

## Florida Debt Collection Laws

Submitted by Justin D. Jacobson, Managing Partner, Jacobson, Sobo & Moselle  
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*Established by James Cary Jacobson in 1971, the law firm of Jacobson, Sobo & Moselle practices exclusively in debt collection. In 2000, Robin Moselle merged her firm, Sobo, Levine & Moselle, with the Jacobson firm. Justin D. Jacobson joined the firm in 1997 and became managing partner in 2010. Justin attended Princeton University and the Duke University School of Law. He lives in Plantation with his wife and two daughters.*

*We focus on commercial claims, with a specialization in post-judgment work, including proceedings supplementary, handling cases throughout Florida. We pride ourselves on our efficiency and effectiveness, investing significant time and resources to keep ourselves on the cutting edge of technology.*

Florida has a reputation as being a very debtor-friendly state. While it does permit a variety of significant personal exemptions, they are not absolute. Moreover, it also has a variety of policies that make collection against corporate entities more viable. In some ways, Florida can be difficult terrain compared to its neighbors; in other ways, it can be very productive.

### Substantive Issues

#### Limitations

Florida's limitations period is governed by Fla. Stat. [§95.11](#). The general limitations period is four years. The four-year limitations period also covers such specific actions as statutory liability, fraud, rescission, and sale of goods (without a written contract). There is a five-year limitations period on actions on a written agreement.

Florida has a two-year limitations period on actions for professional malpractice and unpaid wages, and a one-year period on actions for specific performance.

The limitations period may be tolled by absence of the debtor from the state, the debtor's concealment from service, or payment of any liability founded upon a written instrument.

#### Worthless Check/Civil Theft

Florida's worthless check statute is [§68.065](#). It is important to note that the statute does not create an independent cause of action, but rather, it merely provides for additional penalties. The creditor must send a formal demand letter by certified mail, incorporating specific elements as outlined in the statute.

The letter provides the debtor a 30-day window to pay the face amount of the check and a modest service charge. If the debtor fails to pay within that window, the creditor may file suit and demand the face amount of the check, plus the service charge, *plus* treble damages. The statute also provides for an award of attorneys' fees.

In a suit on a worthless check, the creditor may sue both the maker and the drawer, i.e., the signer and the account holder. Generally, an individual who signs on a corporate account will not be liable as the signor. However, if the creditor can establish that a tort was committed, e.g., they signed the check knowing it would be dishonored, they may be held liable.

Florida has a separate statute covering conduct that rises to the level of theft. Such conduct may be sued for under [§772.11](#). The statute first requires the creditor to send a formal demand letter by certified mail and provides a 30-day window to pay treble damages. If the debtor fails to pay, the creditor may file suit and demand treble damages. The statute also provides for an award of attorneys' fees.

### **Garnishment**

Florida permits garnishment of any third-party that is in possession of the debtor's property. This includes both bank and wage garnishment. Florida's garnishment procedure is highly technical and includes short deadlines, and even the slightest oversight can result in automatic dissolution.

Florida has a significant exemption to garnishment, referred to as the "head of family" or "head of household" exemption, provided for by [§222.11](#). The wages of the head of a family are fully exempt from garnishment. A person is head of family if they provide more than half the support for a child or other dependent. As a practical matter, this exemption has been interpreted very broadly. So, while it would obviously include, say, single mothers, it also includes other, less obvious cases. A millionaire, whose wife doesn't work, qualifies, as does a parent whose non-minor child is a full-time college student.

The wages of a head of family remain exempt even when deposited into a bank account. However, the debtor must trace the funds in the account to the wages for 6 months. Additionally, accounts held in the name of a husband and wife are presumed to be held as tenancies by the entirety and exempt from garnishment (unless the judgment is against both). This presumption can be rebutted by appropriate evidence.

### **Practice Issues**

#### **Registration**

Florida has two separate registration protocols—one for *commercial collections* ([§559.541](#), et seq.) and one for *consumer collections* ([§559.55](#), et seq.). In both instances, the debt collection agency must register with the state. The important distinction is that registration of commercial collection agencies includes *lawyers* that earn more than half of their income from collecting commercial claims; *lawyers* are

fully excluded from the consumer collection agency registration requirements. Likewise, some credit grantors, financial institutions, and some other specified entities are exempt. *Commercial* collection agencies must have a surety bond; *consumer* collection agencies do not.

There are no special registration requirements for *debt buyers*.

### **Out-of-State Attorneys**

Practice by out-of-state attorneys is covered by Rule 2.510 of the Florida Rules of Judicial Administration. Such foreign attorneys must file a verified motion to appear in court in a particular case, sometimes referred to as a “motion to appear *pro hac vice*”. The rule includes a form motion, which must disclose pending or prior disciplinary proceedings. Generally such motions are granted. However, a foreign attorney may not appear in more than 3 proceedings within one 365-day period.

### **Costs**

Florida is generally an expensive state in which to file suit. As with many states, they have continued to add new fees and increase existing fees to make up for budgetary shortfalls. All court fees are set by the legislature and apply statewide. Following are general guidelines for costs associated with litigation:

- **Filing Suit:** Vary based on the principal size of the claim. \$15,000+ = \$401.00, \$2,500-\$15,000 = \$300.00, and \$500-\$2,500 = \$175.00.
- **Service:** \$10.00 per defendant per attempt for issuance of the summons. The service fee varies depending on whether or not the sheriff or a private process server is used, approximately \$40.00 per defendant per attempt.
- **Mediation:** In Florida, mediation is mandatory prior to trial. In small claims cases, there is generally no charge. In other cases, the cost is borne equally by the parties. This can often run \$200.00 dollars or more, depending on the length of the mediation.
- **Lien Recording:** Approximately \$33.00.
- **Garnishment:** \$188.00 for the writ, plus an additional fee for service of the writ, as above.
- **Levy:** Varies widely by county and the property being levied on. The fee is generally \$200.00. In addition to the actual fee, the sheriff requires a cost deposit to cover expenses, such as recovery and storage of the property. This can range from several hundred to several thousand dollars.
- **Depositions:** Appearance charges vary widely depending on the court reporter used, occasionally with volume discounts for scheduling multiple depositions at the same time. Approximately \$80. Additional charges for transcripts vary on the length.
- **Reopening:** After a judgment is entered, the clerk “closes” the court file. Thereafter, when the creditor wants to take further action in the case, they must pay a \$50 reopening fee. Depending on how the case proceeds, this fee might be charged multiple times.

## **Miscellaneous**

### **Assigned Debt**

The assignee of a consumer debt may file suit in its own name. Pursuant to [§559.715](#), the assignee must give the debtor written notice of the assignment at least 30 days prior to filing suit.

### **Homestead Exemption**

Florida has a significant homestead exemption to levy. Generally, a debtor's primary residence is not subject to levy. However, contrary to common misconceptions, it is not absolute. Within a municipality, the exemption is limited to one-half acre. Thus, larger properties may be subject to partition and levy.

### **Proceedings Supplementary**

Florida has a broad statutory framework to assist judgment creditors in collecting on a judgment, codified in [§56.29](#). The statute gives the court broad latitude to enter orders to effect satisfaction. There are three common mechanisms incorporated in the statute: debtor examination, the setting aside of fraudulent transfers, and impleader of third-parties.

Unlike a typical deposition, the debtor examination takes place in front of the judge and may broadly cover any subject that bears on collection of the judgment. Often, the examination is of the principal of a debtor corporation.

If the court becomes aware of a fraudulent transfer, either during a debtor examination or through other, more traditional forms of discovery, it may enter an order setting that transfer aside and making the asset available to the creditor. This can be a complex proceeding that involves a number of factors. At its core, the process allows the court to set aside a transfer of property by the judgment debtor made to avoid the reach of creditors. A typical example: A judgment debtor signs the title of his car over to his wife after getting served with the lawsuit. The court could set aside the transfer and make the car subject to execution.

In some cases, third-parties may be brought into the lawsuit for their improper conduct in hiding assets of the judgment creditor. A typical example: A corporate debtor "goes out of business;" the principal of the company opens a new company with a similar name, engaging in the same business, at the same address. If the court finds that the new company is a "mere continuation" of the debtor company, it could bring the new corporation in and enter judgment against them for the amount of the underlying judgment.

### **Writs of Bodily Attachment**

Post-judgment discovery can be a time-consuming and inefficient process. However, on occasion, it can be the only method of getting the information necessary to proceed. If initial discovery is ignored, the first step is to obtain a compel order. If that fails, the next step is to obtain a contempt order. If the contempt

order is ignored, the court may enter a writ of bodily attachment. This is an order to the sheriff to take the debtor into custody until they can be brought in front of the judge. Often, the judge will include a provision in the writ that allows the debtor to secure their release prior to the hearing by posting a bond. This bond might be as much as the judgment itself. On posting such a bond, the judgment creditor may move the court to release the bond to apply toward the outstanding judgment. The bodily attachment process costs a few hundred dollars.

*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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