 or the face amount of the check;
- c. \$300.00 or three times the face amount of the check, whichever is less;
- d. Reasonable attorney fees.

These penalties do not apply, however, if there is a justifiable Stop Payment Order. [RCW 62A.3-515](#) does provide an “out” for the party who issued the dishonored check. After suit is commenced, but before trial, the defendant may tender to the plaintiff, as satisfaction of the claim, an amount of money equal to the face amount of the check, a reasonable handling fee, the accrued interest, collection costs equal to the face amount of the check but not to exceed \$40.00, the statutory attorney fee of \$200.00 and the filing and service fees.

### **C. Garnishment Exemptions**

If a judgment debtor’s wages are garnished for the purpose of satisfying the judgment, then [RCW 6.27.150](#) provides that the greater of thirty-five times the federal minimum hourly wage, per week, or 75 percent of the judgment debtor’s disposable earnings per week are exempt from garnishment. [RCW 6.15.010](#) contains a list of personal property that is exempt from garnishment or execution. [RCW 6.15.020](#) declares pension money to be exempt from garnishment or execution, and [RCW 6.15.025](#) provides that either pension or retirement plan benefits are completely exempt from a judgment for out-of-state income tax. If a writ of garnishment is issued against a judgment debtor’s bank account, then any claim of exemption made by the judgment debtor must be based upon the provisions of [RCW Chapter 6.15](#).

## **II. Debt Collection Licensing, Bonding and Regulation**

### **A. A Business or Individual Collecting Their Own Debt is not Subject to Regulation by the State of Washington.**

- B. A collection agency is subject to regulation** under [RCW Chapter 19.16](#). [RCW 19.16.110](#) requires any collection agency to obtain a license from the state. The license must be obtained by the agency. An employee of the agency is not required to be licensed. [RCW 19.16.190](#) requires the agency to post a surety bond in the sum of \$5,000.00; however, this requirement does not exist for an out-of-state collection agency, if the agency maintains an adequate bond or other legal alternative required by the state in which the out of state collection agency is located. [RCW 19.16.250](#) contains a “laundry list” of prohibited practices

by both a collection agency and the agency's employees. Of great significance is the fact that a violation of [RCW 19.16.250](#) is per se violation of the Washington State Consumer Protection Act found in [RCW Chapter 19.86](#). The Consumer Protection Act allows fines to be levied, injunctions to be entered and attorney fees to be awarded.

- C. If an individual or a business buys the debt of a third party, then as the owner of the debt, the individual or business entity is not required to be licensed or bonded, and the requirements of [RCW Chapter 19.16](#) do not apply.

### **III. Litigation**

There exists in each of the 39 counties of the State of Washington a Superior Court. The Superior Court has unlimited civil jurisdiction. A District Court also exists in each of the 39 counties and, in some counties, the District Court sits in multiple locations within the county. The civil jurisdiction of the District Court is limited to claims of \$75,000.00 or less.

Most collection cases within the jurisdictional limit of the District Court are filed in that court because District Court practice is more "streamlined" than practice in the Superior Court.

There is no difference in the way a commercial claim is handled versus a consumer collection claim. If a creditor has security interest in the goods in the hands of the debtor, then the creditor has the option of either suing upon the debt or asking for replevin of the collateral pursuant to [RCW Chapter 7.64](#). When a replevin action is commenced, the court issues an order requiring the debtor to appear and show cause why the creditor should not be placed in possession of the collateral. If the creditor is awarded possession of the collateral before trial, the creditor is required to post a bond. If the creditor posts a bond, the debtor can retain possession of the collateral by posting their own bond. Because of this, most creditors schedule the show cause hearing for a time after a defendant's appearance and answer are required. By doing this, if the debtor fails to appear and answer the Complaint, the creditor may obtain judgment by default, which eliminates the necessity for the bond.

### **IV. Filing Fees**

The "basic" civil filing fee in the District Court is \$73.00. The term "basic" is used because [RCW 3.62.060](#) allows the court the option of adding up to a \$10.00 surcharge. The surcharges tend to be a "moving target," so it is not possible to state, with any certainty, the actual amount of a filing fee charged by a particular District Court.

The civil filing fee in the Superior Court is \$240.00, and that sum is charged by all of the 39 Superior Court.

## **V. Other Court Costs**

### **A. Service of Process**

Process in the State of Washington can either be served by the county sheriff or a private process server. The fees of the county sheriff are established by statute ([RCW 36.18.040](#)). Private process servers are regulated by [RCW Chapter 18.180](#). Every private process server in the state must register with the county auditor in the county where the process server resides or has his or her principal place of business. [RCW 18.180.035](#) allows the private process server to charge, as a fee for service of process, the actual cost of the service, if that charge is less than \$100.00, or a reasonable fee, if that amount is more than \$100.00. However, [RCW 18.180.035\(2\)](#) essentially says that if a party pays any process server fee, that fee is deemed to be reasonable and shall be added to any judgment entered by the court.

### **B. Other Statutory Fees**

The fees charged by the clerks of the District and Superior Courts are set by statute. The fee for issuance of a writ of garnishment by the clerk of a District Court is \$12.00. The fee for issuance of a writ of garnishment, attachment or execution by the clerk of a District Court is \$12.00. The fee for issuance of these writs by the Clerk of the Superior Court is \$20.00. The clerks of both courts charge a \$20.00 fee for scheduling a debtor's examination.

By statute, the clerks of both the District and Superior Courts are allowed to charge a fee for "services." The most common "service" is the processing of orders and judgments submitted to the court. Unfortunately again, the clerk of the 39 District Courts are "across the board" with regard to these fees. Certain District Court clerks do not charge a fee. Other clerks do, and the maximum fee is \$20.00.

All Superior Court clerks charge such a fee, and the fee ranges between \$20.00 and \$40.00.

## **VI. Relevant Cases.**

There have been few decided appellant cases in the State of Washington dealing solely with the issue of debt collection.

There is a dispute between the various divisions of the Washington Court of Appeals regarding the “proof” required to obtain summary judgment upon a debt arising from the use of a credit card. In [Discover Bank v. Ray, 139 Wn.App. 723, 162 P.3d 1131 \(2007\)](#), Division III of the Court of Appeals held that the cardholder agreement plus credit card statements were sufficient to establish the debt to be owing. However, in [Discover Bank v. Bridges, 154 Wn.App. 722, 226 P.3d 191 \(2010\)](#), Division III of the Court of Appeals held that, in addition to the credit card agreement and statements of account, cancelled checks showing payments upon the account were required. In [City Bank South Dakota, NA v. Ryan, 160 Wn.App. 286, 247 P.3d 778 \(2011\)](#), Division I of the Court of Appeals agreed with the analysis of Division II outlined in [Bridges](#).

While these cases deal with motions for summary judgment, they are extremely important in view of the materials that appear later pertaining to [RCW 4.84.250](#) et. seq.

The Washington Court of Appeals, in [Donohue v. Nielson, 161 Wn.App. 606, 255 P. 3d 760 \(2011\)](#), held that once a collection agency gives the validation notice required by the Fair Debt Collection Practices Act (FDCPA), an attorney hired by the collection agency to sue on the debt is not required to give a second validation notice.

[Panag v. Farmers Insurance Company, 166 Wn.2d 27, 204 P.3<sup>rd</sup> 885 \(2009\)](#) involved the intersection of the Fair Debt Collection Practices Act, the Washington State Collection Agency Act, and the Washington State Consumer Protection Act. For the purpose of these materials, [Panag](#) stands for the proposition that information given to a debtor by a creditor must be accurate.

A potentially very significant case with regard to the collection of debt is presently pending before the Washington State Supreme Court. In the State of Washington there are a series of statutes dealing with lawsuits seeking to recover a debt of \$10,000.00 or less. The statutory scheme allows either the plaintiff or the defendant to make an offer of settlement prior to trial. If the offer is not accepted and the offering party receives more at trial than the sum offered, the party who rejected the offer must pay the offering party’s attorney fees. The question now before the Washington State Supreme Court is whether that statutory scheme applies when a Plaintiff recovers “nothing.”

In the case before the Washington State Supreme Court a collection agency was attempting to collect a medical bill. When it became apparent that the medical practitioner would have to appear and testify at trial, the practitioner told the collection agency to dismiss the lawsuit. It is the debtor’s argument before the Supreme Court that, when the case was dismissed, the plaintiff recovered “nothing,” thereby entitling the defendant to an award of attorney fees without requiring the statutory offer. If the Supreme Court agrees with the debtor’s argument, the practical effect would be that for any collection agency to file suit

in this state for a claim less than \$10,000.00, it must be prepared to provide trial evidence, including a witness to substantiate the claim.

*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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