

## Arkansas Debt Collection Laws

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### **I. Fundamental Debt Collection Laws in Arkansas**

#### **a. Statute of Limitations for written contracts and domestic and foreign judgments**

In Arkansas, the statute of limitations for a written contract is five years from date of default. [Ark. Code Ann. § 16-56-111](#) states:

- (1) Actions to enforce written obligations, duties, or rights, except those to which [§ 4-4-111](#) is applicable, shall be commenced within five (5) years after the cause of action shall accrue.
- (2) However, partial payment or written acknowledgment of default shall toll this statute of limitations.

The five-year statute of limitations applicable to written contracts applies to credit card debts. See [Born v. Hosto & Buchan, PLLC, 2010 Ark. 292, 18-19 \(Ark. 2010\)](#) (citing [In re Pettingill, 403 B.R. 624 \(E.D. Ark. 2009\)](#)). This is because credit card agreements are based upon a written contract. Credit cards are issued to a credit applicant "to be accepted...in accordance with the terms and conditions set forth by the card member agreements or to be rejected by the [credit applicant's] non-use of the credit cards. The issuance of the card was an offer and the contract became binding when the [credit applicant] retained the card and made use of it and thereby agreed to the terms of the written agreement." [In re Pettingill, 403 B.R. 624, 628](#) (Bankr. E.D. Ark. 2009) (citing [Citibank South Dakota N.A. v. Santoro](#), 210 Ore. App. 344, 349, 150 P. 3d 429, 432 (2006)).

Domestic judgments and foreign judgments properly domesticated are valid for 10 years from the entry of the judgment and can be renewed. [See Bird v. Shaffer, 2012 Ark. App. 464 \(Ark. Ct. App. 2012\), Ark. Code Ann. § 16-65-501.](#)

#### **b. Bad check laws and civil penalties**

In Arkansas, there are two statutes that provide a basis for prosecution of worthless checks, more commonly known as “hot checks.” The first is Ark. Code Ann. [§ 5-37-302](#) and the second is Ark. Code Ann. [§ 5-37-307](#). The main difference between the two is that the latter does not require proof of intent to defraud. [Ark. Att’y Gen. Op. 2000-181](#). An important note regarding these statutes is that checks written to satisfy pre-existing debts are not prosecutable. See [Ridenhour v. State, 279 Ark. 240, 650 S.W.2d 575 \(1983\)](#) as to the former statute and the plain language of the latter, [Ark. Att’y Gen. Op. 2000-181](#).

Intentionally writing a “hot check” is a criminal act under the Arkansas Code and can be punishable as either a misdemeanor or a felony, depending on the amount of the check and frequency of the violation. In addition, an individual who issues a hot check can incur a civil penalty and be required to pay the holder of the check the amount of the check and a collection fee of up to thirty dollars (\$30.00), plus the amount of any fees charged to the holder of the check by a financial institution as a result of the hot check. [Ark. Code Ann. § 4-60-103](#). If the issuer of the hot check does not pay this restitution and fee within thirty (30) days of receiving notice from the holder of the check, the holder of the check can then collect twice the amount of the check, but not less than fifty dollars (\$50), a collection fee not to exceed thirty dollars (\$30), plus the amount of any fees charged to the holder of the check by any financial institution as a result of the hot check, court costs, and attorney’s fees. [Ark. Code Ann. § 4-60-103](#).

#### **c. General garnishment exemptions**

Federal and state laws have several provisions that exempt property from garnishment. The most commonly claimed exemptions arise in the context of wages and Federal benefits.

The Federal wage exemption caps the amount of an individual’s wages subject to garnishment at twenty-five per centum (25%) of his disposable earnings for that week, or the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage, whichever is less. [15 U.S.C. §1673 \(2012\)](#).

Federal law also exempts the following from garnishment: Social Security, SSI, Veteran’s benefits, AFDC (welfare), unemployment compensation, and worker’s compensation. See [42 U.S.C. 407\(a\) \(2012\)](#); [42 U.S.C. 1383\(d\)\(1\) \(2012\)](#); [38 U.S.C. 5301\(a\) \(2012\)](#); [45 U.S.C. 231m\(a\) \(2012\)](#); [45 U.S.C. 352\(e\) \(2012\)](#).

In 2011, a new regulation was enacted that created a methodology under which financial institutions are to determine whether funds held by an account holder are conclusively presumed exempt. This regulation requires financial institutions to conduct a review of an account upon receipt of a writ of garnishment and evaluate whether a benefit agency (Social Security Administration (SSA), the Department of Veterans Affairs (VA), the Office of Personnel Management (OPM), or the Railroad Retirement Board (RRB)) has electronically deposited a benefit payment into the account during the look-back period. The look-back period is the two-month period preceding the date the account is reviewed, and the amount of funds that are conclusively presumed exempt is the sum of the benefit payments electronically deposited to an account during the look-back period or the account balance at the opening of business on the day the account is reviewed, whichever is less. [31 C.F.R. § 212 \(2012\)](#).

Although rarely asserted in the context of a collection action, under Arkansas law, an individual who is married or is the head of a family may claim as exempt up to \$500 of their personal property (up to \$200 if they are not married or the head of a family). [Ark. Const. of 1874, art. IV, et. seq.](#)

In addition, Arkansas law provides a Homestead Exemption which states:

The homestead of any resident of this State, who is married or the head of a family, shall not be subject to the lien of any judgment or decree of any court, or to sale under execution, or other process thereon, except such as may be rendered for the purchase money, or for specific liens, laborers' or mechanics' liens for improving the same, or for taxes, or against executors, administrators, guardians, receivers, attorneys for moneys collected by them, and other trustees of an express trust, for moneys due from them in their fiduciary capacity.

[Ark. Const. Art. 9, § 3, Ark. Code Ann. § 16-66-210](#). The Arkansas homestead exemption is not without limitation, and places restrictions on both rural and urban homesteads. A rural homestead cannot consist of more than one hundred sixty (160) acres of land or exceed in value the sum of two thousand five hundred dollars (\$2,500), but shall not be reduced to less than eighty (80) acres, regardless of the value. An urban homestead cannot consist of more than one (1) acre of land or exceed the sum of two thousand five hundred dollars (\$2,500) in value, but shall not be reduced to less than one-quarter (1/4) of an acre, regardless of the value. Although this homestead exemption does not arise in the garnishment context, it may limit the effectiveness of a claim of a judgment lien against a debtor's real property.

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

### **a. Creditors/Lenders**

In consumer debt collections, debt collectors must be aware of The Fair Debt Collection Practices Act and Arkansas' mirroring statute. The legislature enacted these laws in order to regulate consumer debt

collection and protect consumers from “abusive debt collection practices.” [15 U.S.C. §§ 1692-1692p \(2012\)](#), [Ark. Code Ann. § 17-24-501](#) *et. seq.* The statute provides for actual damages, attorneys’ fees, and penalties of up to \$1,000 per violation.

Original creditors collecting debts owed to themselves are not subject to regulation under the Fair Debt Collections Practices Act (FDCPA). Neither must original creditors, collecting debts owed to themselves in their real name, be licensed by the Arkansas Board of Collection Agencies. Original creditors/lenders must simply comply with the requirements of all entities conducting business in the state of Arkansas. See [Ark. Code Ann. § 4-25-201](#) *et. seq.*

#### **b. A Collection Agency**

Collection agencies must obtain licensing before engaging in the collections of debts. The State Board of Collections Agencies can charge an annual licensing fee of up to \$125 and an annual fee of fifteen dollars (\$15) for each employee who will be engaging in collection activities. [Ark. Code Ann. § 17-24-305](#). The State Board also requires each licensee to secure a surety bond of at least \$5,000 but not more than \$25,000 for each location. [Ark. Code Ann. 17-24-306](#).

Arkansas law defines a "collection agency" as:

“Any person, partnership, corporation, association, limited liability corporation, or firm which engages in the collection of delinquent accounts, bills, or other forms of indebtedness owed or due or asserted to be owed or due to another or any person, partnership, corporation, association, limited liability corporation, or firm using a fictitious name or any name other than its own in the collection of their own accounts receivable, or any person, partnership, corporation, association, limited liability corporation, or firm which solicits claims for collection or any person, partnership, corporation, association, limited liability corporation, or firm that purchases and attempts to collect delinquent accounts or bills” [Ark. Code Ann. § 17-24-101](#).

#### **c. Debt Buyers**

Neither the Arkansas Supreme Court nor the Arkansas Court of Appeals have addressed whether debt buyers are required to obtain a license from the Arkansas Board of Collection Agencies. Although it appears many passive debt buyers obtain a license from the Arkansas Board of Collection Agencies, it is at least arguable that passive debt buyers should not be required to do so. This is because passive debt buyers purchase delinquent accounts and then engage others (who must either be licensed under [Ark. Code Ann. §17-24-101](#) or are exempt from licensing under such provisions, such as attorneys) to attempt to collect these delinquent accounts. [Ark. Code Ann. §17-](#)

[24-301](#) provides that it is unlawful for a person or entity that is not licensed by the State Board of Collection Agencies to...“purchase and attempt to collect delinquent accounts or bills.” It can be argued that because a passive debt buyer does not “attempt to collect” the delinquent accounts it purchases, but instead engages others to do so, [A.C.A. §17-24-301](#) does not require a passive debt buyer to obtain a license.

**d. Lawyers licensed in the state of Arkansas**

Arkansas licensed attorneys, who are engaged in debt collections in the State of Arkansas, are not required to obtain a collection agency license. [Ark. Code Ann. § 17-24-102](#).

**e. Lawyers not licensed to practice in Arkansas**

An attorney who wishes to engage in debt collection of a client’s debt in Arkansas must obtain an Arkansas bar license or risk disciplinary actions by the Arkansas Bar Association. [Ark. R. Prof. Cond. 5.5](#).

**III. Debt Collection Practices Generally**

In commercial and consumer debt collections, [Ark. Code Ann. § 16-45-104](#) and Arkansas Rule of Civil Procedure 10(d) are particularly important. [Ark. Code Ann. § 16-45-104](#) applies specifically to suits based on an account and allows a creditor to establish a prima facie case on its suit by attaching an affidavit making certain averments. At the same time, Arkansas Rule of Civil Procedure 10(d) applies to all lawsuits and requires the plaintiff to attach a copy of the written instrument or document upon which its claim is based to its complaint.

The Arkansas Code provides that in a suit based on an account, an affidavit that complies with [Ark. Code Ann. § 16-45-104](#) is sufficient to establish the account (constitutes a prima facie case). [Ark. Code Ann. § 16-45-104](#), states as follows:

- (a) In a suit on an account, including without limitation a credit card account or other revolving credit account, in a court of this state,
  - (1) the affidavit of the plaintiff that the account is just and correct, taken and certified according to the 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:
    - the creditor to whom the account is owed;
    - the creditor pursuing the collection of the account; and

- the debtor obligated to pay the account.
- (2) a statement or disclosure of whether or not the debtor's account has been assigned or is held by the original creditor. 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 the 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.

Although the statute does not require the plaintiff to file the affidavit, it permits the plaintiff to attach the affidavit to give weight to the complaint. Thus, filing such an affidavit is highly recommended in collection actions based on accounts.

Unlike [Ark. Code Ann. § 16-45-104](#), all suits to collect debts must comply with the Arkansas Rules of Civil Procedure. Arkansas Rule of Civil Procedure 10(d) requires that "a copy of any written instrument or document upon which a claim or defense is based shall be attached as an exhibit to the pleading in which such claim or defense is averred, unless good cause is shown for its absence in such pleading."

It is not clear under Arkansas law precisely what 10(d) requires. The most helpful Arkansas case concerning compliance with 10(d) is [Cavalry SPV, LLC v. Anderson 99 Ark.App. 309, 313 \(2007\)](#). In this case, the Arkansas Court of Appeals opined that where the plaintiff attached to its complaint numerous documents in support of its claim, including a signed credit card application, invoices bearing the defendant's name along with charges and payments, other statements of account, a card-member agreement containing the terms and conditions of the account, and an affidavit of account, the plaintiff had complied with Rule 10(d). [Anderson, 99 Ark.App. at 313](#). The inadequacy of the case is that it does not define the minimum requirements of Rule 10(d), but instead holds that the abundance of documents attached to the complaint was sufficient to maintain the suit. *Id.* Though *Anderson* leaves open what 10(d) actually requires, by looking to other Arkansas decisions, in the context of a credit card action, creditors could argue that attaching the Terms and Conditions (sometimes referred to as the Card Member Agreement) fulfills the requirements of Rule 10(d). *In re Pettingill, 403 B.R. 624, 628 (Bankr. E.D. Ark. 2009)* ("The issuance of the card was an offer and the contract became binding when the Debtor

retained the card and made use of it and thereby agreed to the terms of the written agreement.” ([citing Citibank South Dakota N.A. v. Santoro, 210](#) Ore. App. 344, 349, 150 P.3d 429.3d 429, 432 (2006))).

#### **IV. Court Filing Fees**

The filing fee for a complaint in circuit court is \$165.00 and in district court is \$80.00. District courts have jurisdiction over collections cases where the balance does not exceed \$5,000.00, exclusive of interest, cost and attorney’s fees, although there are some pilot courts with jurisdiction up to \$25,000.00. *S. Ct. Admin. Order No. 18.*

For writs of garnishments, the filing fee in circuit court ranges from \$20.00-\$25.00 and in district court is \$10.00. District courts in Arkansas are not courts of record, therefore, in order to place a lien on a debtor’s property as a result of a district court judgment, the judgment must be filed with the circuit clerk and recorder. To do this, the judgment creditor must get the judgment certified by the district court and then file it with the circuit clerk. The district clerk charges a fee of \$5.00 for certification and then the circuit clerk charges a fee of \$15.00 plus \$5.00 for each additional page to have judgment filed.

#### **V. Process Service Options & Costs**

##### **a. Sheriff’s Fees**

The sheriff’s office generally charges \$50.00 to serve papers.

##### **b. Process Server Fees**

Process server fees generally range from \$50.00 to \$60.00.

##### **c. Asset Depositions**

Once a judgment has been entered, the judgment creditor can subpoena a debtor for an asset deposition where they can inquire as to the debtor’s assets. There is not a filing fee associated with this deposition, although the subpoena must be served upon the debtor and the debtor is entitled by Arkansas law to a \$30 witness fee plus mileage reimbursement at twenty-five cents per mile (\$0.25) for his travel to and from the deposition. Ark. R. Civ. P. 45.

*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.*