

Colorado Debt Collection Laws

Submitted by David Silverman and Anne-Marie Vos, Silverman/Borenstein PLLC

www.sblawpllc.com

Published by The National List of Attorneys

www.nationallist.com

Mr. Silverman graduated Cum Laude with a B.A. in Psychology from California State University, Northridge, in 1978, and he subsequently earned his Juris Doctor from Loyola Law School, Los Angeles, CA, in 1982. From 1982 to 1983, he was an Associate Attorney for a Los Angeles Creditor's Rights law firm, Lederer & Kotler. He opened The Silverman Law Firm in December, 1983, focusing on commercial litigation, retail and commercial collections, business counseling, real estate law and conflict resolution. Mr. Silverman merged with The law Offices of Irvin Borenstein to create Silverman/Borenstein PLLC in 2010. Mr. Silverman is the current, founding President of the Colorado Creditors Rights Association (CCBA), has been an active member of the National Association of Retail Collection Attorneys (NARCA) since 1995 and served two terms as a member of its Board of Directors. He is a member of the Debt Buyers Association and the National Association of Subrogation Professionals.

Ms. Vos graduated from Georgetown University with a B.A. in History in 2005 and earned her Juris Doctor in 2009 from Notre Dame Law School. She has practiced law in Colorado since 2009 and joined Silverman/Borenstein, PLLC in the spring of 2012.

Introduction

This paper is intended to present a general overview of Colorado's Debt Collection Laws and judicial process in the context of primarily consumer collections. It will cover Colorado's state debt collection laws, licensing requirements, Colorado's statute of limitations, and Colorado's bad check laws. It will then look at the actual practice of debt collection in Colorado utilizing the judicial process and practices related to consumer collections, commercial collections, secured versus unsecured matters, post-judgment remedies, and relevant Colorado ethics opinions. It is not intended to be the final and authoritative voice on the matter. Always check for updated case and state laws, and seek advice from qualified, competent counsel before proceeding.

The Colorado Fair Debt Collection Practices Act

This section discusses the Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. 1592 and the Colorado Fair Debt Collection Practices Act (CFDCPA) [C.R.S. §12-14-101](#). It highlights differences between the two and stresses where a debt collector must be wary.

The CFDCPA governs collection law in Colorado. The CFDCPA is loosely based upon the FDCPA. However, the CFDCPA defines debt differently from the FDCPA and thus governs more collection actions than the FDCPA does. The CFDCPA broadly defines "debt" as 'any obligation or alleged obligation of a

consumer to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment. In Colorado, the Attorney General reads the CFDCPA's definition of 'debt' to include many types of transactions not normally considered debt. It includes

- 1) tax liabilities; see [Colo. Collection Agency Board, Admin. Opinion Letter, May 11, 1988](#);
- 2) child support obligations, see [Colo. Collection Agency Board, Admin. Opinion Letter, July 9, 1993](#); accord *Supportkids v. Udis*, Denver Dist. Court, Case No. 03CV5492 (Denver Dist. Ct. Jan 6, 2004);
- 3) civil penalties under a civil shoplifting statute, see [Colo. Collection Agency Board, Admin. Opinion Letter, Aug. 30, 1994](#); and
- 4) insurance subrogation claims, see [Colo. Collection Agency Board, Admin. Opinion Letter, July 14, 2004](#).

The Attorney General's Office admits that at least one court held an insurance subrogation claim is not a debt for FDCPA purposes. See [Hawthorne v. Mac Adjustment, Inc.](#), 140 F.3d 1367 (11th Cir. 1998) , and the [FTC staff commentary; FTC Staff Letter to Lawrence A. Dunn, Aug. 17, 1992](#). Differences such as these make it imperative that a lawyer practicing debt collection law in Colorado is familiar with both state and federal laws.

Who Needs to Be Licensed?

The CFDCPA requires agencies to obtain a license prior to soliciting clients or collecting debts in Colorado. The CFDCPA applies to consumer debt collection by third party collection agencies that collect for others and to third party debt buyers, if the account was in default when purchased or obtained. Agencies limited to collecting commercial, business, investment and agricultural debts are not subject to the CFDCPA.

Attorneys engaged in collections do not need a collection attorney license, but must comply with the substantive consumer protection provisions. Out of state collection agencies that collect for clients with a place of business in Colorado, or are third party debt buyers, must be licensed in Colorado and are subject to the CFDCPA. An attorney, whether licensed as a lawyer in Colorado or not, who regularly engages in the collection of debts incurred within Colorado is also subject to the CFDCPA, but does not have to be separately licensed. "Regularly" means twenty to twenty-five cases per year.

How Do I Get a License?

The CFDCPA licensing requirement involves several steps and fees. Only one license is required regardless of the number of branch offices a collection agency maintains. To obtain a license, an agency needs to complete the collection agency license application, pay the \$300.00 investigation fee, complete and submit the Collection Manager application, provide a financial statement for the agency, have a Colorado office address, provide approved certificates of good standing from the Colorado Secretary of State, provide trust account information (debt and judgment buyers are exempt), post a bond of at least \$20,000.00, list the currently employed debt collectors and solicitors, list existing branch offices, provide a sample of the validation/first notice required by the CFDCPA (containing Colorado web site reference, right to cease communication, and federal consumer rights information), and pay \$1,000.00 initial license once

the application is complete.

Licenses must be renewed every year by July 1st. The renewal fee is \$500.00. Every licensee must maintain an office in Colorado that is open to public during normal business hours, where payments may be made and which has access to consumer payment records and client account records. Each collection agency must have an approved collections manager to supervise debt collectors and be responsible for compliance with Colorado's collection laws. To be approved, a collections manager must submit certain information to the licensing agency. The collection agency license application may be found online at <http://www.coloradoattorneygeneral.gov>.

Why Is License Renewal Critical?

Once licensed, vigilance must be maintained to ensure the license remains in good standing with the Secretary of State. The loss of good standing requires immediate cessation of all business activities, including litigation, regardless of which stage that litigation may be in. The Attorney General will likely issue an immediate cease and desist letter. Not only must a collection agency be properly licensed at the beginning of litigation, it must be properly licensed throughout the entirety of the litigation, or risk the case being dismissed. In [SMLL, LLC v. Peak Nat'l Bank, 111 P.3d 563 \(Colo. App. 2005\)](#), the creditor failed to file its annual report, and thus was placed on suspension by the Secretary of State. The case was dismissed without prejudice as the Plaintiff no longer had standing. Once the creditor was reinstated, it brought the lawsuit again. This time the case was dismissed due to the statute of limitations having run. *Id.* at 565.

Colorado's Statute of Limitations

Colorado's statute of limitations for debt collection is generally six years under [C.R.S. § 13-80-103.5](#). The statute of limitations on medical debt had been the subject of appellate litigation for several years thereby influencing the possibility of affecting the statute for consumer accounts. The Colorado Supreme Court finally settled the matter. In [Portercare Adventist Health System v. Lego, 286 P.3d 525 \(Colo. 2012\)](#), the Colorado Supreme Court reversed a decision of the Colorado Court of Appeals which held that medical debt had a statute of limitation of three years. The Court of Appeals had held that [C.R.S. § 13-80-103.5\(1\)\(a\)](#) only applied in the hospital debt context where an agreement specifically set forth an amount owed or a formula for calculating such an amount. The Colorado Supreme Court reversed, holding that [C.R.S. § 13-80-103.5](#) applies to all liquidated debt, including the medical debt before the Court. Therefore, the majority of Colorado debt collection, open accounts, written contracts, and medical debts, fall under [C.R.S. § 13-80-103.5](#), with a statute of limitations of six years. The statute of limitations is also six years for auto and mortgage deficiencies. The same is true for replevin and foreclosure under [C.R.S. § 13-80-103.5](#). However, insurance subrogation for auto negligence falls under [C.R.S. § 13-80-101](#) with a statute of limitations of three years.

Colorado's Bad Check Laws

In addition to its standard debt collection practices, Colorado has a bad check law at [C.R.S. § 13-21-109](#). Any person who obtains money, merchandise, property or thing of value, or makes any payment on any obligation, other than an obligation on a consumer credit transaction as defined in C.R.S. § 5-1-301, by means of making any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation which is not paid upon its presentment is liable to the holder of such check, draft, or order or any assignee for collection for one of the following amounts, at the option of the holder or assignee, either the face amount plus actual damages or face amount plus a posted or contractual charge under \$20. However, if the check, draft, or order has been assigned for collection, then the additional amount may be up to twenty percent of the face amount of the check, draft, or order but not less than twenty dollars. If notice of nonpayment on presentment of the check, draft, or order has been given and the total amount due as set forth in the notice has not been paid within fifteen days after such notice is given, the person shall be liable to the holder or assignee for collection for three times the face amount of the check but not less than one hundred dollars and, with regard to a paycheck, actual damages caused by the nonpayment, including associated late fees. The main take away is that a consumer may be liable for up to three times the face value of the check if the required notice is provided.

The Judicial Process - Overview

The judicial process in Colorado is simple and straightforward. A creditor should to ensure competent counsel is in place, an attorney that offers professional representation who has a thorough understanding of the client's judicial rights and remedies and how they can best be achieved in the context of Colorado's judicial system. Prior to entering that system however, both the FDCPA and the CFDCPA require certain notice(s) be provided. A statutorily compliant demand letter must be sent to which the consumer has thirty days to respond to register a dispute and/or seek validation. If the consumer voices a dispute or requests validation orally rather than in writing, the FDCPA/CFDCPA does not require the collector to provide the validation. However, it is the best practice to provide proper debt validation prior to initiating legal action regardless of whether such request is made in writing or orally within thirty days of the consumer receiving the demand letter. A good rule of thumb is to wait 35 days from the date of initial demand.

Service of Process

Once the demand and validation phase is complete, suit may be initiated. Colorado is a "serve-first" state. In most states, the first step is filing the case with the court and then serving the defendant. In Colorado, the first step is to serve the defendant and then file the case with the court along with an affidavit of such service. It is permissible to file first and then serve the Summons and Complaint and this procedure is utilized in the event the case is running up against the statute of limitations. The "serve first" alternative is an economically advantageous process because it eliminates wasteful case filing fees for those accounts that

are unable to be served. Private process server fees range from \$35.00 to \$75.00, depending on many factors, such as distance and difficulty of service. Sheriff fees vary depending upon the particular Sheriff's department and location and range from \$35.00 - \$85.00. If a sheriff has to serve out-of-state, the fees range from \$85.00 - \$150.00. There are a variety of reasons a sheriff may be preferred over a private process serving company, such as geographic location or the potential of danger. Service by publication is available but is very expensive and rarely worth the cost.

Filing the Summons and Complaint

The applicable portion of Colorado's court system is divided into two, monetary jurisdictions. County Court's monetary jurisdiction extends up to \$15,000.00 inclusive of principal and interest at the time of entry of judgment. If judgment is sought in excess of \$15,000.00 inclusive of principal and interest, the case must be filed in District Court.

In County Court, the defendant must be served with a Summons, Complaint, and a blank copy of the statutorily mandated form to file his "Answer" to that Complaint. Counsel, including the issuance of the Summons, generates all these documents. The Summons does not need to be issued by the court or the court clerk. This is one feature that streamlines the Colorado judicial system. The Summons, Complaint etc. must be filed within fourteen days of the service of the Summons on the defendant and not less than seven days in advance of the "Return Date." The Return Date is the first appearance date by which the defendant is required to file an Answer or risk having a default judgment entered against him. The Return Date must be within sixty days of issuance of the Summons. It is also an opportunity for the defendant and plaintiff's counsel to discuss the issues towards attaining resolution. If no settlement is reached, plaintiff's counsel will seek entry of default judgment unless the defendant files an Answer. Default judgment can also be sought against all defendants who fail to appear at the Return Date unless they have filed an Answer prior to the Return Date.

Each county determines whether an attorney is required to appear at the Return Date. Currently, there are ten counties that require plaintiff's counsel to appear on a scheduled Return Date: Adams, Arapahoe, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Pueblo, and Weld. The other counties do not require such personal appearances and allow attorneys to file a Motion for Default Judgment if the defendant fails to file an Answer.

The rules in District Court are different, but not materially. District Court also maintains a "serve-first" procedure but there are no Return Dates. Once served, the defendant has twenty-one days after service to file a response. If no response is filed, counsel may file a motion for entry of default judgment.

Electronic filing ("E-Filing") is mandatory statewide. E-filing is significantly easier and more efficient than

manual or mail filing systems. Every court in Colorado will be using the ICCES E-Filing system as of January 1, 2013, with the exception of Denver County, which utilizes Lexis-Nexis.

Court Costs/Filing Fees

Court filing fees in Colorado varies between County and District Court. In County Court, the original filing fee is \$80.00, a jury demand is \$74.00 (optional), and registering a foreign judgment is \$182.00. In District Court, the initial filing is \$182.00, a jury demand is \$145.00 (optional), and registering a foreign judgment is \$182.00. Post judgment court costs need to be taken into consideration as well. Issuing and docketing an execution is \$31.00, preparing and issuing Transcript of Judgment is \$18.00, a writ of garnishment is \$31.00, and a writ of attachment is \$44.00. In County Court, there is a one time E-Filing cost of \$6.85 and in District Court the E-Filing cost is \$6.00 for each document filed.

Default Judgment

If the defendant fails to appear, default judgment may be entered. The documentation necessary to secure a default judgment is an affidavit signed under oath by the client along with a billing statement evidencing the amount sought for entry of judgment.

Active Litigation

While most defendants fail to appear and a default judgment is entered, some defendants move forward with the litigation by filing an Answer. Once an Answer is filed, an attorney has several options on how to proceed. If the Answer fails to state a legal defense, Plaintiff can file a Motion for Judgment on the Pleadings. If the material facts are not in dispute, a Motion for Summary Judgment may be appropriate. In Colorado, the case typically does not jump straight from the Answer being filed to a trial. Courts try to give the parties another opportunity to meet face to face and try to resolve the issues. This can be done at Pre-Trial Conferences or Status Conferences. These are both court ordered and if the defendant fails to appear, the judge may grant default judgment at that time.

There is no discovery allowed in either County or District Court absent Order of Court upon good cause shown. This rule streamlines the process and reduces its costs significantly. Several counties in Colorado require mediation before proceeding to trial, regardless of the amount in dispute. Other counties strongly suggest mediation, and judges may order it in particular cases. Some mediation occurs in court, some by phone and some in counsel's office. If all of these measures have failed to bring about resolution, the parties proceed to trial. It is not uncommon for the parties to reach a resolution before trial or for default judgment to be entered due to a defendant's failure to appear at a Pre Trial Conference or mediation.

Trial

Generally, trial dates are set either by phone or at the Pre Trial Conference where both parties are present.

Witnesses may appear and testify by phone. Some courts even allow counsel to appear and conduct the trial by phone.

Secured Versus Unsecured Debts

All debts are either secured or unsecured. Secured debts have some collateral which has been pledged to secure repayment of the debt. If the defendant defaults in meeting obligations required by the loan, the creditor may obtain possession of the collateral and sell it so the proceeds can be applied to pay down the debt. Once the collateral is sold any remaining debt, i.e. the deficiency balance becomes unsecured. Collateral may be either real or personal property. A creditor may get title to the real property through a public trustee foreclosure or a judicial foreclosure. Colorado has a unique public trustee foreclosure process which is almost always used when debts are secured by real property. A creditor may also conduct a foreclosure through the courts using a judicial foreclosure. Judicial foreclosures are generally used to correct errors in legal descriptions or to obtain money judgments while getting title to the property. In Colorado, consumers are liable for any remaining debt owed after the collateral has been sold whether the collateral is real or personal property.

Personal property is obtained through a pre-judgment replevin action or post judgment enforcement levy and attachment. Exemption laws also apply to both real and personal property. Exemption amounts should be considered prior to deciding to foreclose or seize property to make certain the collateral has sufficient value to provide a financial benefit to the creditor after the costs of obtaining and selling the property are paid.

To be secured, the creditor must have a written enforceable interest in the collateral, such as a recorded deed of trust for real property, a lien on a vehicle title, or a recorded UCC statement. Unperfected security interests are not enforceable. The collateral must be identified with particularity so as to be identifiable. Broad descriptions such as "all assets" will not meet the identification standard. Having a lawyer's help in preparing loan documents and security interests is the most effective way to have an enforceable secured interest. Colorado is a "first in time" recording state meaning the creditor who records its secured interest first takes priority over later filed secured interests.

Any debt that does not have an enforceable security interest in some collateral is unsecured. Unsecured debts have no source for repayment other than the defendant. Aggressive and continuing post judgment collection action is the most effective remedy to collect an unsecured debt.

Post-Judgment Remedies

Once entered, a county court judgment is good for six years while a district court judgment is good for twenty years. Judgments may be revived for six or twenty years respectively.

After judgment enters, Colorado law provides a variety of post-judgment remedies. In all collection cases in Colorado, a judgment creditor may garnish the consumer's wages and bank account, send out interrogatories, and record the judgment with the county recorder's office to secure a lien on real property.

Wage Garnishment

A judgment creditor may garnish the defendant's bank account and wages. The wage garnishment process starts with filing a form with the court clerk who then issues a garnishment to be served on the defendant's employer. The employer serves a copy on the defendant, who has ten days to file a claim of exemption. Typically a wage garnishment takes approximately 25% of the defendant's net disposable income, if he meets the minimum threshold of income. The monthly minimum threshold is measured at 130 x minimum hourly wage (as set by the U.S. government). The money may be paid directly to the attorney's office. A wage garnishment is only good for six months. After six months, the judgment creditor goes to the back of the line of any other creditors whose wage garnishment may be pending with the same employer. The same judgment creditor may serve a successive wage garnishment, which takes effect immediately upon the expiration of the prior garnishment if there are no other judgment creditors with wage garnishments then pending.

Garnishments Against the Self Employed

Self-employed debtors can be garnished. One must be prepared to respond to a claim of exemption and demonstrate to the court that "wages" include all forms of compensation, including payments made to oneself in the course and scope of self-employment.

Bank Garnishment

Bank garnishments only attach the money the defendant has in the account at the time the account is levied. Certain days are better than others to serve the garnishment. The goal is to levy on payday, before rent and other monthly expenses are paid from the account. The 1st, 15th or 30th of the month, or Fridays are the best days to serve bank garnishments to increase the chances of a successful levy. The first step is serving any branch of the bank. The defendant must also be served with notice of the bank garnishment, i.e. a Notice of Levy. Again, the defendant has ten days to file a claim of exemption. Exemptions to bank garnishments in Colorado include the federal exemptions of Social Security benefits, court ordered child support, public and private disability benefits, Veterans' Affairs benefits, federal railroad retirement benefits, group insurance benefits, worker's compensation benefits, civil service retirement system benefits and federal employee retirement system benefits, to name a few. Courts in Colorado will set a hearing if a claim of exemption has been filed. If there is no claim of exemption, a proposed Order is filed with the court, ordering the bank to release the funds to the plaintiff. Federal law [31 C.F.R. 212](#), states that banks have a duty to protect certain federal benefits from garnishment. The burden shifts from the defendant to the bank

to protect the defendant's exempt funds. The bank looks back sixty days to determine whether any federally protected funds have been directly deposited in the defendant's bank account. If the amount of the protected funds is equal to or greater than the sum currently in the bank account, the bank considers the money exempt and reports no non-exempt funds in the account. Claims of exemption must be served on the Plaintiff's counsel and thereby provide an opportunity to reach a resolution with the defendant with respect to the entire judgment in the context of negotiating the claim of exemption.

Drivers License Suspension

A judgment creditor can suspend the defendant's driver's license if the judgment arose from an auto accident subrogation claim. [C.R.S. § 42-7-301](#) directs the driver's license to be suspended upon receipt of an affidavit of the creditor that the defendant defaulted on any payment obligation under the contract, notice was sent of the default via certified mail, and the default was not cured within fifteen days after mailing. This can be a very powerful judgment collection tool.

Debtor Of A Debtor

An often-overlooked remedy is levying on monies owed to a debtor. This is an especially powerful tool in the context of commercial collections. It is possible to enforce a judgment by collecting the accounts receivables of a business before those receivables ever get to the business. In other words, one can levy on a business' customers. Oftentimes, just the threat of this action will force payment.

Interrogatories

In County Court, a judgment creditor may serve on the defendant Interrogatories, which the defendant must answer and file with the court and serve on the judgment creditor within twenty-one days of service. The Interrogatories are questions about the defendant's finances, banking, assets, and employment. The questions are designed to help the plaintiff find the defendant's money or other non exempt assets. In County Court, the plaintiff cannot subpoena documents or witnesses. However, if the defendant fails to answer the Interrogatories, the judgment creditor may seek the issuance of an Order To Show Cause at which time the judgment debtor must demonstrate why he should not be held in contempt for failure to answer the Interrogatories.

In District Court, a formal asset examination may be done whereby the defendant is subpoenaed into court to not only answer either written interrogatories or submit to an oral examination but must also produce any and all financial documentation specified in the subpoena, like bank statements, payment stubs, car payments, etc. If the defendant fails to appear or produce all of the subpoenaed documents, the creditor may make a written or oral Motion to Show Cause why the defendant should not be held in contempt of court. If the consumer fails to do either, the court can hold him in contempt. In a worst case scenario, this procedure can also lead to the issuing an arrest warrant for the defendant.

Real Property Lien

Once judgment has entered against the consumer, [C.R.S. § 13-56-101](#) allows the plaintiff to file a transcript of the judgment with the county where the real estate is located. A real property lien is thereby created and remains a lien on all property in the county for the life of the judgment.

Privacy Considerations

In practice, collecting on a judgment can involve a combination of the above remedies to reach a satisfactory outcome. Throughout the entire process, great care must be taken protect the consumer's confidential information and following the steps required by both the FDCPA and the CFDCPA. Failure to do so could result in high fines for a collection agency and disciplinary actions for attorneys.

Ethics Opinions

As of this writing, no lawyer has been publicly disciplined for CFDCPA violations. However, lawyers have been disciplined for actions arising out of debt collections. In [People v. Standley, No. 08PDJ1009, 2008 Colo. Discipl. LEXIS 66 \(Colo. PDJ Dec. 8, 2008\)](#), Standley was suspended for 60 days and placed on two years probation for his failure to oversee employees performing collection work.

Commercial Litigation

Commercial litigation follows the same basic procedures as consumer litigation with some important distinctions having potentially large financial impacts. Of course the FDCPA/CFDCPA does not apply so there is no required demand letter or validation process to delay litigation. However, once litigation is filed, commercial accounts find themselves at the center of the discovery and motion practices which traditionally cause potential delays and increased costs of litigation. Entirely different strategies are necessary when litigating commercial accounts.

Conclusion

This paper outlined the CFDCPA and the licensing requirements for a collection agency, third-party debt buyers, and attorneys. It covered Colorado's statute of limitations, generally six years for debt collections, with an exception for subrogation of an auto accident, which is three years. The above also summarized Colorado's bad check laws. It then looked at the actual practice of debt collection in Colorado via step by step practices related to consumer collections, commercial collections, secured versus unsecured matters, and post-judgment collection remedies. It ended with an overview of relevant Colorado ethics opinions. If this all sounds overwhelming to you, consider hiring somebody who deals with the CFDCPA and Colorado Collection Law on a daily basis. It is dangerous to venture into a field with so many potential landmines without a knowledgeable guide.

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.

© The National List of Attorneys, 1/1/2013