

## Delaware Debt Collection Laws

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*CICONTE WASSERMAN SCERBA & KERRICK, LLC, is Delaware's largest collection law firm, with over thirty years of experience in commercial and retail collections. Its collection attorneys litigate cases at every court level throughout the State. Ciconte, Wasserman, Scerba & Kerrick's collection team includes attorneys, paralegals, collectors, skip tracers and other support staff. Special process servers and private investigators are also utilized in order to maximize the probability of recovery.*

*Ciconte, Wasserman, Scerba & Kerrick are active and longstanding members in the Commercial Law League of America (CLLA) and the National Association of Retail Collection Attorneys (NARCA), and the firm is currently listed on a number of commercial law lists, including The National List.*

*The major areas of the firm's practice include retail and commercial collections, subrogation, representing creditors in bankruptcy proceedings, replevins, mechanic's liens, equipment leasing, deficiency balance claims, insurance claims, transportation claims and medical claims.*

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### I. Delaware Debt Collection Laws

#### 1. Statute of Limitations

Contract 3 years

The statute of limitations runs from "the date the debt accrues."

Mutual Running Account

The statute of limitations is not triggered if the account is open and current.

Promissory Note 6 years

Contract Signed Under Seal 20 years

#### 2. Judgment Execution Options

Wage Garnishment

Debtor Exams – Oral Deposition and Deposition Duces Tecum

Levy of Personal Property

Lien Real Estate

Foreclosure

License Suspension available for Automobile Subrogation Judgments

\*No Bank Levies

However, there is authority to argue that bank levies are permitted on judgments obtained in other jurisdictions and subsequently transferred to Delaware.

### 3. Judgments

Judgments are presumed valid for 20 years

Judgment Liens on Real Property expire 10 years after entry

Judgment Liens can be:

- a) renewed prior to the 10 year lien expiration or
- b) revived after the expiration of 10 years unless the judgment debtor shows good cause as to why the lien should not be renewed.

## II. Delaware Court Structure

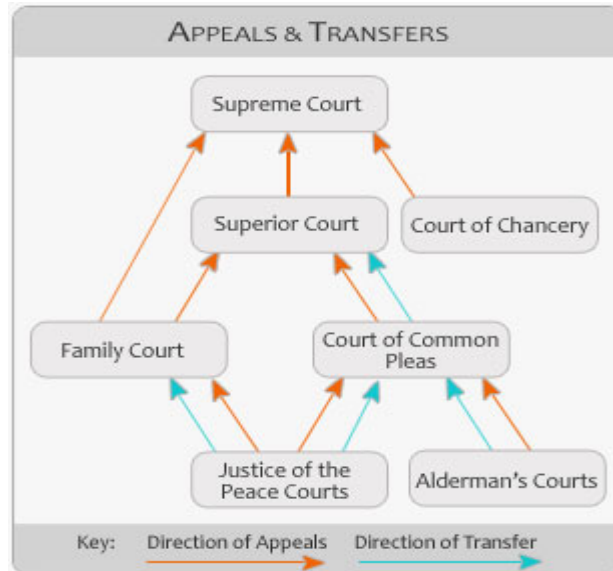
The [Justice of the Peace Court](#), the initial entry level into the court system for most citizens, has jurisdiction over civil cases in which the disputed amount is less than \$15,000.

The [Court of Common Pleas](#) has jurisdiction in civil cases where the amount in controversy, exclusive of interest, does not exceed \$50,000.

The [Superior Court](#), the State's court of general jurisdiction, has original jurisdiction over civil cases, except equity cases. In civil matters, the Court's authority to award damages is not subject to a monetary maximum. The Superior Court also serves as an intermediate appellate court by hearing appeals on the record from the Court of Common Pleas. Appeals from the Superior Court may be taken to the Supreme Court.

The [Court of Chancery](#) has jurisdiction to hear all matters relating to equity. The litigation in this tribunal deals largely with corporate issues, trusts, estates, other fiduciary matters, disputes involving the purchase of land and questions of title to real estate, as well as commercial and contractual matters. The Court of Chancery has a national reputation in the business community and is responsible for developing the case law in Delaware on corporate matters. Appeals from the Court of Chancery may be taken to the Supreme Court.

The [Supreme Court](#) is the State's appellate court that receives direct appeals from the Court of Chancery, the Superior Court, and the Family Court. As administrative head of the courts, the Chief Justice of the Supreme Court, in consultation with the other justices, sets administrative policy for the court system.



### III. Fees and Costs Associated with Civil Actions

#### Superior Court

For a complete list of fees and costs associated with civil actions and post-judgment execution costs, please see the court's website:

<http://courts.delaware.gov/superior/fees.stm>

#### Court of Common Pleas

For a complete list of fees and costs associated with civil actions and post-judgment execution costs, please see the court's website:

[http://courts.delaware.gov/help/proceedings/ccp\\_civil.stm](http://courts.delaware.gov/help/proceedings/ccp_civil.stm)

#### Justice of the Peace Court

For a complete list of fees and costs associated with civil actions and post-judgment execution costs, please see the court's website:

[http://courts.delaware.gov/Help/Proceedings/jp\\_startcivil.stm#fees](http://courts.delaware.gov/Help/Proceedings/jp_startcivil.stm#fees)

### IV. Filing Consumer Debt Actions in Delaware

Ciconte Wasserman Scerba & Kerrick, LLC, files the majority of its cases in the Court of Common Pleas. Recently the Court of Common Pleas issued Administrative Directives regarding consumer debt actions: <http://courts.delaware.gov/CommonPleas/docs/AD2012-2.pdf>.

When filing a consumer debt action, plaintiffs must plead more specific information than was previously required under Delaware's historically accepted "notice pleading" standard. In

order to file suit on a consumer debt, the creditor plaintiff must identify the original creditor in the caption, along with the current owner of the debt and the last four digits of the account underlying the debt, and provide a breakdown of principal, interest, fees and other costs. Further, plaintiffs must complete and substantially comply with the language of the Form 1 Affidavit of Ownership, and attach it to all consumer debt actions. Please see the above link to the Administrative Directive.

Finally, in order to obtain a default judgment in a consumer debt action, plaintiff's representative must complete and sign an Affidavit in Support of Default Judgment that confirms specific details about the underlying account, including, but not limited to: the principal amount owed, interest, attorney fees, and costs. In addition, plaintiff must attach documents evidencing the legal obligation underlying the debt and proof of plaintiff's ownership of the debt.

Ciconte Wasserman Scerba & Kerrick, LLC, has developed policies and procedures to assist its clients with compliance of the Court of Common Pleas Administrative Directive.

**V. Filing Commercial Collection Claims in Delaware**

Ciconte Wasserman Scerba & Kerrick, LLC, files commercial debt actions in the Delaware Court that meet jurisdictional limits of the claim amount and county where the debtor's registered agent resides. Most commercial claims are filed in New Castle County.

**VI. There Are No Licensing, Bonding or Specific Debt Collection Regulations**

**VII. There Are No Recent, Relevant or significant Collection Cases Brought by the Delaware Attorney General**

**VIII. There Are No Recent Debt Collection Ethics Opinions**

**IX. Federal Court Opinion on FDCPA Claims**

[\*Davis v. Lyons Doughty & Velduis, P.A.\*, D.Del., April 17, 2012, \(J. Andrews\)](#); the Court granted defendant's motion to dismiss the debtor's complaint that was filed after receiving a form collection letter sent to the debtor in an effort to collect debt.

**X. Superior Court Opinion on Judgments and Judgment Liens**

[\*Gamles Corp. v. Gibson, Sr., and Gibson, Jr.\*, Del. Supr., 939 A.2d 1269 \(2007\)](#); the Court reaffirmed that Delaware has no statute of limitations on judgments or actions on judgments.

XI. **Court of Common Pleas Opinions on Consumer Debt Claims where the underlying debt had Multiple Assignments and/or Owners**

[Delaware Acceptance Corp. v. Swain, Del. CCP, C.A. No. CPU4-10-006533, Davis, J.](#)

[\(March 9, 2012\)](#); the Court's opinion provides guidance for evidentiary challenges debt

buyers must overcome to demonstrate ownership and other aspects of the underlying debt.

*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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