Oklahoma Debt Collection Laws

Submitted by Nicholas R. Hood, Associate Attorney, Hood & Stacy, P.A.
www.hoodandstacy.com
Published by The National List of Attorneys
www.nationallist.com

For more than thirty years, Hood & Stacy, P.A., has been serving the needs of a broad range of clients in the areas of creditor bankruptcy, commercial and retail collections, mortgage foreclosures, landlord-tenant relations, corporate business, wills, probates, and real estate.

Mr. Hood, a native Arkansan and second-generation Hood & Stacy attorney, graduated Summa Cum Laude from Missouri Valley College in 2008 with a dual-degree in Economics and Business Administration with a concentration in Marketing. He obtained his Juris Doctor cum laude from Valparaiso University School of Law in 2011, where he was a member of the honors program and publishing note-writer for the Valparaiso University Law Review Mr. Hood is currently licensed to practice law in Arkansas and Oklahoma and specializes in the areas of collections, replevin, foreclosures, and creditors' rights.

Oklahoma laws concerning the collections of accounts receivable may seem rather uncomplicated initially. However, a more in-depth examination reveals that many different rules—of the state, federal, and even local variety—intersect to regulate the actions of those lending credit, purchasing debt, and rendering legal services in Oklahoma as it relates to debt collection. Thus, understanding the basics of Okalahoma debt collection is vital to not only debt collectors, but their clients as well.

I. Oklahoma Debt Collections Basics

a. Statutes of Limitation

A statute of limitations sets the period of time in which a party (most often a credit issuer or debt buyer in the collections scenario) has to file a lawsuit alleging damages incurred by an individual(s)' failure to pay debts when they come due. Oklahoma imposes a different statute of limitations depending on the type of debt involved: the statute of limitations for an action on a contract not in writing, either express or implied, is three years, while actions on written contracts have a statute of limitations period of five years. Okla. stat. tit. 12, § 95(A)(1)–(2).

While Oklahoma courts have not definitively resolved whether a cardmember agreement (sometimes called the terms and conditions of account) is a written or non-written contract for purposes of calculating the applicable statute of limitations, they uniformly hold that the cardmember agreement establishes the material terms of the contract between the issuer and cardholder. See, e.g., Discover Bank v. Worsham, 176 P.3d 366, 368–69 (Okla. Civ. App. 2007) (affirming a grant of summary judgment where the "cardmember agreement [was] part of the record," its "terms [were] clear," and the consumer never

objected to those terms, the consumer was liable for charges and fees as stated in the cardmember agreement).

Moreover, other titles and sections of the Oklahoma statutes discuss credit card agreements as though they should be construed as written contracts. See, e.g., Okla. stat. tit. 15, § 140(C)(2) (exempting from contractual limitation certain actions by lenders where, "whether or not the credit agreement has been signed by the borrower," the terms and condition of the account "are in writing and are provided to the borrower prior to his usage of the card or account"); Cf. Citibank South Dakota N.A. v. Santoro, 150 P.3d 429, 432 (Ore. 2006) (noting that the typical cardmember agreement is issued to the 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," and opining that "[t]he 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.")

Thus, while there remains some ambiguity as to the applicable statute of limitations on credit card debts in Oklahoma, where a credit issuer or debt buyer can demonstrate that a debtor was provided clear terms in writing prior to the usage of the account, the argument can be made that the longer, five-year statute should apply. Lastly, foreign judgments are subject to a limitations period of three years, while domestic judgments remain valid and enforceable for a period of five years, unless renewed by the filing of a renewal of judgment or the issuance of garnishment or execution. Okla. stat. tit. 12, §§ 95(A)(2), 735 (A)(1)–(4).

b. Bad Check Laws and Civil Penalties

In Oklahoma, intentionally writing a "bad check" (i.e., a check drawn on a closed account or account with insufficient funds) carries with it both civil and criminal liability if it is not corrected within five days of the date the check was dishonored. Criminally speaking, writing a bad check is punishable with up to a year in prison and fines up to $5,000, depending upon the amount of the check (for smaller "bad checks" the fines are more circumscribed). Okla. stat. tit. 21, § 1541.1–1541.4. As to civil liability, the issuer of a bad check is liable for repayment in full of the amount of the charge, plus the expenses incurred or interest lost due to the dishonored check, even if the check is unintentionally "bad." See Okla. stat. tit. 12A, §§ 4-207, 4-208.

c. Property and Funds Exempt from Garnishment

In Oklahoma, a court must look to both state and federal exemption law to determine whether funds and/or property are exempt from execution or garnishment. As for post-judgment garnishments, Oklahoma has two main varieties, each of which is subject to its own rules: (a) continuing garnishments (typically wage garnishments) and (b) non-continuing garnishments (typically bank account

garnishments). Aside from a select few instances (e.g., the collection of a judgment for child support), garnishments are treated similarly and are to be paid in the order in which they are received and processed. See, e.g., Okla. stat. tit. 12, § 1173.4(I)(1). For the most part, claims for an exemption must be affirmatively asserted by the debtor and the burden rests on the judgment-debtor to demonstrate that the funds claimed as exempt are indeed exempt.

Continuing garnishments of wages are served on a judgment-debtor's employer and remain in effect until either the judgment amount is satisfied or 180 days expired from the effective date of the garnishment summons (whichever shall first occur). Okla. stat. tit. 12, §§ 1171, 1173.4. Up to 25percent of a judgment-debtor's disposable earnings are subject to garnishment, unless the debtor is able to establish that "undue hardship" would result to their family and/or dependents if the garnishment were to remain in place. 15 U.S.C. § 1673; Okla. stat. tit. 31, § 1.1. In determining whether a judgment-debtor has established the existence of "undue hardship," the court will consider (a) the income and expenses of the judgment-debtor's family and dependents, (b) the standard of living created thereby, (c) the judgment-debtor's standard of living vis-à-vis the minimal subsistence needs of his or her family/dependents, and (d) the judgment-debtor's standard of living vis-à-vis the minimal subsistence standards in the community in regard to basic shelter, food, clothing, personal necessities, and transportation. Okla. stat. tit. 31, § 1.1. Having assessed (a)–(d) above, the court is then required to determine whether the debtor and his dependents would suffer "undue hardship" (as outlined above) if the garnishment were to remain in place. Okla. stat. tit. 31, § 1.1. Upon the finding of an "undue hardship," the court may then either (a) order all or a portion of the earnings exempt or (b) in the case of a continuing (wage) garnishment, exempt all or a portion of the earnings withheld within the thirty days preceding the filing of the claim for exemption, or modify or stay the garnishment for a period of time not to exceed the 180-day period in which the continuing garnishment shall be in effect. Okla. stat. tit. 31, § 1.1.

As for non-continuing (bank account) garnishments, the exemption for "undue hardship" remains the same (as does the analysis); however, there are additional exemptions that the court must consider. Additional exemptions include Social Security benefits; supplemental security income; unemployment benefits; workmen's compensation benefits; welfare benefits; veteran's benefits; certain classes of pension, retirement fund, and disability benefits; Civil Service Survivor annuities; prepaid burial benefits; proceeds of group-life insurance policies; and alimony, support, separate maintenance, or child support payments necessary for the support of the judgment-debtor's dependent(s). See 38 U.S.C. § 5301(a); 42 U.S.C. § 407(a); 42 U.S.C. § 1383(d)(1); 45 U.S.C. § 231m(a); 45 U.S.C. § 352 (e).

Moreover, under a relatively new federal regulation, certain types of electronically deposited federal benefit payments are protected from garnishment. 31 C.F.R. § 212.6. As opposed to the exemptions discussed above (where a judgment-debtor must file a claim for exemption and demonstrate the funds in

question are exempt), funds protected from garnishment under 31 C.F.R. § 212.6 are not surrendered from the debtor/garnishee's possession. See 31 C.F.R § 212.6 ("The financial institution shall ensure that the account holder has full and customary access to the protected amount, which the financial institution shall not freeze in response to the garnishment order.") Under the regulation, a financial institution is to determine whether federal benefit payments from specified federal agencies have been electronically deposited within the two months immediately preceding the date the garnishment order or writ was received, and if so, that amount is conclusively established as exempt from garnishment. 31 C.F.R. 212.6(c). In practice, this typically means that two months' worth of electronically deposited federal benefit payments will be protected from garnishment (even if the funds actually in the account were not federal benefit payments), in addition to any monies that might otherwise be exempt from garnishment under other state or federal laws. See Garnishment of Accounts Containing Federal Benefit Payments, 76 Fed. Reg. 9939, 9942 (Feb. 23, 2011) (The two month look-back period will ensure that, in almost all cases, the protected amount will include two benefit payments. . . . "[A] two month look-back period measured date-to-date will capture at least two [monthly federal benefit] payments in 99percent of cases.")

II. Debt Collection Licensing, Bonding and Regulation

a. Creditors/Lenders, Debt Purchasers, and Oklahoma Licensed Attorneys

Creditors (including but not limited to lenders) do not have to apply for or be granted any special licensing to engage in the collection of their own outstanding debts under Oklahoma law. Nor are original creditors collecting debts owed to themselves subject to regulation under the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq*. Original creditors and lenders merely need to maintain the standard business licenses that are required of all businesses conducting business in the State of Oklahoma. See, e.g., Okla. stat. tit. 18, § 1002 *et seq*.

Debt purchasers are similarly not required to obtain licensure as a collection agency under Oklahoma law. And *Oklahoma licensed attorneys* who are retained by their clients to collect, solicit, or obtain payment on their clients' claims are not subject to increased oversight above and beyond that imposed upon them by the State Bar and federal law. In fact, even *collections agencies* and those otherwise collecting the debts owed to others are not required to obtain licensure under a special regulatory body or required to post a bond or fee for operating, as is required in some states. See, e.g., Ark. Code Ann. § 17-24-101 *et seq*.

b. Attorneys not Licensed in Oklahoma

Attorneys not licensed to practice law in Oklahoma, who are retained by a client to vindicate their client's legal rights, are required to obtain an Oklahoma bar license, as practicing law in the state without a proper license is considered the unauthorized practice of law.

III. Practices Specific to Various Types of Debt

As is true in many states across the country, collections laws in Oklahoma have become increasingly debtor-friendly. As a result, it is more important now than ever for creditors and lenders to remain cognizant of the laws that will govern their future collections efforts even before accounts go into default. Said differently, the nature of Oklahoma collections laws ensures that those creditors and lenders who perform due diligence in properly documenting their activities during the pendency of a credit account are rewarded in the event a given borrower defaults.

a. Consumer/Retail Collections

Throughout the state of Oklahoma, courts have imposed heightened requirements for documentation on defaulted credit accounts (including credit card debts) for creditors attempting to collect their outstanding debts through legal action. In the case of credit card debt, courts require the creditor to either (a) provide a cardmember agreement establishing the terms of the account or (b) establish that the parties had a previous business relationship and that the consumer—either expressly or impliedly—agreed to repay the amount claimed as due. See, e.g., Discover Bank v. Worsham, 176 P.3d 366, 369 (Okla. Ct. App. 2007) (holding a consumer liable on a credit card debt because she used the credit card for four years after her husband's death, made payments on the account as was stated in the monthly billing statements, and incurred and never disputed any of the interest charges or fees assessed on the account). Cases such as Worsham demonstrate how maintaining complete and accurate records during the life of a credit account can assist a creditor or lender if and when the business is forced to pursue collection through legal avenues.

Moreover, courts in Oklahoma are imposing increasingly stringent requirements, even in those cases where a consumer has failed to answer or otherwise defend a lawsuit that was filed against them. For instance, Rule 16 of the Local Court Rules for the Seventh Judicial Circuit governs the entry of default judgments in collections matters and requires a creditor to provide the following documentation to a judge before a default judgment may be entered in the creditor's favor: (1) proof of service; (2) servicemember's affidavit in accordance with the Servicemember's Civil Relief Act of 2003 and Department of Defense Status Report (many judges require both an affidavit and a screen shot demonstrating that the attorney actually visited the Department of Defense website); (3) proof of breach of last payment; (4) copy of the contract, mortgage, note or account; (5) amount of debt, principle and interest; (6) assignments, if applicable; and (7) any other item specifically requested by the assigned judge. As easily seen then, creditors are well-advised to document their process, documentation, and information, at each step in the life of a credit account, as failure to produce the required documentation exponentially increases the difficulty in collecting on some defaulted accounts. By the same token, purchasers of debt will find it even

more difficult to prove their entitlement to relief, as doing so will require them to produce a chain of title evidencing their interest in the particular credit account.

In practice, these heightened documentation requirements have made it increasingly difficult for debt purchasers to successfully litigate accounts in which debtors proffer no specific disputes, but simply dispute anything and everything about a particular debt. Producing sufficient documentation to persuade district court judges to grant summary adjudication in collections cases typically requires the creditor to have maintained proper documentation on the account and produced it in the litigation. In the end, Oklahoma (state) district court judges hold creditors—both original creditors and debt purchasers alike—to a very high bar when it comes to establishing their entitlement to damages, costs, or fees on a consumer credit account, in large part because the state appellate courts have been increasingly willing to impose a similarly high standard. See, e.g., Discover Bank v. Worsham, 176 P.3d 366, 369 (Okla. Ct. App. 2007) (vacating a trial court's grant of attorneys' fees and costs where the trial court failed to sufficiently state the statutory or contractual authority upon which the creditor relied in supporting its request for costs and fees).

b. Commercial Collections

The laws governing commercial collections of accounts do not differ greatly from those governing collection of consumer debt. Thus, as is true with consumer collections, in the case of commercial collections, the ability of a creditor to collect its outstanding debts often depends upon the actions taken by the creditor long-before the account was ever in default.

Before extending credit to a business, a lender should ensure the business is credit worthy and obtain vital information on the business, including information about the guarantors. Thereafter, and throughout the life of the credit account, the lender should retain any meaningful documentation and maintain updated information on its borrowers, so if there is ever a default on the account, and a subsequent need for collection or litigation, the lender is better able to prove liability and damages as to the claim. Ultimately, without sufficient information on its borrowers, a creditor will find it exceedingly difficult to identify and locate a debtor, prove entitlement to recovery, and successfully enforce their rights to repayment on defaulted account(s).

c. Secured Debts

In the case of credit secured by collateral—such as a boat, RV, or car—certain restrictions apply to a creditor's attempts at repossession and resale/lease of the vehicle upon default. Oklahoma, like most states, allows creditors to use self-help repossession when borrowers default on a vehicle loan. See Okla. stat. tit. 12A, § 9-201, *et seq*. Oklahoma has adopted the Uniform Commercial Code for secured transactions, which includes specific requirements creditors must meet to repossess an automobile

without a court order. See id. Many of these requirements, like those imposed by courts in unsecured collections cases, require the creditor to maintain accurate records and document the actions taken during the duration of the credit account. See, e.g., Okla. stat. tit, 12A, §§ 9-310–9-316 (outlining procedures for perfecting a security interest in collateral); §§ 9-320.2, 9-502 (outlining requisites for effective filing statement); § 9-601 *et seq*. (outlining procedures for repossessing collateral in the event of a default by the borrower).

As to real property, it typically takes between four and six months for a lender to foreclose its interest in Oklahoma, so long as the lender has the necessary paperwork (as outlined below). The foreclosure process is initiated with a petition, just as any other lawsuit, and in Oklahoma, there is ample authority providing that service of process upon the borrower(s) is sufficient election by the mortgagee to accelerate the indebtedness due on the note (i.e., no prior or additional notice is required beyond the initiation of the lawsuit). See Fed. Nat'l Mortgage Ass'n v. Walter, 363 P.2d 293 (Okla. 1961). Prior to initiating any action in foreclosure, however, it is important for the mortgagee and its attorney to assess the documentation on hand (e.g., the note and any endorsements, the mortgage, any assignments of the mortgage, or any loan agreements, modifications or amendments), and determine the necessary parties to the foreclosure action (i.e., all mortgagors, occupants, guarantors, co-makers of the note, holders of homestead claims, and junior lien holders). Naming all necessary parties and compiling all necessary documentation at the outset will ensure that the mortgagee or purchaser at public auction obtains marketable title.

After obtaining a judgment, a lender must have the property appraised and publish notice of the date, time, and location of the sale of said property. Okla. Stat. tit. 12, §§ 762, 764. In Oklahoma, properties are sold to the highest bidder at a public auction, but the highest bid must be at least two-thirds of the appraised value of the property. Okla. Stat. tit. 12, § 762. Once sold at auction, the creditor has only ninety (90) days to file for a deficiency judgment or is forever barred from seeking to recover the deficiency balance. See Okla. Stat. tit. 12, § 686; see also Int'l Paper Co. v. Whitson, 595 F.2d 559 (10th Cir. 1979); Reliable Life Ins. Co. v. Cook, 601 P.2d 455 (Okla. 1979). The motion for deficiency judgment may be combined with the motion to confirm sheriff's sale. See Okla. Stat. tit. 12, § 686. Lastly, the foreclosure is finalized when the creditor obtains a court order confirming the sale of property and requiring the same to be surrendered to the highest bidder at the public auction (after mailing notice of the hearing at least ten days prior by first-class mail to all named defendants). See Okla. Stat. tit. 12, § 765(B).

Perhaps due to the recent economic downturn, housing market collapse, and overall disenchantment with mortgage lenders of late, 2012 was a year in which Oklahoma courts pointedly addressed issues concerning promissory notes, mortgages, and assignments. See CPT Asset Backed Certificates v. Cin

Kham, 278 P.3d 586, 588–90 (Okla. 2012) (discussing "traditional mortgage lending" and foreclosure law and a change in the "time-honored conservative mortgage lending practices" of old); Cf. Bank of America v. Kabba, 276 P.3d 1006, 1009 ("A foreclosing entity has the burden of proving it is a 'person entitled to enforce an instrument' by showing it was '(i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to [the Oklahoma UCC].'")

One such issue concerned a note-holder's ability to prove its standing to foreclose its interest. In CPT, the Oklahoma Supreme Court set aside a default judgment entered in favor of a creditor, because the creditor failed to establish it was person entitled to enforce the note when the lawsuit was originally filed. 278 P.3d at 592–93 ("Appellee must also demonstrate it became a 'person entitled to enforce' *prior* to the filing of the foreclosure proceeding.") (Emphasis in original.) The Court emphasized that, in order to demonstrate entitlement to enforce a note, a creditor must either (a) demonstrate it is the holder of the note (by producing the originally endorsed note) or bear the burden of establishing that it is a non-holder in possession with the rights of a holder (by establishing delivery of the note as well as the purpose of that delivery). See id. ("Without anything in the record establishing Appellee is a person entitled to enforce the note, either as a holder or non-holder in possession who has the rights of a holder, there is nothing to establish Appellee's standing in this case.") The Court opined that while an assignment of a mortgage is meaningless, an assignment of a note with proper endorsements operates to transfer the interest in both the mortgage and the note. See CPT, 278 P.3d at 592 ("[I]n Oklahoma it is not possible to bifurcate the security interest from the note." (citing Gill v. First Nat. Bank & Trust Co. of Oklahoma City, 159 P.2d 717, 719 (Okla 1945), and Prudential Ins. Co. of America v. Ward, 274 P. 648, 650 (Okla. 1929))); see also Kabba, 276 P.3d at 1009 ("The assignment of a mortgage is not the same as an assignment of the note.").

In the end, the new requirements imposed on creditors and lenders attempting to foreclose their interests in real property trace those seen in collections actions more generally: a creditor should be prepared to produce as much documentation as can reasonably be expected.

IV. Filing Fees, Process Server Options and Costs, and Other Court-Related Costs

a. Filing Fees in Civil Cases

In Oklahoma, the cost of filing a lawsuit is determined by the type of case and the amount of the claims involved. For cases seeking a monetary judgment that do not exceed $10,000.00 in requested relief, the filing fee is $200.70 (or $190.70 for pro se individuals). For cases involving claims over the $10,000.00 threshold, the cost for filing a lawsuit is $213.70 ($203.70 for pro se individuals). In addition to the filing fees for filing a petition, there is an additional charge of $5.00 per named Defendant for the issuance of a

summons. Each county in Oklahoma charges the same fee for the filing of petition and the issuance of summons.

In addition to costs related to the filing of a lawsuit, certain actions taken by a party during a lawsuit (and even once judgment has been obtained) require the payment of additional fees. For instance, the cost of filing a motion for summary judgment is $50.00. However, a motion for default judgment entails no costs. A continuing garnishment costs $100.70 to have issued ($110.00 if the court is to ensure service of the same), while a non-continuing garnishment costs $60.70 (or $70.70 if the court is to exact service of the garnishment).

Moreover, certain actions to collect on an outstanding judgment require the payment of costs: an application for a hearing on assets pursuant to 12 Okla. stat. tit. 12, § 842, costs $65.70, a notice of renewal of judgment costs $55.70, a citation for contempt costs $65.70, and a bench warrant costs $50.00. Finally, a judgment-creditor wishing to record his judgment as a lien on the property of the debtor must file a statement in the office of the county clerk in which the property rests, which costs an additional $13.00.

b. Service of Process Using Sheriff or Licensed Professional

Once the filing fees have been paid, a case has been filed, and a summons has been issued, there are still a number of costs to be expected before a creditor can obtain a judgment. One such fee is the cost for having process served – either by sheriff or a licensed private process server. See Okla. Stat. tit. 12, §§ 158.1(A); 2004(C)(1)(a). The exact fee charged depends upon a number of factors including the county in which the process is to be served and the particular server (or sheriff) serving the process, but rates throughout the state tend to be similar.

Using a sheriff to serve process typically costs approximately $50.00 (if the sheriff is successfully able to serve the party at the first address provided). If the sheriff is required to try multiple addresses to exact service on a defendant, the cost of service is almost certain to be greater. Additionally, some sheriffs in Oklahoma charge a mileage fee for each mile traveled during attempts to serve process. The benefit to using a sheriff to serve process, however, is the added authority (or appearance thereof) with which law enforcement officials are inherently vested. That said, in many cases, a given sheriff's office may have a considerable workload and may push civil service requests to the back-burner in favor of accomplishing other duties or serving more pressing paperwork. Thus, many law firms and litigants elect to utilize the services of a process server duly licensed to serve process in Oklahoma pursuant to Okla. Stat. tit. 12, § 158.1.

Using a process server to serve process typically costs between $50.00 and $60.00, depending on the terms of contract between the firm and server. Law firms able to provide servers with a high volume of cases may be able to obtain more favorable rates from servers. Another advantage to licensed process servers is that they often take less time to exact service and can provide tangentially related services such as skip-tracing and other investigations. Providing a process server with as accurate and detailed information as possible will save time and expense, and ultimately avoid unnecessary costs that accumulate when a server is unable to easily locate a particular defendant.

V. Conclusion

In the end, creditors, lenders, and debt purchasers in Oklahoma are having a similar experience to their counterparts in other states—an increased scrutiny on their actions and increased regulation on their attempts to enforce their legal rights. While creditors may spite this increased regulation and oversight, it underscores their need to find competent local counsel, familiar with the legal environment in Oklahoma, to help vindicate their rights and collect on outstanding debts. Though this article attempts to provide helpful analysis concerning many of the common issues encountered in Oklahoma collections laws, creditors themselves must make compliance with state and federal law a priority—and employing knowledgeable, helpful, and experienced legal counsel is a good starting point.

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.