

North Dakota Debt Collection Laws

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The [Rodenburg Law Firm](#) represents collection agencies, commercial forwarders, lending institutions, auto and consumer finance companies, debt buyers, state colleges, health care organizations, and other creditors in credit matters including consumer and commercial collections in Minnesota, Montana, North Dakota, South Dakota, and Wyoming. The Rodenburg Law Firm is affiliated with the state bar associations in those states as well as with the [Commercial Law League of America](#) (CLLA), [ACA International](#), and the [National Association of Retail Collection Attorneys](#) (NARCA).

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I. Statutes of Limitations

The statute of limitations for actions on notes and contracts, including credit card debt, is six years. N.D. CENT. CODE §§ 28-01-16; 41-03-18. North Dakota does not have separate statutes of limitations for written contracts and open accounts. North Dakota follows the Uniform Commercial Code in providing a four year statute of limitations for actions on contracts for sale (i.e., purchase money security interests) and for actions on leases. N.D. CENT. CODE §§ 41-02-104; 41-02.5-54. Partial payments that are voluntary, free from uncertainty as to the identity of the debt, and made and accepted as partial payment of the larger debt under circumstances consistent with an intent to pay the entire debt, toll the statute of limitations for the entire debt. Kadmas, Lee & Jackson, P.C. v. Bolken, 508 N.W.2d 341 (N.D. 1993). The statute of limitations for actions on domestic judgments is ten years. N.D. CENT. CODE § 28-01-15.

II. Suits, Judgments, and Judgment Liens

a. Commencement of a Lawsuit

A lawsuit is commenced by service of the summons upon a party, not by filing the action in a court of law. N.D.R.Civ.P. 3; N.D. CENT. CODE § 28-01-38. Service may be made personally, by substitute abode service, by publication, or by certified mail with a signed receipt. N.D.R.Civ.P. 4. An action is still timely if the defendant is served after the statute of limitations period expired, provided that the sheriff's office of the county where the defendant resides (a) receives the summons for service on the defendant prior to the statute of limitations expiring, and (b) serves the defendant within 60 days after receiving the summons. N.D. CENT. CODE § 28-01-38. The fees for a sheriff or other private process server to serve documents on another party can range from \$20 to upwards of \$100, depending on the county, the

server, and the distance from the location of the process server to that of the party being served. Process servers typically charge for mileage. The costs for service of process can be awarded to the plaintiff in the judgment. N.D. CENT. CODE § 28-26-06.

The filing fee for district court civil cases for plaintiffs is \$80. N.D. CENT. CODE § 27-05.2-03. There is no minimum or maximum limitation for the claim amount for accounts sued in district court cases. A creditor may commence an action in small claims court when the value of the amount claimed does not exceed ten thousand dollars. N.D. CENT. CODE § 27-08.1-01. Small claims court is governed by Rule 10.2 of the North Dakota Rules of Court, and the appropriate forms may be found at www.ndcourts.gov/court/forms/Small/forms.htm.

b. Obtaining Judgment

A defendant's answer is due within 21 days after being served with the summons and complaint. N.D. R. CIV. P. 12. If the defendant does not serve an answer or a motion under Rule 12 of the North Dakota Rules of Civil Procedure, then the plaintiff may apply for default judgment. N.D. R. CIV. P. 55. The application may be without notice to the defendant unless the defendant has appeared. If the defendant did not answer, but appeared in the action, then the plaintiff must submit a motion to the court pursuant to Rule 3.2 of the North Dakota Rules of Court and must serve the defendant with notice of plaintiff's motion to enter default judgment. North Dakota courts broadly interpret what constitutes an appearance. Any contact with the plaintiff or agent of the plaintiff, whether verbal or written, by the defendant or on behalf of the defendant will likely be considered an appearance. Wallwork Lease & Rental Co. v. Schermerhorn, 398 N.W.2d 127 (N.D. 1986). Motions may be decided on briefs alone, but a hearing will take place if requested by a party or ordered by the court. N.D.R.Ct. 3.2.

The statutory prejudgment interest rate is six percent unless another rate is contracted for in writing. N.D. CENT. CODE § 47-14-05. Upon entry of judgment, a prevailing plaintiff may ask for and obtain a statutory award of \$10. N.D. CENT. § 28-26-02. Post-judgment interest changes annually, and is currently set at 6.5 percent. N.D. CENT. CODE § 28-20-34. Attorney fees are not allowable to the successful litigant in an action unless expressly authorized by statute or by agreement between the parties. N.D. CENT. CODE §§ 28-26-01; 28-26-04; Olson v. Fraase, 421 N.W.2d 820 (N.D. 1988).

c. Effect of Judgment

A judgment is valid for ten years. N.D. CENT. CODE § 28-20-35. A judgment can be renewed by filing an affidavit with the court but can only be renewed once; the life of a judgment in North Dakota cannot exceed twenty years. N.D. CENT. CODE §§ 28-20-21, 28-20-22. The judgment is a lien on all the real property, except the homestead, of every person against whom the judgment is rendered, which the person may have in any county in which the judgment is docketed at the time of docketing, or which the person later acquires in the county. N.D. CENT. CODE § 28-20-13. Renewing the judgment renews the

judgment lien, as well. N.D. CENT. CODE § 28-20-23. North Dakota, like many states, has adopted the Uniform Enforcement of Foreign Judgments Act, which is set forth in Chapter 28-20.1 of the North Dakota Century Code. The filing of a foreign money judgment in a county where the judgment debtor has an interest in real property constitutes a lien on the debtor's interest in that property. Erway v. Deck, 1999 ND 7, 588 N.W.2d 862 (N.D. 1999).

In aid of the judgment or execution, a judgment creditor or successor in interest may obtain discovery from any person, including the judgment debtor, as set forth in the North Dakota Rules of Civil Procedure. N.D.R. CIV. P. 69. Judgment creditors may proceed with post-judgment discovery without first issuing an execution on the judgment debtor's property. Mid-Dakota Clinic, P.C. v. Kolsrud, 1999 ND 244, 603 N.W. 475 (N.D. 1999).

III. Post-Judgment Remedies

a. Writ of Execution

A money judgment is enforced by a writ of execution. N.D.R. CIV. P. 69. No execution may be issued on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after notice of its entry, if the opposing party appeared, and 14 days have passed after entry of a default judgment. N.D.R. CIV. P. 62. The cost to obtain a writ is \$10. N.D. CENT. CODE § 27-05.2-03. Writs are valid for 60 days. N.D. CENT. CODE § 28-21-07.

b. Garnishment

North Dakota allows for the garnishment of both wages and bank accounts. A judgment creditor must serve the judgment debtor with notice that a garnishee summons may be issued at least ten days before the issuance of any garnishee summons against the earnings of any person, and it must be in substantially the same form as that set out in the statute. N.D. CENT. CODE § 32-09.1-04. This notice must be served personally or by first class mail. Id. The maximum part of the aggregate disposable earnings of an individual for any workweek, which is subject to garnishment, may not exceed the lesser of: (a) twenty-five percent of disposable earnings for that week or (b) the amount by which disposable earnings for that week exceed forty times the federal minimum hourly wage. N.D. CENT. CODE § 32-09.1-03. The maximum amount subject to garnishment for any workweek must be reduced by twenty dollars for each dependent family member residing with the garnishment debtor. Id. A continuing lien on wages may only last for two hundred seventy days. N.D. CENT. CODE § 32-09.1-21.

The garnishee summons and notice to defendant shall be served upon the garnishee, whether place of employment or other garnishee, in the same manner as other summons in that court of record except that service must be personal. N.D. CENT. CODE § 32-09.1-08. The debtor must also be served with the garnishee summons and other papers served on the garnishee not later than ten days after service is made upon the garnishee. Id. The garnishee witness fee is \$25. N.D. CENT. CODE § 32-09.1-10.

The debtor can claim that the indebtedness or property, or a part thereof, is exempt from garnishment or from execution. N.D. CENT. CODE § 32-09.1-22. The debtor must claim these exemptions within twenty days after the service of the garnishee summons upon him or her. Id. Exemptions are set forth in Chapter 28-22 of the North Dakota Century Code, and must be claimed by the debtor by affidavit. N.D. CENT. CODE § 28-22-07. The process for objecting to a debtor's claim for exemptions is set forth in section 28-22-07 of the North Dakota Century Code.

c. Debtor's Exam

Another post-judgment device is the debtor's exam. If an execution has been returned unsatisfied in whole or in part, by the sheriff of the county where the judgment debtor resides or has a place of business, or by the sheriff of the county where issued; or if before the return of the execution, it is apparent to the court that the judgment debtor has property that the judgment debtor unjustly refuses to apply to the satisfaction of the execution, the court may require the judgment debtor to appear and answer concerning the debtor's property. N.D. CENT. CODE § 28-25-01. This exam must be held in the county where the judgment debtor resides or where ordered by the court; the exam may be had before the court or before a referee appointed by the court. N.D. CENT. CODE §§ 28-25-02, 28-25-03. A judge may allow witness fees and disbursements to the judgment creditor or to any party examined. N.D. CENT. CODE § 28-25-15. If any person, party, or witness disobeys an order of the judge or referee, duly served, such person may be punished by the judge for contempt. N.D. CENT. CODE § 28-25-16.

IV. Debt Collection Licensing, Bonding, and Other Regulation

a. Collection Agency Licensing

No person (or entity) other than a collection agency licensed in North Dakota, may engage in debt collection in the state of North Dakota. N.D. CENT. CODE § 13-05-02. Debt collection is defined as the act of collecting or attempting to collect debts owed another, solicitation of debts for the purpose of collection, and accepting assignment of debts for the purpose of collection. N.D. CENT. CODE § 13-05-01.1. A person engages in debt collection in North Dakota if the debtor resides in North Dakota. N.D. CENT. CODE § 13-05-02.

Requirements to apply for a collection agency license are set forth in N.D. CENT. CODE §§ 13-05-03 and 13-05-04, which include an application fee of \$400 and an annual fee of \$300. Licensees must maintain a surety bond of \$20,000 and a minimum net worth of \$25,000. N.D. CENT. CODE §§ 13-05-04.1 and 13-05-04.2. Collection agency licensees are regulated by the Department of Financial Institutions (DFI), which has rulemaking authority. N.D. CENT. CODE §§ 13-05-06, 13-05-06.1, 13-05-06.2. Those rules are found in Chapter 13-04-02 of the North Dakota Administrative Code. The DFI requires that licensed collection agencies provide the department with the name and address of debt collectors. N.D. ADMIN. CODE § 13-04-02-03. This requirement includes debt collectors who work for attorneys licensed to practice in North Dakota.

Collection agency licensees must also keep records of all sums collected and disbursed by them for a period of six years. Those records can be electronic. N.D. CENT. CODE § 13-05-07. Collected funds must be deposited in a trust account within 48 hours, and they must be disbursed to clients no later than 30 days after the monthly closing for the month in which the money was collected, if \$25 or more (no later than 60 days if less than \$25). N.D. ADMIN. CODE §§ 13-04-02-11, 13-04-02-12. If requested by a debtor, a collection agency must provide a written statement to the debtor indicating the current balance of the remaining debt, the total of all interest charged, and a record of all payments applied to the debt. N.D. ADMIN. CODE § 13-04-02-14.

Entities exempt from licensing include (1) attorneys licensed to practice in North Dakota (but exemption does not extend to persons employed by the licensed attorney); (2) licensed real estate brokers; (3) banks; (4) trust companies; (5) building and loan associations; (6) credit unions; (7) agencies of a state or of the federal government; (8) abstract companies doing an escrow business; (9) creditors collecting their own debts; (10) mortgage servicing companies; (11) individuals or firms who purchase or take accounts receivable for collateral purposes; (12) individuals employed in the capacity of creditmen upon the staff of an employer not engaged in the business of a collection agency; or (13) a public officer, receiver, or trustee acting under the order of a court. N.D. CENT. CODE § 13-05-02.3.

It is possible that the statute regarding debt collection activities including “accepting assignment of debts for the purpose of collection,” could be construed to include debt buyers. However, that interpretation is unlikely, and a more likely interpretation of that statute does not include a valid assignment resulting from the purchase of delinquent accounts for consideration, and as long as a debt-buying entity does not engage in any debt collection activities, and, instead, hires an attorney or other licensed agency to engage in the collection activities for that entity, no license should be necessary.

b. Lawyers not licensed to Practice within North Dakota

Pro hac vice admission is required for all nonresident attorneys admitted and licensed to practice law in another state or the District of Columbia, but not licensed in North Dakota, and who engage in the practice of law in this state by appearing, either in person, by signing pleadings, or by being designated as counsel in actions filed in state courts, administrative agencies, or tribunals. ADMISSION TO PRACTICE R. 3. Registration is required for each calendar year, and each attorney registered under this rule is to adhere to the North Dakota Rules of Professional Conduct. A nonresident attorney may provide legal services under this rule for five years or until the attorney becomes eligible for admission based on practice as provided by Rule 7A of the North Dakota Admission to Practice Rules, whichever is earlier. ADMISSION TO PRACTICE R. 3.

V. Debt Collection General Issues

a. Bad Check Laws

Issuing a bad check is either a misdemeanor or felony, depending on the amount of the check or the frequency of the infraction. The person issuing the check with non-sufficient funds (NSF) is also liable to the holder of the check for the amount of the funds and costs and fees of up to \$35.00. [N.D.CENT.CODE § 6-08-16](#). The check holder may mail to the issuer a notice of dishonor as set forth in the statute. [Id.](#) If the check issuer does not reimburse the check holder with the funds and fees, a civil penalty may be assessed against the issuer for \$200.00, or three times the amount of the check, whichever is less. [Id.](#) The holder of an NSF check is not prohibited from electronically debiting collection fees without a written authorization from the check writer. Consumer electronic fund transactions are subject instead to the Electronic Funds Transfer Act, 15 U.S. C. §§ 1693, et seq., and Regulation E, 12 C.F.R. Part 205. [CybrCollect, Inc. v. N.D. Dep't of Fin. Insts.](#), 2005 ND 146, 703 N.W.2d 285 (N.D. 2005).

b. Common Defenses Claimed by Debtors

Common issues raised by debtors when dealing with purchased debt include standing of the debt buyer. However, this argument is defeated by statute, which states that, “[a] right arising out of an obligation is the property of the person to whom it is due and may be transferred as such.” [N.D. CENT. CODE § 09-11-01](#)

Another commonly raised issue by debtors is that the claim is barred by the statute of frauds. However, the law in North Dakota specifically provides that an agreement or promise for the lending of money or the extension of credit in an aggregate amount of twenty-five thousand dollars or greater must be in writing and subscribed to by the party or party’s agent. [N.D. CENT. CODE § 09-06-04\(4\)](#).

Lastly, debtors often claim that an affidavit accompanied by business records is not sufficient to prove the creditor’s claim. However, the North Dakota Supreme Court determined that business records and the testimony of employees established the appropriate foundation to prove a claim when no evidence was presented to direct a conclusion to the contrary. [Farmers Union Oil Co. v. Wood](#), 301 N.W.2d 129, 136 (N.D. 1980). Additionally, the [North Dakota Rules of Evidence](#) clearly set forth the appropriate standards and required information in order to overcome any claims of hearsay and to lay the appropriate foundation.

VI. Ethics Opinions from State Bar Association of North Dakota Ethics Committee and Cases brought by the Attorney General Related to Debt Collection

Trust Accounts

Opinion [11-04](#): A lawyer representing a client in a debt collection law practice can establish a separate interest bearing trust account for a debt collection client. The lawyer can honor the client’s request for a daily sweep of the trust account, as long as the sweep occurs only after the deposited funds have cleared or another process is set up with the client’s consent to remove the possibility of an overdraft on the account. The process must also comply with the other requirements of Rule 1.15.

Unauthorized Practice of Law

Opinion 84-39: Guidelines for attorneys to avoid assisting collection agencies in engaging in the unauthorized practice of law.

VII. Additional Comment

The North Dakota State Courts will mandate e-filing beginning April 1, 2013. Information about e-filing is available at <http://www.ndcourts.gov/cle/>.

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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