

## **Rhode Island Debt Collection Laws**

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*Hodosh, Lyon, & Hammer Ltd is continuing its long tradition as a preeminent debt collection law firm in Rhode Island. While its business structure has changed over the years, the focus has been the same for well over twenty years. We put our intimate knowledge of the state's laws and courts to work for our clients. We have clients that place hundreds of cases monthly, as well as clients that place only a few each year. We handle a broad variety of cases: retail, commercial, and medical collections. We currently have two partner attorneys, Neill B. Lyon and Scott L. Hammer. Neill has been practicing since 1987 and Scott since 1996. Both partners have participated in bar association and court committees, as well as being founding members of the Rhode Island Creditors' Bar Association.*

### **I. Essential Debt collection Laws**

Rhode Island has a relatively small bar of attorneys that concentrate their practice in debt collection. Much of the practice has not changed in many years. The State Courts still maintain all files on "paper only," creating special challenges for the practitioner who is trying to accommodate client demands and technological expectations. The laws are primarily statutory, with some long-standing common law. As a small state, only a few cases are decided by the Supreme Court each year, making case law sparse, particularly in the collection area.

#### **A. Statute of limitations**

While RI has several different limitation periods for other causes of actions, in nearly all collection actions the statute is ten years. Rhode Island General Laws (RIGL) section 9-1-13 is the applicable statute for all contracts, book accounts, charge accounts and similar actions. It is basically the "catch all" statute. Since these collection actions do not fall under any other specific statute, the "catch all" applies. The statute commences to run at the execution of the contract or opening of an account and re-starts each time a payment is made. In a recent US District Court decision, at least one Judge found that the longer RI statute applied, when confronted with debtor's allegation that the shorter statute from the state of residence of the creditor applied. Florenzano v.LVNV Funding LLC, 062912 RIDC, CA 11-178M

#### **B. Foreign Judgments**

The Uniform Enforcement of Foreign Judgments Act has been adopted in RI. This, essentially, requires the filing of an affidavit, together with an exemplified copy of the foreign judgment. Absent a successful

challenge to either the originating Court's jurisdiction or service of the summons and complaint, the judgment may be enforced.

### **C. Bad checks**

While it is a crime, the passing and failure to cover a bad check also subjects the payer to civil penalties. RIGL section 6-42-31 requires the recipient of a bad check to provide a very specific notice to the payer by certified mail at least thirty days in advance of the filing of a civil action. Should the payer fail to cover the check, he or she is subject to suit for the face value of each check, plus a penalty of three times that face value, but no less than two hundred dollars nor more than one thousand dollars for each check, plus a twenty-five dollar collection fee. That statute permits a defense for a valid stopped payment (RIGL section 6-42-4).

### **D. Post Judgment Process**

Rhode Island has a few basic options once a judgment has been sustained. By far the most common is the traditional supplementary process. This requires plaintiff's counsel to obtain and serve upon the debtor an execution making payment demand and a citation assigning a hearing date. These two documents are separate in Superior Court, but they are on one combined form in the District Court. On the assigned hearing date, the debtor appears; and if a voluntary agreement cannot be reached, he or she will testify under oath, and the Court will determine his or her ability to pay.

### **E. General Garnishment**

Another option is to use the above referenced execution form to record a lien on real property of the debtor. RIGL section 9-26-4.1 provides for a homestead exemption on the debtor's real estate to the extent of \$ 500,000.

Also, in the event that the debtor is employed, his or her wages may be attached. Prior to serving the wage attachment, a motion must be filed and granted, this motion must be on a specified court form that provides "objection forms" for the debtor and an objection date. RI law exempts from attachment the wages of any person who is currently receiving public assistance or has received public assistance within the last year. Exactly what is "public assistance" is broadly defined by the courts. In addition, the debtor must make in excess of thirty times minimum wage in order to have garnishable wages. If they have wages in excess of thirty times minimum wage but less than forty times minimum wage, then all funds in excess of thirty times shall be garnished. In the event that the debtor earns in excess of forty times minimum wage, then the first seventy-five percent is exempt and the rest shall be garnished. There is no

maximum dollar amount or duration for an attachment. Bank attachments are also available, though not as commonly used. When an account is located, it may be attached by serving a writ on the bank and by noticing the debtor of the attachment and assigning a hearing date ten to fourteen days from the date of the attachment. The debtor may claim an exemption for any monies from Social Security, public assistance, unemployment, TDI, pension funds and the like.

## **II. Courts and Costs**

Rhode Island's court system and related costs are fairly simple. The state has a total of four counties. Each county has three courts. There is a Superior Court for each county that handles matters with damages from ten thousand dollars and up. The filing fee in all Superior Courts is one hundred sixty dollars (\$160). Executions cost fifty dollars (\$50), and citations cost twenty-five dollars (\$25). All other writs and processes in Superior Court have no costs associated with them.

While not technically defined by county, RI has four District Courts, with one located in each county. Historically, there were ten District Courts; however, over time they were consolidated into four. Second and Fourth Division are defined by county lines. Third Division includes some cities and towns that are within neighboring Providence County, and Sixth Division includes the remainder of Providence County. Each District Court also has a Small Claims Division. Small claims permits suits to be filed up to two thousand five hundred dollars (\$2,500). District Court allows suits to be filed up to ten thousand dollars (\$10,000). Filing fees for all districts are uniform. The filing fee for Small Claims is fifty-five dollars (\$55), while District Court filing fees are eighty dollars (\$80). Executions and Citations are one combined document. The cost to obtain from the courts is twenty dollars (\$20), regardless of whether it's Small Claims or District Court. Most all other writs and process that a collection attorney may require are available from the court at no cost.

## **III. Process Servers and Sheriffs**

Rhode Island licensed process Servers are called Constables. Either a constable or state sheriff may serve any writ. State Sheriffs have offices at each courthouse and will serve any writ mailed or delivered to them for the same rate set by statute as the maximum reimbursable rate. That is to say, if a party pays in excess of that rate, they may not charge the debtor more than the prescribed maximum. Constables are privately licensed process servers. They will often arrange with an attorney to pick up and drop off writs, in addition to handling the service.

Summons, wage and bank garnishments, as well as executions, citations and subpoenas all must be served by a constable or sheriff. Unlike the other writs, the execution must be served personally on the

defendant and not left with anyone else. This can, at times, be problematic, because the courts rarely, if ever, permit an exception. Notice by publication, which is technically permitted upon motion, is in many cases practically unavailable, due to the high cost of the required legal notice in the newspaper.

### **Other laws & Decisions of Note**

In 2007, RI passed the RIFDCPA, which governs debt collection in RI. RIGL SECTION 19-14.9-1 et seq. Among other things, it requires all persons engaging in the collection of debts to register as a debt collector. Attorneys, however, are among the limited set of exceptions to registration.. RIGL section 19-14.9-12. The RI US, District Court, in interpreting this provision, found that registration was even required for a debt buyer that retained a Rhode Island law firm to collect its debts. Florenzano v. LVNV Funding LLC, 062912 RIDC, CA 11-178M

The RI Superior Court recently addressed the issue of “ghost writing.” In the case of Card v. Pichette, 072612 RISUP, PC 2011-2911, a RI attorney working for a debt consolidation company prepared an answer and counter claimed for a debtor, but did not sign the pleading, nor did his name appear on it. The debtor filed and signed it as his own. After the hearing, it was clear that the “pro se” debtor did not even understand the contents of the alleged counter claim. In the end, the ghostwriting attorney was ordered to produce all ghost-written pleadings that he had ever prepared, and the Court referenced the matter to the State Disciplinary Counsel for action. Card v.Pichette, 072612 RISUP, PC 2011-2911

*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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