

West Virginia Debt Collection Laws

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[Atkins & Ogle Law Offices, LC](#) (A&O) is a law firm located in Buffalo, West Virginia. Three attorneys with over 50 years of combined legal experience and over 60 years of combined collections experience lead a team of nine full-time and four part-time staff members.

James B. Atkins is a managing attorney for A&O. His focus areas include debt collection, contract or civil disputes, criminal defense, and personal injury. Jamie is admitted to the West Virginia State Bar, the U.S. District Court Southern District of West Virginia, and is the president of the Putnam County Bar Association.

*Jamie graduated cum laude from Glenville State College, with a bachelor's degree in music education. He earned his J.D. from the West Virginia University College of Law. He held the position of President for both the Lugar Trial Association and the Christian Legal Society and as well as Chair for the Ethics Committee. He also earned selection into the National Order of Barristers. After graduation he taught as an adjunct lecturer for Glenville State College and West Virginia State University and co-authored/taught *How to Get Results in Collection of Delinquent Debts in West Virginia*.*

Traditionally, A&O has been strong at litigation and post-judgment remedies on debt collection matters. In recent years the firm has developed strategies and efforts designed to better front-load collection results for clients. The firm has maintained a consistently strong percentage of the market share of West Virginia collections claims, due primarily to a business model that caters both to larger creditors and smaller, local businesses. Secondly, A&O has continued to receive work in times of increased debtor legal action and national emphasis on compliance, due to written, tested and proven policies and procedures designed to protect our clients from frivolous attacks.

Collection Climate

West Virginia carries a reputation as being anti-collection. This reputation is fair, in part, albeit not a complete picture of the West Virginia collection climate. Through advertisement and news stories, the average West Virginia consumer/debtor has a greater awareness of his consumer protection rights. The office of the West Virginia Attorney General spends considerable resources targeting out-of-state creditors who attempt collection efforts within the state borders without proper licensing and bonding. A review of the [Consumer Protection and Anti-Trust Division of the](#)

[office of the Attorney General](#) can shed more light on common pitfalls of creditors, as well as the type of information distributed to the general public.

Collections efforts in West Virginia, generally, are not difficult, as compared to other states. West Virginia enjoys the highest percentage of home ownership in the nation, and debtors are loathe to encumber property for the sake of small claims, if it can be avoided. Debtors are responsive and respectful with collection staff when spoken to with candor and respect.

WV-Specific Legislation

1. Licensing

Creditors who take the time to [obtain proper licensing](#) to conduct business in the State of West Virginia can otherwise retain the services of an attorney licensed in the state and proceed with only standard precautions.

Currently under scrutiny by our local courts is the question of what type of licensing debt buyers must obtain, i.e., are they more akin to the original creditor or the collection attorney? We recommend that debt buyers obtain proper licensing and forward claims to an attorney licensed in the State.

Finally, while there is a tremendous campaign to protect and educate the average consumer, almost no effort is given toward the protection of commercial debtors, or even individuals who are personal guarantors on commercial loans.

2. Statute of Limitations

Contracts under seal in West Virginia enjoy a ten-year statute of limitations while open contracts have a five-year statute.

3. Bad Checks

Civil and Criminal penalties are each available for bad checks, and a creditor may select either, given factors of police cooperation and civil court costs.

4. Garnishment and Costs

Several post-judgment remedies are available to creditors. Wage garnishments and bank account freezes are the most common. They range in cost from \$30.00 to \$50.00.

5. Debtor Examinations

More punitive executions, such as property forfeitures and foreclosures are available but after a commissioner is appointed and conducts a debtor examination, which typically makes recovery cost-prohibitive. Although the execution itself is not too costly, it is common for the Court to require a creditor's posting of around \$500.00 to front the cost of a commissioner and court reporter. Additionally, the commissioner will conduct the examination and submit a written report to the court detailing the order of preference for each creditor. If you are conducting such a procedure for an unsecured debt, such as a credit card, then you are typically doing so for the benefit of other creditors, such as a mortgage lender.

6. Court Cost Fee Structure

West Virginia has a court cost fee structure that among the lowest in the nation. Magistrate Court, the small claims court, hears matters of conflict up to \$5,000.00. The cost to file ranges from \$55.00 to \$70.00. The Circuit Court hears all other matters and any matters removed from the Magistrate Court. The cost to file in the Circuit Court is \$155.00. In either case the cost of service will vary, depending on use of a local Sheriff (\$25.00) or a private process service.

7. Summary Judgment

West Virginia has one particular statute ([West Virginia Code §55-8-7\(b\)](#)) that opens for interpretation what a creditor must present to the court in order to obtain a Summary Judgment. Most Courts currently hold that in order for the Plaintiff to prevail on a motion for summary judgment, then "at the time of the filing" of the original complaint, the Plaintiff has to include sufficient documentation to establish both an obligation and a sum certain owed by the customer. In other words, when filing a complaint, the Plaintiff will attach a copy of an original application and some sort of verified account breakdown that evidences the balance history. This is not only difficult to obtain at times in a debt-buyer market, but this interpretation also effectively renders traditional default judgment moot. Every judgment, entered by default and upon a motion by the Plaintiff, will read similar to and sometimes even be accompanied by a hearing just like summary judgment.

Summary of West Virginia Collection Environment

So, while a great deal of talk exists about the pitfalls of debt collection in West Virginia, a closer examination of recent settlements and legal decisions reveals that a very small percentage of those matters were handled first by a local collections attorney. West Virginia, much like many southern states, enjoys an environment of customers who wish to clear their debts and only wish to be treated with respect. Debt buyers and original creditors are encouraged to contact the attorneys at Atkins & Ogle Law Offices, LC to discuss concerns, rather than leave claims not worked.

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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