

## California Debt Collection Laws

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*Collection Lawyers has been representing banks, governmental agencies, corporations, collection agencies, and other creditors for over 25 solid years. With proven efficiency, productivity, and consistent client services, Collection Lawyers does immediate collections as part of litigation, resulting in maximized returns for its clients. Realizing that winning the case is only part of the battle, Collection Lawyers has developed effective and unique strategies for California collection litigation. Collection Lawyers scrutinizes collection recovery at all stages of the collection litigation process, including pre-suit, suit, and post-judgment enforcement and execution. Collection Lawyers has extensive experience in commercial, retail, and student loan collection litigation, creditor bankruptcy matters, and in defense of suits filed against creditors.*

### I. California debt collection laws

**a. Statute of limitations** for open accounts, written contracts, domestic and foreign judgments:•

Contract (in writing), 4 years [Code of Civil Procedure § 337\(1\)](#)

• Contract (oral or not in writing), 2 years [Code of Civil Procedure § 339\(1\)](#)

• Open Book Account, 4 years [Code of Civil Procedure §§ 337\(2\), 337a](#)

• Account Stated, 4 years [Code of Civil Procedure § 337\(2\)](#)

• Other Common Counts, either 2 or 4 years depending upon whether based upon written contract or not

**b. Bad check laws and civil penalties** Dishonored checks, 4 years [Civil Code §1719](#): 3 times the amount of the check, with a minimum of \$100 and a maximum of \$1,500.

**c. General garnishment exemptions** (wage and property)

Pursuant to [Code of Civil Procedure §706.050](#), California exemptions for wage garnishments generally track exemptions available under [Federal law](#) (25% of income) As of January 1, 2013, the exemptions are 25% of a wage earner's net income. In addition, there are other exemptions including SSI, retirement and disability plans.

### II. Debt Collection licensing, bonding and other regulations

As of June 30, 1992, the California Department of Consumer Affairs no longer has jurisdiction over the collection agency industry, due to a sunset provision in the Collection Agency Act. However, local, state

and Federal officials and agencies still have jurisdiction to enjoin and prosecute violations of State or Federal law. The [California State Attorney General](#) and the [California Department of Consumer Affairs](#) are some of the more active California state agencies.

The [Bureau of Consumer Financial Protection](#) (CFPB), created by the Dodd-Frank Act, has a risk-based program to supervise certain nondepository covered persons and companies for compliance with Federal consumer financial laws.

The CFPB is looking into debt collection practices and has gone on record stating, "We take seriously any reports that debt is being bought or sold for collection without adequate documentation that money is owed at all or in what amount." Therefore, collection agencies and collection attorneys are seeing a larger number of consumer claims accompanied by substantially more backup.

The scope of the CFPB is broad, and over time it will have a significant impact upon the consumer credit industry, including collection agencies, credit-reporting companies, law firms, and creditors. As of January 2, 2013, companies with only \$10 million in gross receipts from consumer debt collections are subject to their scrutiny.

Attorneys who are not residents nor employed in California, or regularly engaged in substantial business, professional, or other activities in the State of California may apply to appear [pro hac vice](#).

### **III. California collection and litigation**

#### **a. Commercial collections**

Commercial collections can be subject to the [California version of the UCC](#). In Commercial and business unsecured collections, Prejudgment Writs of Attachment are available.

[Code of Civil procedure §483.010](#), *et seq.*

A writ of attachment is a very effective tool for creditors. With increasing backlogs in Court calendars across the State of California, a prejudgment writ of attachment allows a creditor to obtain liens upon the debtor's assets early in the litigation.

- The matter must be based upon a contract.
- The amount must be readily ascertainable.
- The plaintiff must establish the probable validity of the claim (more likely than not), and if the defendant is an individual, the claim must arise out of their primary business, trade or profession.
- A statutory \$10,000 bond is required. [Code of Civil Procedure §489.220\(a\)](#)

The advantages to obtaining a writ of attachment are clear: A writ of attachment allows a lien to be placed upon the debtor's property, and allows the Sheriff or a private process server to levy upon bank accounts, account receivables and all other assets against which a judgment lien could be levied.

In addition, a subsequent judgment will "relate back" to the date of the attachment lien, even if other creditors obtain judgment liens after the attachment and before the creditor obtains judgment. A prejudgment writ of attachment is not available for consumer cases.

#### **b. Consumer collections**

Consumer collections in California are subject to both the Federal [FDCPA](#) and California [Rosenthal Fair Debt Collection Practices Act](#)

#### **c. Secure versus Unsecured matters**

*Secured collections:* Pretrial claim and delivery is available to recover specific tangible personal property. [Code of Civil Procedure §512.010](#), *et seq.* It requires a bond equal to twice the value of the collateral.

*Foreclosures:* most California foreclosures are nonjudicial with no court involvement.

[Code of Civil Procedure §580d](#) "precludes a judgment for any loan balance left unpaid after the lender's nonjudicial foreclosure under a power of sale in a deed of trust... on real property."

However, "section 580d does not prevent a [junior creditor](#) from obtaining a money judgment for the full amount due on the underlying junior debt obligation when the senior lienholder conducts a nonjudicial foreclosure that extinguishes the junior lienholder's security interest."

### **IV. Filing Fees**

Initial Court costs vary according to principal balance and county:

- Superior Court Limited Jurisdiction up to \$10,000: \$225 - \$240
- Superior Court Limited Jurisdiction \$10,000-\$24,999.99: \$370-\$395
- Superior Court Unlimited Jurisdiction \$25,000 and up: \$435 - \$450

### **V. Service of Process and other costs**

**a. Sheriff's fees:** Service of process: Approximately \$35 for County Sheriffs. Some County Sheriffs no longer serve civil process and use of private process servers is required; use of Sheriffs for service is generally not recommended due to severe backlogs, even in the counties where the Sheriff still serves civil process.

**b. Process server fees:** Approximately \$75 - \$125 (can be higher in remote portions of the state).

**c. Garnishment fees:**

Writ of Execution \$25, plus to Sheriff fees: Bank levy \$35, Wage Garnishment \$30; process server fees additional if served by private process server.

**d. Debtor exams**

Varies by county: Approximately \$30-60, plus cost of personal service upon the debtor.

**VI. Post-Judgment Enforcement and Execution**

*Judgments* are good for ten (10) years, and can be renewed any time after five (5) years. [[Code of Civil Procedure §683.110](#)] It is recommended, especially in larger cases, that the renewal of judgment be undertaken shortly after five (5) years, in order to maximize accruing interest. A renewal of judgment must be served in the same manner as an initial complaint. If a judgment includes an award of attorney's fees, post-judgment attorney's fees incurred in enforcing the judgment may be added to the amount owing on the judgment. [[Code of Civil Procedure, §685.040](#)]

*Interest* accrues at 10% per annum [[Code of Civil Procedure, §685.010](#)], and creditors can recover allowable fees and costs incurred within the prior two years.

*Post-judgment liens:* An Abstract of Judgment is issued by the Clerk of the Court [[Code of Civil Procedure §674](#)] (\$25), and recorded with County Recorders (\$23 - \$48). An Abstract places a lien upon any real property in the particular county where recorded in the name of the judgment debtor. Therefore, an Abstract should be recorded in larger cases in each county in which the creditor believes the judgment debtor may have an ownership interest in real property. Abstracts are good for ten years, and may be renewed.

A [Personal Property Judgment Lien](#) (PPJL) is recorded with the Secretary of State (\$10). It is good for only five years, and may be renewed by filing a continuation statement in the last six months before the lien expires [[Code of Civil Procedure §697.510](#)].

Judgment Creditors can have *Writs of Execution* issued by the Clerk of the Court: (\$25)

*Bank levies:* After the Clerk of the Court issues a Writ of Execution (\$25), it may be served upon financial institutions. The Writ of Execution may be served upon the financial institution by a Sheriff or private process server. Some County Sheriffs no longer serve civil process and use of private process servers is

required. Even if a process server is used, the Sheriff fee (\$35) must be paid. Therefore, the judgment creditor has to pay for issuance of the Writ of Execution (\$25), approximately \$35 to the Sheriff, and possibly pay for a private process server to effect service of a bank levy.

Pursuant to [Assembly Bill 2364](#), as of January 1, 2013, each bank in California is designating a single location for all bank levies, pursuant to Code of Civil Procedure §684.115. This previously was voluntary, and few banks provided a central location. This allows creditors with a single Writ of Execution to levy upon all of a debtor's bank accounts in their name located anywhere in the State of California.

*Garnishments:* Wage garnishments allowed (25% of income, subject to exemptions)

After issuance of a Writ of Execution by the Court (\$25), it may be served upon the debtor's employer by Sheriff or private process server. Some County Sheriffs no longer serve civil process and use of private process servers is required. Even if a process server is used, the Sheriff's fee (\$30) must be paid. Therefore, the judgment creditor has to pay for issuance of the Writ of Execution (\$25), approximately \$30 to the Sheriff, and possibly pay for a private process server to effect service of a bank levy.

The employer is required to provide a written return of Garnishee within fifteen (15) days after service. If the employer fails to pay funds over to the County Sheriff, they are liable to the creditor for all amounts that should have been withheld, which can be enforced in a separate action.

Other Post-judgment Remedies:

- Judgment Debtor Examinations [[Code of Civil Procedure §708.110](#)]
- Post-Judgment Interrogatories [[Code of Civil Procedure §708.020](#)]
- Post-Judgment Production of Documents and ESI [[Code of Civil Procedure §708.030](#)]
- Till Taps & Keepers [[Code of Civil Procedure §700.070](#)]
- Receivers [[Code of Civil Procedure §708.620](#)]
- Assignment Orders After a Noticed Motion. This can be used to reach income from self-employed debtors and debtors who receive intermittent payments from specified third parties)

#### **VII. Recent Activity by the State's Attorney General related to debt collection:**

Senate Bill 890 passed the California Senate, but died in committee in the California Assembly.

Spearheaded by Attorney General Kamala Harris, SB-890 would have created the Fair Debt Buyers Practices Act, which would have regulated the activities of a person or entity that bought consumer debt and the circumstances in which the person could bring suit. It would have, *inter alia*, imposed substantial new requirements regarding the requisite documentation for purchased debts.

#### **VIII. Significant case law and some additional statutes related to debt collection:**

In June, 2012, the California Supreme Court affirmed partial National Bank Act preemption over California state law in [MBNA v Parks](#)

The 2009 [Electronic Discovery Act](#) constitutes the most comprehensive change to discovery law in the State of California since the 1980s. The legislation provides detailed procedures for courts and litigants to use in addressing discovery of Electronically Stored Information (ESI). Since the majority of information is ESI, it is probable that the incidence of pretrial and post-judgment discovery of ESI will increase in the future. Also, see [Sedona Conference publications](#).

Use of autodialers to contact persons in the State of California must be evaluated for compliance with the TCPA [\[47 USC § 227\]](#). (Although the TCPA is a Federal statute, enforcement may be brought in California State Courts.)

#### **IX. Ethics opinions and other rules related to debt collection:**

##### [California Rules of Professional Conduct](#)

State Bar of California Standing Committee on Professional Responsibility and Conduct [Formal Opinion No. 2007-172](#) Attorneys may accept fees by credit card.

An article from the [State Bar of California Ethics Hotline](#) concluded that attorneys cannot "friend" debtors to find out personal information.

#### **X. Where do we go from here?**

The State of California should not be treated as a single economy in any overall analysis. The difference between the richest and the poorest counties is substantial. According to *The New York Times*, there is a substantial [economic divide in California](#).

According to the [UCLA Anderson Economic Forecast](#), the outlook is for growth in 2013 above 2%, but 2014 "could very well put the run rate of GDP growth in excess of 3%, as economic activity is buoyed by strength in residential and nonresidential construction and a rebound in export growth."

*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.*