Virginia Debt Collection Laws

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Based in the Hampton Roads region of Virginia, Dominion Law Associates' roots in the collection industry date back to 1977. Since then, the firm has emerged as a leader in the field of debt recovery and provides state-wide litigation service and coverage throughout Virginia, North Carolina, Maryland and DC. Led by Peter Kubin, the firm's CEO and a William & Mary School of Law graduate, Dominion prides itself on its highly tenured and experienced management team. Dominion's philosophy is to blend the best of collection agency methods and technology with a law firm's litigation strategies, while maintaining the highest legal and ethical standards.

Broadly speaking, Virginia strives to be a business-friendly state with a fair approach to debt collection laws. For example, the state does not impose special licensing or bonding requirements for collections entities, and doesn't have any heavy or harsh regulatory or enforcement history. In addition, Virginia has the advantage of having some of the lowest suit filing and service fees in the country. At the same time, there are some key nuances that one needs to know in order to successfully operate in Virginia. This paper will provide a summary of the main debt collection laws and issues in Virginia, with a focus on some of the nuances.

I. Key Debt Collection Laws of Virginia

a. Statutes of Limitations

Several key laws govern statutes of limitations in Virginia. The basic statute on contracts is Va Code §8.01-246, which provides a five-year limitation for any written and signed contract, and a three-year limitation for any unwritten contract, express or implied. One notable exception is for sales contracts under the UCC, which have a separate four-year statute (Va Code §8.2-725).

Open accounts are not expressly addressed, except by Va Code §8.01-249, which only states that the cause of action for an open account runs from the later of the last payment or last charge on the account. There is very little authority on open accounts and credit cards in particular, though the Virginia Attorney Generals wrote a helpful though non-binding advisory opinion in 2011 (Virginia Attorney Generals Advisory Opinion 2.7.11).

Domesticated foreign judgments and judgments entered in the Virginia circuit courts (which have exclusive jurisdiction of claims over $25,000) can be enforced up to twenty years, with extensions of twenty additional years upon motion (Va Code §8.01-251). A judgment in the general district court (which has jurisdiction of claims up to $25,000) is valid for ten years (Va Code §16.1-94.1), though an abstract of the judgment can be filed in the circuit court and receive the same twenty year limitation.

b. Bad Check Laws and Civil Penalties

Like many states, Virginia allows the recipient of an intentional bad check to pursue either a criminal or a civil claim. On the civil side, any person who receives a bad check due to insufficient funds or a bad faith stop payment may recover (i) legal interest from the date of the check, (ii) any bad check fee that they are actually charged by their bank, (iii) a processing charge of $50, and (iv) reasonable attorney's fees if awarded by the court (Va Code §8.01-27.1). In addition, if the drawee refuses after thirty days' notice to pay a check returned for insufficient funds, the holder may receive an additional recovery for the lessor of $250.00 or three times the amount of the check, plus the cost of service and mailing (Va Code §8.01-27.2)

c. General Garnishment Exemptions

Virginia permits creditors to execute against both wages and bank accounts. Garnishments on bank accounts may be filed for up to 90 days, while garnishments against wages can be extended up to a maximum of 180 days (Va Code §8.01-514). In addition to the normal federal exemptions (Social Security benefits, veterans benefits etc.), Virginia law provides for a number of state specific exemptions. For example, the maximum amount of disposable weekly wages that are subject to garnishment is generally 25 percent, unless the judgment-debtor earns less than 40 times federal minimum wage (i.e., at the current rate of $7.25, the defendant would need to earn $290 per week before being subject to garnishment) (Va Code §34-29). In addition, Va Code §34-4.4.2 provides that if a parental household's gross income is less than $1750 per month, the parents can receive additional exemptions for up to three children. Virginia also allows a one-time homestead exemption of $5,000 (or $10,000 if the debtor is 65 or older), which may be used to protect wage or bank garnishments. A complete list of all exemptions from garnishments and liens, including the less common ones, is included in Va Code §8.01-512.4, a copy of which must be provided to each judgment-debtor upon receipt of a garnishment summons.

II. Debt Collection Licensing, Bonding, and Regulations

a. Creditor/Lenders, Debt Purchasers, Collection Agencies and Licensed Attorneys

Virginia is considered an “open border” state and does not impose collection licensing or bonding requirements for creditors, debt purchasers or collection agencies. Depending on business specific needs, an organization may need a certificate of authority to transact business, which can be obtained from the Virginia State Corporation Commission. However, collecting debts is generally excluded from the definition of transacting business (see e.g. Va Code §31.1-757 and Va Code §13.1-1059).

b. Attorneys Not Licensed to Practice in Virginia

Attorneys not licensed to practice in Virginia may engage in the same activities as anyone else with respect to purchasing debt or operating a collection agency, with no licensing or bonding requirements. Attorneys wishing to offer legal advice, threaten or file suit, or prepare pleadings must obtain a license to practice law in Virginia.

III. Practices Specific to Various Types of Debt

a. Commercial Collections

Virginia does not require licensing, bonding or otherwise impose special collections regulations for commercial collectors. Corporate litigants do require an attorney to represent them, except in the case of a small claim ($2,500 or less), where a closely held corporation may be represented by an officer, so long as no pleadings are needed (Va Code 16.1-81.1). From a general perspective, Virginia has a uniform and business friendly statutory scheme for commercial collections, including the adoption of the UCC. Successful collection often depends on creditors properly documenting their accounts and making sure they identify the true entities with whom they are dealing (getting tax ID numbers, checking licenses etc.)

b. Consumer/Retail Collections

One of the more unusual features of the Virginia legal process is the “return date” system for all cases filed in the general district courts. Essentially, this means that every single case has to be scheduled for an initial return hearing date, even if there is no contest or dispute (disputes and trials are identified at the return date and may be scheduled for later hearings). This procedure is cumbersome for high volume collection attorneys and requires the scheduling of numerous initial hearing dates and available attorneys. The return date system applies to all civil cases, including commercial, though commercial cases are more likely to have higher balances and therefore to be filed in the circuit courts (exclusive jurisdiction over claims over $25,000).

A significant development that has occurred over the last several years is an increasing scrutiny by the courts with regard to what claim documentation is needed for a debt purchaser to file suit and obtain judgment. The so-called "Fairfax Rule" for claim documentation has spread via judicial conferences and is now followed by the majority of Virginia judges, citing their role as gate keepers of the judicial process. The documentation required varies somewhat by venue, but the essential elements are: (1) a statement from the original creditor showing the balance claimed; (2) documentation showing the defendant used the account; and (3) the terms and conditions or account agreement. In addition, many judges also require documentation showing that the debt purchaser owns the account (bills of sale, assignments, etc). Finally, a number of courts are requiring similar documentation on original creditor retail cases, though it is typically much easier for the original creditor to provide such documents.

c. Secured Debt

Secured debts are typically covered by the UCC and most commonly involve defaulted vehicle loans and leases. In the event that a defaulted auto loan or lease is repossessed, the creditor must provide the proper ten days' notice of their intent to sell the vehicle, then do so in a commercially reasonable manner, and provide notice within fourteen days of any surplus or deficiency (Va Code 8.9A - part 6). Auto deficiency claims are another area where a number of judges exercise extra scrutiny and require specific documentation, which usually involves evidence of the notices provided to the defendant before and after the sale.

Although Virginia law generally allows for peaceful "self-help" for the recovery of unpaid secured property, the law also provides a statutory remedy for recovery of unlawfully withheld property via an action in "detinue" (commonly called "replevin" in other states). To file an action in detinue, the plaintiff must sufficiently describe the property that is being unlawfully withheld and state an alternate claim for the value of the property (§8.01-114). Upon an award of judgment, the defendant is allowed a reasonable time (up to thirty days) to decide whether to surrender the property or pay the alternate value (Va Code 8.01-121). If the defendant does not make an election, then the plaintiff may choose.

IV. Court Filing Fees

Filing fees in the general district courts (jurisdiction up to $25,000) vary by venue and sometimes by the amount of the claim. The 2012-2013 fees range is $40 to $49 (exclusive of service fees), with most venues running around $44. The judicial system website, run by the Virginia Supreme Court, provides an updated fee calculator that lets you get an exact figure for filing fees in any general district court venue. Filing fees in Virginia are relatively low, though the legislature has been gradually increasing the fees over the last several years.

Circuit court filing fees (exclusive jurisdiction over $25,000) also vary by venue and claim amount, but the fee increases significantly for larger claims. Current fees start at about $126 (exclusive of service fees) for claims from $25,000 to $50,000, then increase to $232 for claims from $50,000 to $100,000, and going up from there with higher balance claims. The judicial system website also provides an updated circuit court fee calculator, which shows specific fees by venue and claim amount.

V. Process Service Options & Costs

a. Sheriff's Fees

Pursuant to Va Code §71.1-272, the sheriff's fee for filing of suits and serving of witness is capped at $12 per person. Beyond the fee, using the sheriff for service has certain advantages and disadvantages. On the plus side, the sheriff can gain entry to certain places inaccessible to a private process server, their service is rarely questioned by the court or defendant, and there is a value to having a uniform and badge serving ones papers. On the down side, sheriffs will not cross city or county lines (which are not always clear), they provide very limited information back to you, and the level of customer service is inconsistent and sometimes erratic, depending on the venue.

b. Process Server Fees

Private process servers in Virginia typically provide very competitive rates compared to the sheriffs, with prices usually subject to some negotiation, based on the volume of cases expected to be served. The pros and cons of using a private process server are essentially the reverse of those for using the sheriff, with the most significant difference being the ability to receive immediate (or at least much faster) information on the status of services.

c. Garnishment Fees

The basic cost of filing a garnishment, regardless of whether it is wage or bank garnishment, is essentially the same as for the original complaint (see section IV above), though some localities are able to add additional fees not to exceed $6. However, the cost of service is higher, as the sheriff charges separate $25 fees for serving the garnishee and the judgment debtor. Accordingly, using a private process server can represent a substantial savings when filing garnishments.

d. Debtor Exams

A summons to answer interrogatories is permitted under Va code §8.01-506 and the court filing fees are again essentially the same as for the filing of the original complaint (section IV above). As with garnishments, the sheriff will charge a higher fee ($25) for debtor exams, though usually only one service of process is necessary. Again, this is a situation where using a private process server can be more economical.

e. Other costs

The most common and significant other cost incurred in collection cases is for the filing of the abstract of judgment from the general district court. Recording the abstract from the general district in the judgment lien book of the circuit court has two purposes – it creates a judgment lien on any property owned by the judgment debtor in that venue, and it extends the enforceability of the general district court judgment to twenty-years (see section I.a. above). The cost of recording the abstract of judgment is currently $10.

VI. Significant Debt Collection Actions by the Virginia Attorney General

The Virginia Attorney General has not issued significant enforcement actions against debt collection entities in Virginia. However, the Virginia Office of Attorney General does have a "Consumer Protection Section," but their primary purpose appears to be to offer advice and resources to aggrieved consumers, though they will also occasionally mediate with collection organizations in appropriate circumstances. In addition, the Virginia OAG has issued a significant and quite helpful opinion regarding the statute of limitations applicable to credit card accounts (Virginia Attorney Generals Advisory Opinion 2.7.11).

VII. Debt Collection Ethics Opinions issued by the Virginia State Bar

The Virginia State Bar, an administrative agency of the Virginia Supreme Court, has issued a number of Legal Ethics Opinions (LEOs) regarding debt collections. A few of the notable ones are summarized below:

- LEO 0946: A lawyer can refer a client's collection accounts to a collection agency, provided that the lawyer preserves client confidences and does not engage in impermissible fee splitting.
- LEO 1835: A lawyer cannot disburse payments to his or her clients until those funds have "cleared" the bank.
- LEO 1849: A lawyers may not sign a default judgment affidavit on behalf of his or her client.

VIII. Miscellaneous Cases Relevant to Debt Collection Law in Virginia

There are a host of other laws or cases that can impact debt collection practices in Virginia in specific situations. A few significant cases are listed below:

- Bernardini v. Central National Bank, 223 Va. 519 (1982): Exempt funds commingled in a general account containing other nonexempt money lose whatever exemptions they may have had. The case is good law in Virginia, though many judges routinely ignore the holding.
- Mullins v. Richlands National Bank, 241 Va. 447 (1991): If there is a claim to recover attorney's fees with no specified amount in the contract, an attorney needs to provide an affidavit estimating the time and effort expended, the nature of the services rendered, and any other relevant circumstances in order for the court to grant an award of fees.
- 1924 Leonard Rd v. Van Roekel, 272 Va. 543 (2006): The Virginia Supreme Court finds that successor in interest can admit a predecessors business records under the hearsay exemption.
- Leasing Service Corp. v. Justice, 243 Va. 441,(1992): While a bankruptcy may discharge a judgment-debtor's personal liability, a judgment lien filed prior to the bankruptcy petition continues to be valid, unless discharged in bankruptcy, as to any property the debtor may have owned prior to filing bankruptcy.

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.