

New Jersey Debt Collection Laws

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Sklar ~ Markind is a full service commercial law firm established in 1995. We are devoted to providing our clients with the highest level of legal services in the areas of retail and commercial debt collection, bankruptcy, foreclosure, eviction, and secured creditor representation throughout New Jersey and Southeastern Pennsylvania. We are committed to using a combination of a highly trained staff and the latest technology to ensure that all matters are handled efficiently and effectively. Sklar ~ Markind represents clients ranging in size from large national equipment leasing companies to small local retail stores. We diligently pursue collection of past due retail and commercial accounts. In addition to claims placed for litigation, our collection department handles pre-litigation collections and post-judgment executions. Additional practice areas include bankruptcy (debtor and creditor representation and Chapter 7 Trustee practice), mortgage foreclosure, replevin, subrogation, and landlord-tenant.

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Lloyd S. Markind is the owner of Sklar-Markind. Lloyd has more than 20 years experience in commercial litigation and collections, with a concentration in the areas of equipment leasing, auto finance and banking. Lloyd is a member of the New Jersey and Pennsylvania Bars, and is a graduate of Temple University and the University of Tulsa School of Law.

Collection Practice in New Jersey

Statutes

Statute of Limitations

The statute of limitations for an action on an open account, an oral or written contract or promise to pay is six (6) years. N.J.S.A. 2A:14-1.

Duration of Judgments

N.J.S.A. 2A:17-3: Issue of execution without revival of judgment. Execution may issue, without a revival of the judgment, at any time within 20 years after its entry.

Domestication of Judgments

Uniform Enforcement of Foreign Judgments Act (N.J.S.A. 2A:49A-25 et seq.). Upon domestication, a foreign judgment is treated as a New Jersey judgment. It requires an exemplified copy of the foreign judgment, an affidavit or certification, and a \$35.00 filing fee. Upon recording, the Clerk of the Superior

Court will issue a notice to the debtor informing him of the 14-day period to file objections to the judgment. No execution of process may be made within the 14-day period. Forms and procedural requirements are available online at http://www.judiciary.state.nj.us/prose/10519_docket_foreign_judgments.pdf.

Bad Check Penalties:

N.J.S.A 2C:21-5 imposes criminal liability for the issuance of a bad check “knowing that it will not be honored by the drawee.” The offense is:

- (1) a crime of the second degree, if the check or money order is \$75,000.00 or more;
- (2) a crime of the third degree, if the check or money order is \$1,000.00 or more but is less than \$75,000.00;
- (3) a crime of the fourth degree, if the check or money order is \$200.00 or more but is less than \$1,000.00;
- (4) a disorderly persons offense, if the check or money order is less than \$200.00.

Proof of fraudulent intent is not required, but the State must show that the defendant passed the check knowing it would not be honored at that time.

N.J.S.A. 2A:32A-1 authorizes a civil action against the issuer of a bad check, who “who then fails to pay the face amount in cash or by cashier's or certified check within 35 days after the date a demand for payment of dishonored check notice was mailed by or on behalf of a payee by certified mail to the maker's last known address.” The statute authorizes the award of court costs, attorneys' fees and the costs of mailing the demand for payment, along with damages equal to the greater of \$100.00 or triple the amount for which the bad check was drawn. Maximum damages may be no greater than \$500.00 more than the amount of the check.

Licensing and Bonding Requirements

Any person operating a collection agency or engaged in the business of collecting or receiving payment for any sort of indebtedness must annually file a Collection Agency Bond Application, evidencing a \$5000.00 bond with the New Jersey Division of Revenue. (New Jersey Fair Debt Collection Practices Act, N.J.S.A. 45:18 et seq.) Instructions, application form and further information can be found at the Division of Revenue website. <http://www.nj.gov/treasury/revenue/filecollagbond.shtml>

Fair Debt Collection

In addition to federal legislation, New Jersey collection practice is subject to the restrictions of the New Jersey Fair Debt Collection Practices Act (N.J.S.A. 4-18-1 et seq.).

Rules of Court: The New Jersey Rules of Court set forth the state Rules of Professional Conduct as well as the rules controlling actions in the Superior Court. A complete copy of the Rules of Court, along with

appendices, is available on the New Jersey Judiciary website:

<http://www.judiciary.state.nj.us/rules/index.html>.

Filing and Process Fees and Procedures:

The Law Division and the Special Civil Part (amount in controversy under \$15,000.00) are governed by different Rules. Law Division filings are subject to the requirements of Part IV of the Rules of Court; Special Civil Part filings are subject to the requirements of Part VI of the Rules of Court.

Special Civil Part forms, including a form of summons and post-judgment proceedings for information subpoenas and writs of executions against wages and goods and chattels are available online in Appendix XI to the Rules of Court. <http://www.judiciary.state.nj.us/rules/index.html>. Special Civil Part filing fees include a fee for service of the complaint by the Special Civil Part court officer or clerk. Mileage fees for personal service are listed at: http://www.judiciary.state.nj.us/civil/forms/10537_scp_mileage_list.pdf

Law Division forms, including summons, civil case information statement, writ of execution and writ of wage execution are available online in Appendix XII to the Rules of Court.

<http://www.judiciary.state.nj.us/rules/index.html>.

Mandatory Electronic Filing for Certain Cases

Note that at this time, electronic filing of cases is only available in the Special Civil Part through the JEFIS system, and only for civil suits (dockets beginning with DC-); foreclosure and landlord-tenant filings are not available. JEFIS filing is mandatory for attorneys or firms that file more than 400 DC complaints per year.

<http://www.judiciary.state.nj.us/jefis/index.htm>; http://www.judiciary.state.nj.us/jefis/scp_dc.html

Service of Process

Special Civil Part: At the time the complaint is filed, the Clerk of the Special Civil Part issues a summons and copy of the Complaint, which are served either by an officer of the Special Civil Part or, in many counties, by mail.

Law Division: After receiving the filed complaint from the Clerk, the plaintiff's attorney prepares a summons and serves the summons and copy of the complaint on the defendant in one of the following ways:

1. By personal service. The complaint may be transmitted to the sheriff for service; however, in New Jersey, personal service is usually effectuated by a process server. The complaint and summons may also be personally served by the attorney or by any person who does not have a personal interest in the litigation.
2. By simultaneous mailing to the defendant's last known address by regular mail and certified mail, return receipt requested. Service is presumed if the regular mail is not returned, even if the certified mail is returned unclaimed or is refused.

Costs of Filing and Service: Superior Court of New Jersey

Additional fee information may be found online at:

http://www.judiciary.state.nj.us/forms/11112_courtfees.pdf

| | Law Division (over \$15, 000) | Special Civil Part (under \$15, 000) | Special Civil Part Small Claims (under \$3,000) |
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Filing Fees

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| Complaint | \$200.00 | Complaint or other initial pleading containing a counterclaim, cross-claim or third-party complaint in all other civil actions where the amount exceeds the small claims monetary limit (\$50.00)+2.00 for each additional Defendant | Complaint or other initial pleading containing a counterclaim, cross-claim or third-party complaint in all other civil actions where the amount does not exceed the small claims monetary limit (\$32.00) +2.00 for each additional Defendant |
| Answer, Answer w/ Cross-claim or Motion (if first paper) | \$135.00 | | |
| Answer w Counterclaim or Third-Party Complaint | \$200.00 | | |
| Motion | \$30.00 | | |
| Domestication of Judgment | \$35.00 | \$35.00 | |
| Writ of Execution | \$5.00 | \$5.00 | \$5.00 |
| Papers Required to Initiate Suit | Complaint Summons for each defendant (prepared by attorney) Civil Cover Sheet (CIS) Summons and CIS forms are available on the New Jersey Judiciary website: http://www.judiciary.state.nj.us/rules/index.html | Complaint (Form A) Summons (Form B: prepared by attorney, served by Special Civil Part Clerk) Special Civil Part forms are available on the New Jersey Judiciary website: http://www.judiciary.state.nj.us/rules/index.html | |

Service Requirements

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| Original Process | Personal service by Plaintiff's attorney, process server, sheriff (it is not required that original process be served by the sheriff, and it is in fact much | Special Civil Part clerk handles mailed service; Special Civil Part court officer handles personal service. Call the county | Special Civil Part clerk handles mailed service; Special Civil Part court officer handles personal service. Call the county |
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| | <p>more time-effective to serve via process server) or other adult without personal interest in litigation.</p> <p>Alternately, by simultaneous mailing by regular and certified mail, return receipt requested. (Mailed service may not be adequate to support a judgment by default.)</p> | <p>in which action will be filed to determine which method will be used.</p> | <p>in which action will be filed to determine which method will be used.</p> |
| | <p>Sheriff: Basic Summons is \$24.00 plus mileage (\$22.00 (service fee) + \$2.00 (return fee) + mileage Basic Writ: \$50.00 plus mileage \$48.00 (service fee) + \$2.00 (return fee) + mileage Process Server: varies. Expect approximately \$40 to \$60.</p> | <p>Mailed service (\$7.00 per defendant) or personal service (\$3.00 for first defendant, \$2.00 for each additional, plus mileage for each defendant).</p> | <p>Mailed service (\$7.00 per defendant) or personal service (\$3.00 for first defendant, \$2.00 for each additional, plus mileage for each defendant).</p> |
| Time to Plead or Defend: | 35 days | 20 days | 20 days |

Post Judgment Proceedings

Entry of Default

In the Special Civil Part, the Clerk automatically enters default against the defendant upon the expiration of the 20-day period to file a response.

In the Law Division, after the expiration of the 35-day period for response, plaintiff or its attorney files a Request for Entry of Default with the Clerk of the Law Division. The Request simply reads, "Please enter upon the docket the default of Defendant XYZ for failure to plead or otherwise defend." The plaintiff must submit a supporting affidavit which sets forth the date of service upon the defaulting defendant, that the defendant has failed to plead or otherwise defend, and that the time for defendant to plead or defend has not been enlarged or extended. Some counties will accept an attorney's certification in lieu of an affidavit, but it is better practice to submit an affidavit to avoid returned filings.

Final Judgment by Default

Requests for final judgment in the Law Division must be filed separately from the request for entry of default, after default has been entered on the docket. The request for final judgment must include a certification stating with specificity the amount due and a certification that the debtor, if an individual, is not in the military service of the United States, supported either by personal knowledge or by documentation from the Department of Defense.

Rule 4:43-2(c) requires that the plaintiff or plaintiff's attorney serve a copy of the final judgment by default upon the defendant. Service must be made within seven days of receipt, by ordinary mail.

Docketed Judgments (to assert a lien against real estate)

Law Division judgments for money damages are a lien against any real estate owned by the defendant in the State of New Jersey. N.J.S.A. 2A:16-1. R. 4:101-1. The initial duration of the lien is 20 years, but may be renewed for additional periods of 20 years. However, to create a lien, the judgment must be properly docketed with the Clerk of Superior Court in Trenton. R. 4:47(a). Law Division judgments are submitted for docketing to the Clerk of Superior Court. Special Civil Part judgments may also be docketed by requesting a transcript and submitting the transcript to the Clerk's office. A docketed judgment is assigned a docket number beginning with "DJ," which indicates a docketed judgment constituting a lien against real estate. Special Civil Part judgments are effective as liens only when the Clerk enters a notation in the "civil judgment and order docket." Brescher v. Gern, Dunetz, Davison & Weinstein, P.C., 245 N.J. Super.365, 369 (App. Div. 1991). Whether the judgment originates in the Law Division or the Special Civil Part, all further proceedings on a docketed judgment are controlled by the Rules of the Law Division

Docketing Special Civil Part Judgment:

1. Request a transcript of the judgment from the Clerk of the Special Civil Part in the applicable county. In some counties, the Clerk will prepare the transcript. In most counties, the attorney prepares the form of transcript and sends it to the Clerk, who will sign and issue the transcript to the attorney.
2. Complete and sign the bottom portion of the returned transcript, certifying the outstanding balance due on the judgment, then send the transcript and the docketing fee to the Clerk of the Law Division, Docketing Section, in Trenton.
3. The Clerk of the Law Division then dockets the judgment and assigns a new "DJ" docket number. From the time the judgment is docketed, any further proceedings in the case are subject to the same rules, policies and fees as a case regularly brought in the Law Division.

Writs of Execution

A Writ of Execution is issued by the Clerk and then delivered to the person responsible for execution. In the Special Civil Part, the Clerk issues the writ and delivers it directly to a Court Officer of the Special Civil Part, who will then handle the execution. In the Law Division and Chancery Divisions, the Writ is returned to the creditor or its attorney, who must then forward the Writ and a copy of the Order granting the Writ to the appropriate Sheriff's department. If the judgment debtor has property in more than one county, the creditor may request multiple sealed Writs and may direct them to each such Sheriff. See N.J.S.A. 2A17-4. N.J.S.A. 2A:17-11 indicates the process for resolving conflicts among competing Writs and the priority of competing Writs.

N.J.S.A. 2A: 17-20 *et seq.*: The Court Officer, after receipt of a Writ of Execution with appropriate fees and instructions, levies on the assets indicated, then files Return of Service with the Court. For levies on personal property, the Return of Service includes an inventory of assets subject to the levy. See the statute for requirements for appraising potentially exempt property and protecting exemptions due to the debtor.

Time to Execute

A Law Division Writ remains in effect for up to one year, and a Special Civil Part Writ for up to two years. At the end of this time, the Writ must be returned satisfied, partially satisfied, or unsatisfied. However, additional Writs may be issued at any time during the life of the judgment (20 years).

Execution Requirements and Exemptions

N.J.S.A. 2A:17-1 provides that the judgment creditor must first exhaust the personal property of a judgment debtor by sale, execution, or exemption, before the creditor may cause a levy to be made on real estate. A levy and sale of real estate is void if the creditor does not comply with this provision. *Fainier v. I & M Investments*, 159 NJ Super 329 (Ch. Div. 1978), *aff'd*, 172 NJ Super 206 (App. Div. 1980), *cert. denied*, 84 NJ 473. *Daeschler v Daeschler*, 214 NJ Super 545 (App. Div. 1986).

Priority of Writs

N.J.S.A. 2A:17-13, *Wolfson v Bonello*, 270 NJSuper274, 287 (App. Div. 1994):

The first of several judgment creditors to levy on property has priority to proceeds from the sale of property. However, if a creditor obtains a Writ of Attachment prior to another creditor obtaining a judgment and a Writ of Execution, the creditor with the Writ of Attachment has priority to the proceeds of the sale. If a court appointed professional has provided services pursuant to the court appointment, the court may declare order that the professional have top priority to the proceeds of an execution.

Execution Sales

Contact the Sheriff of the county in question to determine whether the creditor or its attorney, or the Court Officer, is responsible for preparing and delivering Notices of Sale to the Sheriff. The Sheriff advertises and conducts the sale and is entitled to statutory fees under N.J.S.A. 22A:4-8. As a general rule, the judgment creditor is responsible for the Sheriff's fee, but the fee may be shifted to the bidder-purchaser, provided that the Sheriff's pre-sale advertising and the conditions of sale read or posted at the time of the sale clearly indicate that the fee will be the bidder's responsibility, over and beyond the amount bid for the property. See, e.g., *Howard Savings Bank v. Sutton*, 246 N.J. Super 482, 484 (Ch. Div. 1990). Ten days before the sale, the judgment creditor must provide notice of the sale, by certified mail, to every party who has appeared in the action, to the owner of record of the property at the date of commencement of the action (whether or not they have appeared), and to every person having any ownership or lien interest in the property to be sold. R. 4:65-2.

Assets Subject to Execution; Exemptions

Cash: N.J.S.A. 2A:17-5.

Bank Accounts: Upon levy of a bank account, the bank will freeze the amount requested and the levying officer will file return of service with the court specifying the amount frozen. In order to receive the funds frozen, it is necessary to file a Notice of Motion for Turnover of Funds, providing notice to both the bank and the judgment debtor. (The motion packet will include a Notice of Motion, a supporting Certification, and a proposed Order for Turnover. Forms are available online at

<http://www.judiciary.state.nj.us/prose/10547.pdf>.) Note that the bank will not freeze the entire balance in the debtor's account; the bank may withhold a reasonable fee for its work in processing the levy. All American Auto Salvage v. Camp's Auto Wreckers, 146 NJ 15 (1996). Further, the levy is subject to change upon reversal of any provisional credits that may be subsequently dishonored. DNI Nevada, Inc. v. Medi-Pleth Medical Lab, Inc. 337 NJ Super 313 (App. Div. 2001)

Individual Retirement Accounts: IRAs were once subject, without limitations, to execution, being considered a form of bank account. Following the 1993 Amendment of N.J.S.A. 25:2-1, "qualifying trust[s]" are exempt from execution. N.J.S.A. 25:2-1(b). A "qualifying trust" is a trust created and maintained pursuant to federal law, including IRAs and "Keogh Plans," as defined by 26 U.S.C.A SS 401, 408.

Public Assistance Monies: If received pursuant to Title 44, Chapter 8, public assistance monies may be levied upon. If received pursuant to Title 44, Chapter 10, these monies are exempt from execution. Dover Oil Co v. Sedor, 178 NJ Super 46 (App. Div. 1981)

Social Security: Monies paid pursuant to the Social Security statute are not "subject to execution, levy, attachment, garnishment or other legal process...." 42 U.S.C.A S407. Any monies in a bank account that can be traced back to Social Security benefits are exempt from levy. See Philpott v. Essex County Welfare Board, 409 US 413 (1973).

Exemptions: N.J.S.A. 2A:17-19 exempts from execution "Goods and chattels, shares of stock or interests in any corporation and personal property of every kind, not exceeding in value, exclusive of wearing apparel, \$1,000.00, and all wearing apparel generally are reserved for a judgment debtor's family use before and after death." Additionally, "Household goods and furniture not exceeding \$1,000.00 in value of a person shall also be exempt from attachment, except for a debt incurred in the purchase thereof." N.J.S.A. 2A:26-4. Generally, disability benefits, sickness insurance policies, workers' compensation benefits, and retirement benefits are generally exempt from execution. See, e.g., N.J.S.A.17:18-12, 34:15-29, 43:21-15(c), 43:13-9, 37.5.

Wage Executions

The creditor must first serve the debtor, either personally or by simultaneous certified and regular mail, with a Notice stating that application is being made for a wage execution and advising the debtor that the debtor must, within ten days, notify the court of any objections and the reasons therefore. The Notice must also indicate the limitations on the amount that can be levied pursuant to federal and state law. See 15 U.S.C.A SS1671-1677, N.J.S.A. 2A:17-50 et seq., N.J.S.A. 2A:17-57 et seq. A sample form of Notice is available online at http://www.judiciary.state.nj.us/prose/10548_wage_exec.pdf. If objections are filed, the court will schedule a hearing. However, if the creditor shows proofs adequate to satisfy the requirements of the statute, the court does not have discretion to deny the wage execution. N.J.S.A. 2A:17-50.

The actual application for wage execution should not be filed with the court until thirteen (13) days after the service of the Notice (the 10-day period plus three days for service by mail). If the debtor does not send notice of objection to the creditor and to the court within ten days, the creditor may then file the original Notice of Application for Wage Execution, along with a proof of mailing and a proposed Order for Wage Execution, within thirty days of the date of service (or the date of hearing, if objection is received).

Wage executions are subject to the limitations set forth in NJSA 2A:17-56 (a):

"In no case shall the amount specified in an execution issued out of any court against the wages, debts, earnings, salary, income from trust funds or profits due and owing, or which may thereafter become due and owing to a judgment debtor, exceed 10%, unless the income of such debtor shall exceed 250 percent of the poverty level for an individual, taking into account the size of the individual's family, in which case the court out of which the execution shall issue may order a larger percentage."

Checks for "Payment in Full"

A debtor may offer a check marked "payment in full" for less than the actual amount of the obligation. If the creditor negotiates a "payment in full" check, the debtor will be protected from any claim arising from the outstanding balance of the obligation, provided certain conditions are met (N.J.S.A. 12A: 3-311):

1. There must be an unliquidated claim or a bona fide dispute as to the amount due.
2. The check itself or an accompanying letter or communication must clearly and conspicuously state that the check is tendered in full satisfaction of a claim.
3. The check must be directed as designated by the creditor or to a party that has direct responsibility with respect to the disputed obligation.

Selected Ethics Decisions and Case Law:

Sending collection letters on law firm letterhead constitutes the practice of law; therefore a Greco disclosure may not be used, and attorney involvement must be measured in terms of compliance with the Rules of Professional Conduct. <http://consumerfsblog.com/wp-content/uploads/2012/06/n120530b.pdf> (Opinion 725, reaffirming ACPE Opinion 259, 96 N.J.L.J. 754 (June 21, 1973), and Opinion 506, 110

N.J.L.J. 408 (October 7, 1982), <http://consumerfsblog.com/2012/06/nj-ethics-opinion-deems-sending-collection-letters-as-the-practice-of-law/> .

A law firm may not purchase debts. Chulsky v. Husdon Law Offices, P.C., et al. Feb. 10, 2011.

<http://law.justia.com/cases/federal/district-courts/new-jersey/njdce/3:2010cv03058/242560/16>

In the U.S. District Court for the District of New Jersey. Findings: A provision in New Jersey's Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., prohibits a professional corporation from engaging "in any business other than the rendering of the professional services for which it was specifically incorporated." N.J.S.A. 14A:17-9. The Court held that this provision makes it unlawful for a law firm to engage in the business of purchasing and collecting debts under the umbrella of its professional practice. Since the purchase of debt by a law firm was unlawful, a law firm that purchased a debt and instituted collection suit upon it was therefore in violation of the FDCPA's provision against "false misrepresentation[s] or deceptive means" in collecting a debt, as the firm misrepresented its ability to sue upon the debt.

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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