Georgia Debt Collection Laws

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Lazega & Johanson LLC is a full service collection law firm located in Atlanta, Georgia. The firm's attorneys and staff have decades of experience in the field of creditors' rights and collections law. Covering the entire state of Georgia, Lazega & Johanson's customer portfolio includes some of the biggest names in the commercial, retail and debt buying marketplace. The firm's personal service, aggressive approach, and cutting edge technology have proved to be unmatched in the industry.

Mark Moore oversees the firm's collection practice. Mark is a senior partner at the firm, having dedicated his entire 20-year career to representing creditors and protecting creditors' rights. Born in New York, Mark was raised in both New York and Maine before moving south to attend college. Mark obtained his undergraduate degree from the University of Georgia, and he went on to obtain his J.D. from Georgia State University College of Law.

Whether it's negotiating with a debtor prior to suit, litigating a collection case, or aggressively pursuing the collection of judgments, Mark and his staff take pride in achieving and exceeding their clients' goals and expectations.

Licensing and Bonding Requirements in Georgia

1. Original Creditors and Debt Buyers

Georgia does not have any special licensing or bonding requirements for *collection agencies*, nor does Georgia require licensing or bonding requirements for *debt buyers*. However, lenders "engaged in the business of making loans of $3,000.00 or less," unless expressly exempted, are required to obtain a license under O.C.G.A. § 7-3-8. This statute is apparently designed to regulate only high-interest, pay-day lenders, because it specifically exempts "banks, trust companies, real estate loan or mortgage companies, federal savings and loan associations, Georgia building and loan associations, credit unions, and pawnbrokers." The law additionally exempts educational establishments offering student loans, and any person making loans and charging an interest rate of 8 percent per annum or less.

2. Out-of-State Attorneys

Georgia allows an out-of-state attorney to be admitted on a pro hac vice basis by submitting a verified application to the court where litigation is filed. The application must be served on all parties and the Office of the General Counsel of the State Bar of Georgia. The application must include a non-refundable application fee sent at the time of the filing of the application. The out-of-state attorney must also associate him or herself with an in-state attorney. If the application is granted, it shall be the duty of the in-state attorney to remain responsible to the client and for the conduct of the proceeding before the court.

Judicial Overview

1. Structure and Costs

Georgia's judicial system is county-based. There are 159 counties in Georgia, and each county sets its own filing fees and court costs. Every county has a Magistrate, or small claims court and a Superior court. In addition, for counties with a population of over 100,000 people, there is also a State court. Generally, the Magistrate court filing fees range from $50 to $100, while State and Superior court filing fees range from $242 to $275.

In addition, each county charges a fee to have the county sheriff serve the defendant with the lawsuit. The fee varies from county to county, with the average cost between $25 and $50 per defendant. The sheriff's service fee must be paid along with the filing fee at the commencement of the lawsuit. As an alternative, it is also possible to pay a certified process server to serve a defendant. These fees can vary, as each process server is free to set its own price. All private process servers must be appointed by the court in which the case was filed.

While the lower filing fees of the Magistrate courts may be attractive, there are several limitations to Magistrate court. First, the Magistrate court's jurisdictional limit is $15,000. If a creditor seeks to recover more than $15,000, inclusive of interest, attorney's fees and court costs, the case must be filed in either the State or Superior court. Also, Magistrate courts are not bound by Georgia's Civil Practice Act, which means that there are no pretrial motions and very limited discovery opportunities available to either party. For these reasons, most collection cases are brought in either the State or Superior courts.

Many judgment creditors elect to conduct post-judgment asset depositions of the defendant in order to locate assets to attach to satisfy their judgment. There is no filing fee charged by the courts to conduct a post-judgment deposition. The only major fee that is incurred is that of the court reporter. A court reporter typically charges on a per-page basis for their service. An average one-hour deposition will usually result in a fee of around $500, which is paid by the party requesting the deposition.

2. Statutes of Limitation

In Georgia, there are very specific statutes of limitation that a creditor must be aware of so that their claims do not become time barred. Statute-of-limitation laws give an aggrieved party (the creditor) a certain time limit in which to file a lawsuit. After the limitation period expires, the creditor loses the right to file a lawsuit to collect money or other damages from the debtor.

In Georgia, the statute of limitations to sue a debtor on an open commercial account or on an oral contract is four (4) years from the date of default. If the contract with the debtor is in writing, the statute of limitations is extended to six (6) years. If a creditor is fortunate enough to have a written contract signed under seal by the debtor, Georgia will apply a twenty (20) year statute of limitations. In a favorable ruling, the Georgia Court of Appeals held that the appropriate statute of limitation to apply when suing on credit card indebtedness is six (6) years from the date of default. Hill v. American Express; 289 Ga. App. 576, 2008.

3. Georgia Judgments

Georgia judgments are good for seven (7) years. If not renewed prior to the seventh year, the judgment will become dormant and will be unenforceable. However, Georgia does have a provision that will allow a creditor an additional three (3) years to file a judgment renewal action, known as a scire facias. If no renewal action is filed between years seven (7) and ten (10), the judgment will be forever time barred and void. As long as the judgment creditor takes the appropriate steps, the judgment can be renewed as many times as necessary to collect. Each renewal extends the judgment life out another seven (7) years. Georgia judgments accrue post-judgment interest on the principal amount at the rate of prime plus 3% at the time of entry.

Georgia has adopted the Uniform Enforcement of Foreign Judgment Act ("UEFJA"). The UEFJA is codified at O.C.G.A. § 9-12-130 to 9-12-138. If the state in which the original judgment was rendered has not adopted the UEFJA, Georgia limits foreign judgments to five (5) years, after which time the judgment cannot be domesticated in Georgia.

In Georgia, while some creditors have automatic lien rights, generally a judgment is considered unsecured until the judgment creditor requests that the clerk of Superior Court in the county where the judgment was entered to record the judgment in the General Execution Docket, whereby securing the judgment. The recording of the judgment will result in a writ of fieri facias ("FiFa") being issued by the clerk. This recorded FiFa attaches a lien to any real property the judgment debtor owns in that county. If the debtor owns property in another county, the FiFa must also be recorded in that county in order for the

lien to attach to property in that county. The cost to record the FiFa runs between $5 and $7, depending on the specific county.

While the recorded FiFa places a lien on the debtor's real property, it also places a lien on any personal property the debtor may own located anywhere in the State of Georgia. If unencumbered personal property of the debtor can be located, the FiFa will allow the sheriff to levy on the property and hold said property for auction. The proceeds from the auction, less a sheriff's fee, are paid to the creditor.

4. Garnishments

In Georgia, a judgment creditor is entitled to file a garnishment to assist in the collection of a judgment. A successful garnishment forces a third party to turn over any money or property that they may be holding for the debtor directly to the judgment creditor. The most commonly used garnishment is a bank garnishment. If a bank is served with a garnishment, they must immediately place a hold on the debtor's account and pay to the court all funds on deposit at the time of service, plus any additional funds that may be deposited into the account within the next 30 days.

In addition to bank garnishments, Georgia also allows a judgment creditor to garnish a debtor's wages. After being served with a wage garnishment, the employer must pay into court 25% of the debtor's net take-home pay. In other words, Georgia exempts from garnishment 75% of disposable earnings per work week or an amount equal to 30 times the federal minimum hourly wage, whichever is greater. The garnishment stays in place for the next 180 days (or until the judgment is paid off, if sooner), after which time a new garnishment must be filed.

There are exceptions to what funds can be garnished. IRAs and ERISA pension plans can only be garnished for family support obligations. Pensions are not subject to garnishment directly; however, they may be garnished once they are paid out and are "in the hands" of the debtor, such as a deposit into a bank account. Specifically, the following pensions are exempted from garnishment: firefighters, teachers, peace officers, sheriffs, members of the general assembly, probate and superior court judges, superior court clerks, state court judges and solicitors, district attorneys, and any state or local government employees under the Employees' Retirement System.

Other exemptions include medical assistance reimbursements, benefits from fraternal benefit societies, wages for deceased employees survived by a spouse or minor child, wages of an involuntarily hospitalized and mentally ill person, and social security payments.

5. Bad Check Statutes

Georgia has criminal, as well as civil, penalties for writing a bad check. Criminal penalties depend on the amount of the check in question. Mostly, bad checks under $500 are considered misdemeanors and those $500 or above are considered felonies. There are also civil penalties available to creditors seeking to collect on a bad check. If the creditor gives the debtor a 10-day written demand, the creditor can collect, as additional damages, double the amount of the check (up to $500) and service charges of not more than $25.

Issues Specific to Certain Types of Debt

1. Commercial Collections

Commercial collections in Georgia is fairly straight forward, though proper documentation is always at the heart of a successful commercial collections suit. Georgia's rules of evidence will be changing January 1, 2013, to mirror the federal rules of evidence, in large part. Of particular importance is the new formulation of the "business records" exception to the hearsay rule. Under the new rules, business records may include opinion testimony, such as valuation, and maybe self-authenticated. O.C.G.A. § 24-8-803; O.C.G.A. § 24-9-902. Any attempt to use this self-authentication must be accompanied by written notice to all adverse parties in order to allow an inspection of the record and to provide an opportunity for objection. The net result is that the admission of business records should be streamlined in Georgia after January 1, 2013.

Additionally, one important statute for commercial collections in Georgia deals with the maximum interest rate. A commercial account may charge interest on an account at the rate of 1.5% percent a month, not to exceed 18% per annum. O.C.G.A. § 7-4-16.

2. Consumer Collections

Issues facing commercial collectors are similarly present in the consumer collection field. Courts have become more hesitant to issue judgments on consumer debt where documentation is sparse. The 2013 change in the evidence code will have a streamlining effect for consumer creditors, especially those in the debt buying industry. Fortunately, in Georgia, no particular pleading requirements are made for consumer collections. Aside from the caution that must be exercised in light of the FDCPA and the Georgia Fair Business Practices Act, discussed in more detail below, consumer suits are very similar to commercial suits. As always, of paramount importance is the preservation of documents sufficient to prove the obligation to make payment and any assignment that may exist on the account.
Excluding credit card debt, the interest rate for which is usually determined by the cardholder agreement and the usury laws of the home state of the issuing bank, Georgia has limits on pre-judgment interest

rates. In cases where the rate is not established by contract, the legal rate of interest is 7%. O.C.G.A. § 7-4-2(a)(1)(A). Parties can specify a higher rate, however, by written contract. Where the principal amount is $3,000.00 or less, the rate is limited to 16% per annum. O.C.G.A. § 7-4-2(a)(1)(C). Where the principal amount is more than $3,000.00, the rate is limited to 5% per month, or 60% per annum. O.C.G.A. § 7-4-18. Post-judgment interest is calculated at prime plus 3% (currently 6.25%), but may be set at a higher rate if a contractual interest rate exists. O.C.G.A. § 7-4-12.

3. Secured Debt

In Georgia, a judgment creditor is able to record a lien on any vehicles owned by the debtor, thus creating a lien on the title of the vehicle, which must be paid at the time of transfer. The perfection of a security interest in vehicles is complete upon delivery of a notice of security interest to the county where the vehicle owner resides (among others), along with payment of the fee. O.C.G.A. § 40-3-50 . The perfection relates back to the initial creation of the interest, if this notice process is completed within 30 days. A judgment creditor may obtain a lien on a vehicle by executing a title application and a notice of lien, and by sending the same, along with the required fee, to the person who has custody of the current certificate of title. O.C.G.A. § 40-3-53 . Notice must also be sent to the owner, if someone else has custody of the certificate of title. If the lien is not satisfied within ten days or contested, the holder of the certificate must send the certificate in to the county tag office so that the title may be reissued showing notice of the lien upon the title. If the party holding the certificate fails to act appropriately, the judgment creditor may apply directly to the county office to reissue the title. While a judgment creditor can levy upon a vehicle owned by the debtor, unfortunately, such relief is only effective where the debtor owns the vehicle free and clear of security interests. Otherwise, the judgment creditor would have to first pay off those interests before sale of the property. O.C.G.A. § 9-13-60.

Additionally, for creditors who have obtained a judgment relating to a motor vehicle accident, where the debtor has failed to satisfy the judgment within 30 days, the judgment creditor can apply to the court to send the judgment to the department of motor vehicles and suspend the debtor's driver's license. O.C.G.A. § 40-9-61 .

With respect to real property, a lien upon the property is created at the moment the judgment is rendered. O.C.G.A. § 44-14-320. The entry of a writ of fieri facis upon the general execution docket for each county is the manner of perfecting the lien upon property in that county as to third parties. O.C.G.A. § 9-12-81. Once the FiFa is in place, the judgment creditor may direct the sheriff of the county to levy upon real property. O.C.G.A. § 9-13-10. The creditor must give written notice to the tenant in possession and the defendant not in possession. O.C.G.A. § 9-13-13. The sheriff must give notice of the time and place of sale to the defendant and any holder of a secured interest in the property. O.C.G.A. § 44-14-210 .

Unfortunately, real property is similar to vehicles in that, in order to levy on property encumbered by a security interest, the judgment creditor must first satisfy the security interest by paying it off. O.C.G.A. § 9-13-60. This makes execution and levy an attractive option, primarily where the property is unencumbered.

Significant Georgia Cases and Statutes Related to Debt Collection

1. The Georgia Fair Business Practices Act

Debt collectors throughout the United States must always be vigilant to adhere to the mandates of the Fair Debt Collection Practices Act (FDCPA), a set of federal laws designed to protect debtors from abusive collection tactics. In Georgia, debt collectors must also be aware of the Georgia Fair Business Practices Act (FBPA). O.C.G.A. § 10-1-390. The FBPA prohibits any unfair or deceptive acts and practices in the conduct of consumer transactions. The FBPA creates a cause of action for violations of the act, which allow the debtor to recover actual damages, reasonable attorney's fees and costs, and three times the amount of the actual damages as punishment for an intentional violation.

In 1st Nationwide Collection Agency, Inc. v. Werner, 288 Ga. App. 457, 459, 654 S.E.2d 428, 431 (2007), the Court of Appeals of Georgia held that a violation of the FDCPA was a per se violation of the FBPA. This case demonstrates that debt collectors must be cautious in Georgia, lest they be subjected to treble damages under the FBPA.

2. Assignments

Traditionally a very creditor-friendly state, Georgia courts have recently become much tougher on debt buyers, specifically with regard to assignment issues. In Georgia, a party may assign a contractual right to a third party. However, that assignment must be in writing in order for that contractual right to be enforceable by the assignee. The written assignment must identify the assignor as well as the assignee. In Wirth v. Cach, LLC, 300 Ga. App. 488, 490-91, 685 S.E.2d 433, 435 (2009), the Court of Appeals of Georgia held that a written assignment evidencing the transfer must be present in the record for the debt buyer to succeed in its suit. An affidavit attesting to the assignment is not sufficient. Nor is a bill of sale without an attachment that identifies the transferred account number. This case demonstrates that debt buyers should be diligent in obtaining all available documentation in order to support their assigned debt or risk being unable to collect in court.

3. Admissibility of documents

In Nyankojo v. N. Star Capital Acquisition, 298 Ga. App. 6, 10, 679 S.E.2d 57, 61 (2009), the Court of Appeals of Georgia refused to uphold an assignment where the documents produced in the case did not

affirmatively link the assigned account to the same account number as the original account. The Court noted that computer-generated information, showing certain information tending to show an assignment for which no foundation was laid by a witness, was inadmissible hearsay. It is now more important than ever to be very careful about laying a proper foundation for the documents being introduced to prove the indebtedness. Courts can seize upon the slightest technical defect, in order to deny the validity of an assigned debt.

In a recent ruling, the Georgia Court of Appeals held that summarized statements of accounts submitted to support the amount of indebtedness owed by the defendant were inadmissible under the business records exception to the hearsay rule. Capital City Developers, LLC v. Bank of N. Georgia, 316 Ga. App. 624, 730 S.E.2d 99, 101 (2012). As a result, we are now seeing trial courts denying routine requests for default judgments to be entered, when the only documents submitted to support the account indebtedness is a statement of account. In these cases, the courts are mandating that each and every invoice that is listed on the statement of account be attached to the pleading.

4. Corporations must be represented by a licensed Georgia attorney in court

A corporation, unlike a natural person, must be represented by an attorney in court. Eckles v. Atlanta Tech. Group, Inc., 267 Ga. 801, 803, 485 S.E.2d 22, 25 (1997). As such, any corporate creditor attempting to collect on its debts must retain a licensed attorney to file suit in Georgia. One notable exception to this rule is that, in Magistrate court, a corporation may be represented by a full-time officer or employee of the corporation.

5. Recent cases brought by the Attorney General

Recently, Dorsey Thornton & Associates, LLC, a Georgia debt collector, agreed to settle a number of violations of the Fair Debt Collection Practices Act and the Georgia Fair Business Practices Act, including threatening consumers with arrest or imprisonment if they did not pay the debt; refusing to send consumers written proof of the debt owed; identifying themselves as “Investigators” rather than disclosing that they were debt collectors attempting to collect a debt; contacting third parties and divulging information about the debtor’s account; calling consumers before 8:00 a.m. or after 9:00 p.m.; continuing to contact consumers even after they told the company to stop calling them. Under the settlement, Dorsey Thornton & Associates agreed to cease collection on over 31,000 accounts, representing $15,491,899.36 in consumer debt. The company will pay penalties and reimburse the state for investigative and legal expenses.

Similarly, Nelson, Hirsch & Associates, Inc., another Georgia debt collection agency, agreed to settle charges of multiple violations of the federal Fair Debt Collection Practices Act and the Georgia Fair Business Practices Act, including failing to disclose that it was a debt collector attempting to collect a debt; threatening consumers with arrest, imprisonment or charges of fraud if they did not pay the debt; refusing to send consumers written proof of the debt owed; collecting more than the amount owed or authorized; threatening to call the consumer's employer and have the consumer's wages garnished; falsely representing to consumers that it was affiliated with a law firm and/or that the caller was a fraud investigator; continuing to contact consumers even after they told the company to stop calling them; calling consumers at unusual hours (e.g., before 8:00 a.m. or after 9:00 p.m.); calling consumers at work when they knew their employers prohibited such contact; speaking to consumers in a harassing and abusive manner; threatening consumers' family members; calling repeatedly (sometimes as much as 50 times a day). As part of the agreement, the company will cease collection operations, and its owner must refrain from engaging in debt collection for at least five years. The company will terminate collections on nearly 6,000 accounts, representing a total $4,307,658 in debt. The company will pay penalties and reimburse the state for investigative and legal expenses.

6. <u>Ethics Opinions</u>

Prior to 1986, the State Disciplinary Board was responsible for issuing Advisory Opinions, rather than the Supreme Court of Georgia. Now, however, the Supreme Court of Georgia is the final authority on ethics opinions. Throughout the years, the Court has issued a number of opinions that impact debt collectors in Georgia.

In an ethics opinion from 1968, the State Disciplinary Board stated that it is improper for an attorney to permit a client to use his or her letterhead stationery seeking to collect an account or debt. By extension, the opinion suggests that it would be considered the unlicensed practice of law to send such a letter on an attorney's letterhead, if the sender is not actually an attorney.

In another opinion, the Supreme Court stated that it was an unlicensed practice of law for a debt buyer, who is not an attorney, to sue on debt assigned by the original creditor for the purposes of collection only where the only payment for the transfer is a set fee or contingency fee upon collection. While it is permissible for the debt buyer to sue on an account that has been wholly transferred to the debt buyer for a sum that is fixed and certain, an assignment for the purposes of collection only does not divest the original creditor of the title and interest to the debt. In such an arrangement, it is the unlicensed practice of law by the debt buyer because the debt buyer is representing the original creditor and preparing pleadings on behalf of the original creditor in exchange for a fee.

In another opinion, the Court found that a company, via agency power of attorney, cannot act as the agent for a debtor in the settlement of a lawsuit. Such a scenario is the unlicensed practice of law, and the individual directing the company is also engaged in the unlicensed practice of law. Only an individual who is duly licensed to practice law in Georgia may represent a debtor in such a scenario.

In a recent and controversial holding, the Supreme Court approved an Advisory Opinion in which it was determined that a non-lawyer who files a garnishment answer for another is engaged in the unlicensed practice of law. In response to strong opposition from the business community, House Bill 683 was passed February 2, 2012, which amended the garnishment statute to make it clear that “the execution and filing of a garnishee answer may be done by an entity's authorized officer or employee and shall not constitute the practice of law.”

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.