

Alaska Debt Collection Laws

Submitted by Routh Crabtree, A Professional Corporation

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Routh Crabtree, A Professional Corporation, was formed in the 1980s when its principals joined together to form a practice concentrating its efforts on the representation of creditors' rights. It has since grown to be the largest creditors' rights firm in Alaska, and represents numerous banks, credit unions, credit card companies, third-party debt buyers, and select commercial creditors. The firm's president, Richard L. Crabtree [Reed College, B.A. 1972 (American Studies), Lewis & Clark, J.D. 1975], is a member of the Anchorage Bar Association (past president), Alaska Bar Association, American Bar Association, and Alaska Creditors Bar Association (past president). He is admitted to practice before all Alaska state courts, the U.S. District Court for the State of Alaska, the 9th Circuit Court of Appeals, and the U.S. Supreme Court. The firm is a member of the National Association of Retail Collection Attorneys, and represents Alaska on NARCA's State Law Committee.

I. Alaska Collection Laws

a. Statute of Limitations

Except as otherwise provided by statute, the Alaska statute of limitations for open accounts, written and oral contracts, is three years in duration. [AS 09.10.053](#). Contracts for the sale of goods are subject to the four year limitations period provided for in Alaska's version of the Uniform Commercial Code at [AS 45.02.725](#), unless the parties agree to a shorter period of not less than one year. The statute of limitations on promissory notes is six years per [AS 45.03.725](#). The statute of limitations for bringing actions on judgments or decrees of a court of the United States or of a state or a territory within the United States is ten years per [AS 09.10.040](#). See [Hamilton v. Seattle Marine & Fishing Supply Co., 562 P.2d 333 \(Alaska 1977\)](#).

b. Judgments and Judgment Liens

Judgment liens are good for ten years from the date of judgment ([AS 09.30.010](#)), or for such shorter periods as execution may issue on the judgment. Judgment liens are renewable. Judgments themselves, however, continue until satisfied or discharged by death or bankruptcy, so long as a writ of execution is obtained within five years of the date of judgment and is not recalled, or so long as a period of five years or greater does not elapse without a writ being outstanding. [AS 09.35.020](#). See [State Dep't of Revenue ex rel. Inman v. Dean, 902 P.2d 1321 \(Alaska 1995\)](#). If a period of five years has elapsed without a writ of execution being in effect, permission of the court is required before a writ can issue. [Alaska R. Civ. P. Rule 69\(d\); AS 09.35.020](#).

c. Exemptions for Alaska Bankruptcy Cases

- Homestead (residence) = \$72,900.

The Alaska homestead exemption is not doubled for a husband and wife filing a joint petition. A husband and wife are entitled to a single homestead exemption, split between them. If a debtor is married and the spouse does not join in the bankruptcy petition, the debtor can only take one-half (1/2) of the total homestead exemption amount. This limitation also applies to a debtor who is a single person but owns the residence jointly with another individual.

- Household goods, furniture, clothing = \$3,900. No single item may have a value in excess of \$55
- Vehicle = the total value of the vehicle may not exceed \$27,000
- Jewelry = \$1,300
- Pets = \$1,350
- Professional tools, books = \$3,780
- Life insurance, annuity = \$13,500
- Pension, profit sharing, IRA = Unlimited

If the pension plan is an ERISA qualified plan, it is not considered part of the bankruptcy estate and does not need to be claimed exempt. The exemption is only required if the debtor holds an IRA or a non-ERISA qualified pension plan.

- Alaska Permanent Fund Dividend = 20%
- Alaska longevity bonus, liquor licenses, fishing permits, health aids = Unlimited
- Social Security, Veteran's Benefits = Unlimited
- Liquid assets = \$1,890

Liquid assets include: cash, receivables, notes, securities, etc., but not the Alaska PFD.

The liquid assets exemption is available only if the debtor has no earnings (wages, salary, commissions). May be applied to a future income stream to the extent that the income in any month does not exceed the allowable limitation.

Special rules requiring actual service of notice of exemption rights on judgment debtors exist that require service of the court system's judgment debtor booklet on the judgment debtor prior to, at the time of, or within three days after the levy on the judgment debtor's property. Failure to comply with this requirement has been deemed in some cases to constitute an unfair trade practice. The Alaska Creditor's Bar Association is working with the state court system to develop a more workable method for notifying judgment debtors of their rights and thus avoiding liability hazards for creditors in this area.

Garnishment: judgment creditors can, subject to the judgment debtor's exemptions, levy on wages in Alaska. A garnishment levy remains in effect until the judgment has been paid. If another creditor has a garnishment in place prior to your levy, your garnishment "stacks" as next in line to be paid after the prior levy is satisfied.

Additional information may be found at <http://www.akb.uscourts.gov/pdfs/12exemptions.pdf>

d. Bad checks and civil penalties

[AS 09.68.115](#) provides for civil penalties of up to three times the amount of the check, but not less than \$100 nor more than \$1000, to wit:

(a) In an action against a person who issues a check that is dishonored, the plaintiff may recover damages in an amount equal to \$100 or triple the amount of the check, whichever is greater, except that damages recovered under this section may not exceed the amount of the check by more than \$1,000 and may be awarded only if

(1) the plaintiff makes a written demand for payment of the check at least 15 days before commencing the action; and

(2) the defendant fails to tender, before the action commences, an amount equal to the amount of the check plus up to a maximum \$30 fee.

(b) An action under this section may be brought as a small claims action, if the amount claimed does not exceed the jurisdictional limits for small claims actions, or may be brought in any other court that has jurisdiction.

(c) After the beginning of an action under this section, but before the case is tried, the defendant may satisfy the claim by tendering an amount of money equal to the amount of the check plus court, legal, and service costs incurred by the plaintiff up to a maximum of \$150.

(d) In this section

(1) "check" has the meaning given in [AS 11.46.280](#);

(2) "dishonored" means the nonpayment of a check because of

- lack of funds;
- closure or nonexistence of an account; or
- a stop payment order issued without cause;

(3) "written demand" means a written notice to the issuer of a check personally delivered or sent by first class mail to the address shown on the dishonored check, advising the issuer that the check has been dishonored and explaining the civil penalties set out in this section.

II. Licensing Requirements

a. Collection Agency

Collection agencies are required to be licensed and must post a bond in the amount of \$5000. [AS 08.24.041 et seq.](#)

b. Third-party Debt Buyers and Original Creditors/Lenders

Third party debt buyers and original creditors/lenders attempting to collect their own claims, and attorneys are not required to obtain a collection agency license.

c. Lawyer not licensed to practice in Alaska

[AS 08.08.230](#) and [Alaska Bar Rule 63](#) define “practice of law” as “representing oneself by words or conduct to be an attorney, and if the person is authorized to practice law in another jurisdiction but is not a member of the Alaska Bar Association, representing oneself to be a member of the Alaska Bar Association; and . . . either (i) representing another before a court or governmental body which is operating in its adjudicative capacity, including the submission of pleadings, or (ii), for compensation, providing advice or preparing documents for another which affect legal rights or duties.” [Alaska Rules of Professional Conduct Rule 5.5\(c\)\(4\)](#), concerning the multijurisdictional practice of law provides that “A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that . . . arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.” It does not appear, therefore, that an out-of-state attorney would be prohibited from mailing a demand letter to a debtor within the State of Alaska.

III. Court Costs And Process Server Fees

[Alaska R. Civ. P. 9](#)

(A) Supreme Court and the Court of Appeals:

(1) Filing Fee: \$150

(2) Miscellaneous Fees (i) For preparation of case record for review by the Supreme Court of the United States \$100.00; (ii) For copies of documents on file with the supreme court or the court of appeals, Each page or fraction thereof \$0.25;

(B) Superior Court:

(1) Filing fee: \$150.00

(2) Appeal fee, including a sentence appeal, cross-appeal, petition for review, or cross-petition for review from district court, except *in forma pauperis* cases \$40.00.

(C) District Court:

(1) Filing fee: \$90.00.

(2) Filing fees, small claims actions, claim for relief

(i) \$2,500 or less \$40.00;

(ii) more than \$2,500, \$75.00.

No additional filing fee is due when a small claims case is removed to district or superior court.

(E) Miscellaneous Fees in the Superior Court and the District Court:

(1) Copying.

(i) For photocopying or making copies from microfiche or microfilm, the cost per page is, \$0.25 (A "page" means one side of a sheet of paper.);

(2) Certification.

(i) Each document \$5.00;

(ii) For each additional certified copy of the document requested at the same time \$2.00;

However, a party is entitled to receive one free certified copy of the final judgment or order in the party's case and one free certified copy of a clerk's certificate of name change under [Civil Rule 84\(c\)](#).

(3) For issuing exemplifications \$10.00.

(6) For service of process by the court:

(i) By certified mail (postage provided by party) \$4.00;

(ii) By registered mail (postage provided by party) \$10.00. A party requesting service of process by certified or registered mail must supply an addressed envelope, adequate postage, and appropriate postal forms.

Fees -- Service of Civil Process. [Alaska R. Civ. P. 11](#).

The maximum amount recoverable from another party as costs for the services designated is:

(1) Service of Process:

(i) For service of any summons or subpoena -- each person on whom service is made: \$45.00

(ii) For service of any warrant, attachment, notice of levy, intent to levy or garnishment, execution or other writ -- each person on whom service is made: \$45.00

(iii) For each hour in excess of two actually and necessarily spent to obtain service under (i) or (ii) above: \$30.00

(iv) If more than one document involving the same case is given to the same individual at the same time only one fee shall be charged

(2) Sales of Property Pursuant to Final Process: For advertising and disposing of property by sale, set-off, or otherwise, according to law, pursuant to a writ of possession, partition, execution, or any final process and for receiving and paying over money on account of property sold –

- on any sum not exceeding \$500: 7 percent
- on any excess over \$500 and not exceeding \$10,000: 4 percent
- on any excess over \$10,000 and not exceeding \$50,000: 2.5 percent

- on any excess over \$50,000: 1.25 percent provided that, when the officer disposes of property by sale, set-off, or otherwise, according to law, but does not receive and pay over money on account of such sale, the officer shall receive one-half of the commission allowed in this subdivision.

(3) Deeds: For executing a deed prepared by a party or a party's attorney: \$10.00

(4) Copies: For copies of writs or papers furnished at the request of any party:

- First page or fraction thereof: \$1.00
- Each additional page or fraction thereof: \$0.25

(5) Inventories: For making inventory of unclaimed property for each hour actually and necessarily spent: \$10.00

(6) Keeping Personal Property: For keeping of personal property attached on mesne process, such compensation as the court, on petition setting forth the facts under oath, may allow.

(7) Mileage: For mileage actually and necessarily traveled in going to serve, and in returning from the place of service, of any process described in paragraph (1) above, whether or not service was obtained, for the first 25 total miles or any portion thereof: \$20.00. And for each mile in excess of 25 actually and necessarily traveled the rate allowed for state employees

(8) No fee shall be charged under this schedule for any service rendered to the state or any agency or department thereof

Note that the wage garnishment will generally incur two process server fees of \$45 plus mileage (\$20 for first twenty-five miles or any portion thereof): one fee for service of the judgment debtor exemption notice on the judgment debtor and another fee for service of the garnishment writ on the employer.

All service of civil process and duties ancillary thereto under the Rules of Civil Procedure and applicable statutes are to be performed by private process servers provided, that a member of the Alaska State Troopers or other peace officer may render assistance to a process server or serve any process when directed to do so by the Commissioner of Public Safety. "Civil process" includes any summons, subpoena, attachment, notice of levy, intent to levy or garnishment, execution, or other writ in a civil action, but does not include any process, civil or criminal, served on behalf of the state for any department or agency thereof.

IV. Significant Case Law Related to Collections

[State of Alaska v. O'Neill Investigations, Inc., 609 P.2d 520 \(Alaska 1980\)](#) ruled that collection agencies are subject to the Alaska Unfair Trade Practices and Consumer Protection Act, [AS 45.50.471 et seq.](#) The AUTPCPA applies to transactions between commercial entities, as well as those between commercial entities and consumers. [Western Star Trucks v. Big Iron Equipment, 101 P.3d 1047 \(Alaska 1994\)](#). It does not, however, apply to real estate transactions and loans. [Kuretich v. Alaska Trustee \(Alaska 9-14-12\)](#).

V. Other Factors Unique to Alaska Affecting Collections

a. **State of Alaska Permanent Fund Dividends**

Nearly every Alaska resident is entitled to collect an annual dividend from the trust fund known as the Alaska Permanent Fund. See full details at the Alaska Permanent Fund Corporation's website <http://www.apfc.org> . Eighty percent of each year's dividend is subject to garnishment. The 2012 dividend came to \$878, and the portion subject to levy amounted to \$702.40. Permanent Fund Dividends have been as high as \$3269 (2008) and as low as \$331.29 (1984); they have averaged \$1161 over the 31 year life of the dividend program.

b. **Interest on Judgments**

The Alaska Court System's website provides the following explanation of the rate of interest applicable to judgments at <http://courts.alaska.gov/int.htm>:

How to Determine Pre- and Post- Judgment Interest Rates - 2012

1. Is there a contract that sets the interest rate? If not, go to #2
2. Is there a statute other than [AS 09.30.070](#) that sets the interest rate? If not, go to #3
3. When did the cause of action accrue? In general, a cause of action "accrues" when a suit may be maintained thereon, that is, when sufficient events have occurred to support a valid lawsuit (for example, when injury or damage occurs or when a contract is breached).
 - a. Before August 7, 1997: Both the pre- and post- judgment interest rates are 10.5%
 - b. On or After August 7, 1997: Both pre- and post- judgment interest rates will be the interest rate for the year in which the judgment is entered. This rate is defined in [AS 09.30.070\(a\)](#) as "three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered." (Note: The telephone number for the 12th Federal Reserve District in San Francisco is (415) 974-2000. For a recording about the discount rate, call (415) 974-2230. Discount rate information is also available at the following website: <http://www.frbsf.org/banking/data/discount/index.html>) For judgments entered in 2012, this rate is 3.75%. (The discount rate in effect on January 2, 2012 was 0.75 percent. The applicable rate for 2013 remains 3.75%.)

Note: After the interest rate on a particular judgment is established, it does not later change, even though the interest rate changes. For example: The post-judgment interest rate on a judgment entered in 2001 is 9%. That rate will stay 9% until the judgment is paid. It is not affected by the fact that new judgments entered in 2012 will have a 3.75% interest rate.

c. Chain of Title

Third party debt buyers are required to provide a complete chain of title to prove their ownership of purchased debt.

d. Foreclosure of Security Interests

The foreclosure of personal property security interests is controlled by the applicable provisions of Alaska's version of the Uniform Commercial Code ([Chapter 29 of Title 45 of Alaska Statutes](#)). The foreclosure of real property deeds of trusts and mortgages is controlled by [Chapter 20 of Title 34](#) of Alaska Statutes.

Secured creditors who cannot recover collateral by themselves can bring an action for claim and delivery under [AS 09.40.260](#) and [Alaska R. Civ. P. 88](#). Claim and delivery is the statutory successor to the common law remedy of replevin.

Under [AS 09.40.260](#), a creditor must (1) file a motion with the court requesting delivery of the property; (2) file an affidavit showing a description of the property, the creditor's right to possession, the property's location, etc.; and (3) post a bond in an amount determined by the court. See also [Alaska R. Civ. P. 88\(b\)](#).

The debtor must be served with notice of the motion and a copy of the affidavit. [Alaska R. Civ. P. 88\(c\)](#). Three to seven days after he is served, the court will hold a pre-seizure hearing. *Id.* If the debtor does not appear at the hearing, the court will immediately order seizure of the property. *Id.* If he appears, the creditor must establish the probable validity of his claim and the debtor's lack of defenses. [Alaska R. Civ. P. 88\(d\)](#).

The court may order seizure of the property without notice or opportunity for a hearing where the secured party can show that the debtor is about to conceal, destroy, convey, or otherwise dispose of the property so as to defraud his creditors. [Alaska R. Civ. P. 88\(j\)](#).

Upon issuance of an order to seize the property, an officer of the court will take possession of it and deliver it to the secured creditor. The debtor may prevent seizure of the property or regain it from the creditor by posting a bond in an amount determined by the court. [AS 09.40.280](#); [Alaska R. Civ. P. 88\(i\)](#).

e. E-filing and Research

The state courts in the southeastern "panhandle" part of the state are experimenting with e-filing. If the experiment is successful, it is anticipated that e-filing will be adopted by all courts of the state. It is possible to research state court dockets through "CourtView" available at <http://www.courtrecords.alaska.gov>.

E-filing is required, with limited exception, in the U.S. District Court for Alaska. Federal pleadings can be obtained online through PACER at <http://www.pacer.gov>.

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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