

Arizona Debt Collection Law

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Since 1977, a strong heritage for excellence and integrity has been the hallmark of AV-rated Hammerman & Hultgren, P.C. This firm has emerged as Arizona's premier creditor and collection law firm, in the eyes of both the local and national legal communities. Its lawyers and paralegals consistently provide the highest caliber of legal services to the creditor community in an increasingly specialized field. Stanley M. Hammerman, Esq. has been practicing collection law since 1975. He has given numerous collection law seminars throughout the country. He was counsel for the defendant in the Ninth Circuit case of Terran v. Kaplan, where Rule 11 Attorneys' Fees were awarded against a debtor's attorney in a Fair Debt case. He was also instrumental in writing Arizona's current garnishment laws. Mr. Hammerman is AV-rated and takes pride in aggressively, ethically, and successfully collecting both commercial and retail claims throughout the State of Arizona. More information about Mr. Hammerman and his law firm is available at www.hammerman-hultgren.com.

Arizona's Debt Collection Laws

Arizona's debt collection laws are similar to those of other states with some significant exceptions. When out of state creditors or counsel seek to enforce an obligation in the State of Arizona, special attention must be paid to Arizona's community property laws, judgment domestication laws, and purchase money mortgage laws.

Statutes of Limitation

The following is a list of statutes of limitation pertaining to collection law in the State of Arizona:

Employment contracts (A.R.S. § 12-541)	1 year
Bad Checks (A.R.S. § 12-671)	1 year
Subrogation/Property Damage/Product Liability (A.R.S. § 12-542)	2 years
Open Accounts/Oral Contracts (A.R.S. § 12-543)	3 years
Repossession/Deficiency Balance (A.R.S. § 12-544)	4 years
Foreign Judgments (A.R.S. § 12-544)	4 years
Judgment Renewals (A.R.S. § 12-1551)	5 years
Written Contracts/Credit Cards (A.R.S. § 12-548)	6 years

Bad Check Laws

In Arizona, bad check laws are governed by [A.R.S. § 12-671](#). This statute punishes the writer of a bad check for twice the value of the check or \$50.00, whichever is greater, plus attorneys' fees and costs once a statutory letter or "Notice" has been sent to the person via certified mail, return receipt requested, at the address as it appears on such check or draft. When dealing with corporate checks, you may be able to pursue the writer of the check individually as well as the company.

Garnishment Laws

Arizona's garnishment laws provide for the garnishment of wages, funds in a bank account, certificates of deposit, stocks, bonds, and other personal property. In Arizona, the garnishment of monies or property is governed by [A.R.S. §§ 12-1570 - 12-1597](#). Under these statutes, exempt monies or property are defined as "monies or property that, pursuant to a state or federal law, is not subject to judicial process, including execution, attachment, garnishment, replevin, sale or any final process from any court or any other judicial remedy provided for the collection of debts."

For garnishments involving bank accounts, there is a \$150 exemption per account. If more than one person is listed on the account, there is a maximum personal exemption of \$300. When issuing bank garnishments, whether or not you are already aware that the debtor has an account at that banking institution, it is a good idea to submit a \$25 search fee to the bank to capture any additional accounts that the debtor may have with that institution. This also includes safe deposit boxes where, for an additional fee, you will be permitted to drill the box to obtain the contents to apply to your Judgment balance, if appropriate.

Wage garnishments are governed by [A.R.S. §§ 12-1598 – 12-1598.17](#). They are continuing liens on a debtor's earnings. They allow a creditor to obtain 25% of a debtor's gross earnings less taxes. If a debtor is subject to a prior lien, that amount may differ. Additionally, if the employer is served with a support garnishment (i.e., child support or spousal support) subsequent to the service of your garnishment, you may no longer be entitled to receive any funds, as the support garnishment may exceed your 25%. A judgment debtor is entitled to request a hearing at any time after the service of a garnishment. If the reason given is hardship, the Court, pursuant to statute, has the authority to reduce the garnishment to 15%.

Debt Collection Licensing, Bonding, and Other Regulations

A *creditor* can be anybody, from an individual to a service provider to a lending institution. Depending on what type of creditor you are, there may be certain rules and regulations that govern your ability to collect a debt. *Collection agencies* are required to be licensed in Arizona and must be physically present in Arizona. Those who purchase debt, otherwise known as *debt buyers*, are not required to be licensed in

Arizona. If an out-of-state attorney wishes to practice in Arizona and participate in an active litigation, they must first file a Pro Hac Vice application with the State Bar of Arizona and then file a formal application to associate in the case, pursuant to [Rules 38](#) and [39, Ariz.R.Sup.Ct.](#) Reciprocity is liberally given to out-of-state attorneys who have been admitted to practice elsewhere for more than five years.

Arizona Collection Practices

Arizona has adopted the Uniform Commercial Code regarding *commercial claims*. There are no special laws pertaining to *consumer collections* in Arizona.

Process Serving Options and Costs

In Arizona, the county sheriff's services are utilized primarily for writs of execution and replevin matters. Private process servers are the preferred method of service. The *court costs* vary depending on the court and county in which you are filing. The range of costs per transaction is as follows:

<i>Transaction</i>	<i>Low</i>	<i>High</i>
Summons and Complaint	\$65	\$301
Foreign Judgments	\$246	\$301
Default Judgments	\$24	\$26
Certification	\$24	\$26
Recording	\$9	\$14
Transfer of Judgment	\$68	\$68
Garnishments	\$24	\$26
Judgment Debtor Exam	\$24	\$26
Approx. Cost per Service	\$55	\$90

Additionally, pursuant to an [Administrative Order](#) issued by Chief Justice Rebecca White Birch on November 17, 2010, it is mandatory that attorneys electronically file all civil subsequent documents in Maricopa County Superior Court through the AZTurboCourt system, with a few exceptions. Each electronically filed document has a \$6 charge, in addition to any normal court fees assessed for that document. This additional cost can be passed down to a debtor through the Judgment process. Eventually, all Arizona Superior and Justice Courts will be on this system.

Garnishment fees include charges to issue and serve the garnishment (approx. \$90) plus a \$25 search fee when a bank garnishment is issued. Additionally, Garnishees can charge for the filing of their Answer to the Writ of Garnishment as well as an Administrative fee for ongoing wage garnishments. For bank garnishments, the Garnishee's Answer fee can be anywhere up to \$150. For wage garnishments, Garnishees can request an Answer fee up to \$50 plus an Administrative fee up to \$5 per pay period for having to complete Non-Exempt Earnings Statements.

In Arizona, judgment *debtor examinations*, or supplemental proceedings, are governed by [A.R.S. §§ 12-1631](#) and [12-1632](#). These are usually scheduled to determine the debtor's assets and employment. Such

individuals must be personally served and cannot be sub-served or alternatively served. In order to obtain a civil arrest warrant if a debtor fails to appear, additional information about the debtor may be needed, such as eye color, date of birth, and a physical description.

Significant Case Law Related to Debt Collection in Arizona

There have been no significant cases brought by the Attorney General's Office related to debt collection in Arizona. Most of these cases are filed in federal court pursuant to the Fair Debt Collection Practices Act. [Terran v. Kaplan](#), 109 F.3d 1428 (9th Cir. 1997), was a significant federal case where attorneys' fees were awarded against the debtor's attorney.

Additional Laws Pertinent to Practice of Law in Arizona

Arizona is a community property state and [A.R.S. § 25-215](#) governs this issue. If a married debtor individually signs a contract at the time he/she is married, both the debtor and spouse are liable to repay the obligation with a few exceptions. If the debtor personally guarantees a debt and the creditor fails to obtain a separate guaranty for the spouse, the creditor is limited to collecting from the guarantor. This makes collection difficult, as the creditor can only look to collect from the sole and separate property of the guarantor. They are also precluded from garnishing the guarantor's wages or any joint bank accounts, as they are considered to be community property. Additionally, if a debtor was legally separated at the time a debt was incurred, the creditor is precluded from pursuing the debtor's spouse for the obligation.

Out-of-state creditors or counsel should be aware that any contract of guaranty may be challenged unless both spouses have signed it. Similarly, a judgment against only one spouse can be problematic. While divorced debtors may attempt to avoid repaying an obligation pursuant to the terms of a divorce decree, creditors are not usually involved in such matters and, therefore, they do not have to honor the divorce decree's terms and can seek to collect the debt from both debtors, regardless of their private agreement.

As of July 20, 2011, [Senate Bill 1212](#) amended [A.R.S. § 44-1201](#) pertaining to Arizona's legal interest rate. Specifically, it changed the legal rate of interest on a judgment, attorneys' fees, and costs from 10% per annum to the prime rate plus 1% (currently 4.25%) per annum. If an underlying contract provides for a different interest rate, a court is authorized to impose the greater of the contract rate or the statutory rate. In Arizona, there is no usury law.

[A.R.S. § 33-729](#) governs purchase money mortgages in Arizona. There are no deficiency judgments permitted on real estate mortgages where the debt has been incurred for the purpose of purchasing a single one-family or single two-family residence.

[A.R.S. § 33-814](#) governs deeds of trust in Arizona. Non-purchase mortgages and second deeds of trust are readily enforceable, if the remedy of lawsuit is elected rather than foreclosure. You cannot recover

any difference between the amount obtained by a foreclosure sale and the balance of the debt owed on residential property. Commercial real estate is excluded from this provision.

[A.R.S. § 12-544](#) governs the domestication of foreign judgments in the State of Arizona. This is definitely one of the most frustrating collection laws in Arizona, as it specifically states that out-of-state judgments will not be accepted if the original Judgment is more than four years old. Often times, a creditor properly maintains a Judgment in the originating state, abiding by that state's renewal laws. At some point after the entry of Judgment, the debtor relocates to Arizona and the creditor seeks to domesticate their Judgment. Regardless of the original state's laws, if an out-of-state Judgment exceeds four years, it cannot be domesticated in Arizona and, therefore, the creditor is precluded from enforcing their Judgment.

In summary, Arizona's collection laws, while similar to other states, can be quite unique when it comes to married debtors, those debtors who have relocated to Arizona from another state, and debts involving the purchase of real property.

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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