

## Hawaii Debt Collection Laws

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*For more than 30 years, the **Law Offices of Marvin S. C. Dang, a Limited Liability Law Company**, has assisted local, national, and global clients with their legal needs throughout the State of Hawaii. Since the law firm's inception in 1981, the firm has used its extensive experience and knowledge to effectively advocate for and represent its clients. The firm is committed to representing its clients and resolving legal matters in a professional and ethical manner. The Law Offices of Marvin S. C. Dang works hard to maintain the high standards that its clients and peers expect of the firm.*

**Marvin S.C. Dang** is the Managing Member of the law firm. He is a former Hawaii State legislator and is currently a registered lobbyist. He is a Director and the immediate past Chair of the Collection Law Section of the Hawaii State Bar Association. He is a member of the National Association of Retail Collection Attorneys (NARCA) and the American Collectors Association (ACA) International. Mr. Dang obtained his Juris Doctor (J.D.) degree from George Washington University Law School. He received his B.A. degree in Political Science from the University of Hawaii at Manoa. He is a graduate of Punahou High School in Honolulu, Hawaii.

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### I. Foundational Debt Collection Laws

#### a. Statute of Limitations

**Open accounts/written contracts:** The Hawaii statute of limitations on open accounts and written contracts is six years. Credit card accounts, loans that do not fall within the ambit of the Uniform Commercial Code, and debts arising under other written agreements all fall under the same six year statute of limitations. Haw. [Rev. Stat. §657-1](#).

**Domestic Judgment:** A Hawaii judgment originally issued by a Hawaii court has an expiration date and, therefore, it is in the best interest of the judgment creditor to act upon the judgment as soon as possible so that he/she does not lose out on the opportunity to collect on the judgment.

Hawaii law provides that, unless an extension is granted, every judgment and decree of any court of the State shall be presumed to be paid and discharged at the expiration of ten (10) years after the judgment or decree was rendered. Haw. [Rev. Stat. §657-5](#). No action shall be commenced after the expiration of ten (10) years from the date a judgment or decree was rendered unless extended.

An extension of the judgment may be granted if the extension is sought within ten (10) years of the date the original judgment or decree was rendered. An extension will be granted only when: (1) there is notice; and (2) a non-hearing or hearing motion is filed to extend the life of the judgment or decree.

A court will not extend any judgment or decree beyond twenty (20) years from the date of the original judgment or decree.

**Foreign Judgment:** Under Hawaii law, a judgment creditor who wishes to enforce a judgment that was entered in a court outside the state of Hawaii (also known as a foreign judgment) must file a copy of such judgment, exemplified by the originating court, with the Hawaii state court having jurisdiction over the judgment. Pursuant to Haw. Rev. Stat. Chapter 636C, the Hawaii court in which the foreign judgment is filed will treat the foreign judgment in the same manner as a judgment originally entered by a Hawaii court. That is, the foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings of reopening, vacating, or staying as a judgment of a court of the State, including establishing a lien, and may be enforced or satisfied in a like manner.

#### **b. Bad Check Laws and Civil Penalties**

A creditor may sue a person to collect on a bounced check. Hawaii law allows the Court to award the creditor three (3) times the face value of the check or \$100, whichever is more, but not more than \$500 over the check value, plus attorney's fees, costs, and interest. Haw. [Rev. Stat. §490:3-506](#).

#### **c. General Garnishment Exemptions (wage and property)**

Garnishment can be an effective way for a creditor to receive its money. Once a creditor gets a judgment, the creditor can obtain an order from the court to garnish – either property or wages. In Hawaii, the statutes on garnishment are found in Haw. Rev. Stat. Chapter 652. The wage garnishment calculation is as follows: all except 5% of the first \$100 earned per month; 10% of the next \$100 earned per month; 20% of all sums in excess of \$200 per month. Haw. [Rev. Stat. §652-1\(a\)\(4\)](#).

The Hawaii Supreme Court has adopted the rule followed by a majority of jurisdictions that a judgment creditor may garnish a joint bank account owned by the debtor and others to the extent of the debtor's equitable interest, subject to the initial presumption that the debtor owns the entire account. In [Traders Travel Int'l v. Howser, 69 Haw. 609, 753 P.2d 244 \(1988\)](#), the Court held that the debtor presumptively holds the entire account, but if the debtor and/or other depositors can show (by a preponderance of the evidence) that the debtor does not possess the whole account, a judgment creditor's recovery is limited to the extent of the debtor's equitable interest in the account.

Real property owned by a debtor is exempt to the extent of its fair market equity, as determined by appraisal, up to \$30,000, if the debtor is a head of family or an individual sixty-five years of age or older, or \$20,000 otherwise. Haw. [Rev. Stat. §651-92](#).

The Hawaii statute also provides a similar appraisal process for personal property. Personal property exempt from attachment and execution includes:

- (1) Household furnishings and appliances, books and wearing apparel, jewelry and items of personal adornment in an aggregate cash value not to exceed \$1,000;
- (2) Up to \$2,575 of equity in a motor vehicle, as measured by established wholesale used car prices found in dealers' guides;
- (3) Any combination of tools, equipment, one motor vehicle, and other personal property used in a debtor's trade or profession by which debtor earns a living,
- (4) A niche or burial plot;
- (5) Proceeds of sale or insurance from one exempt property for a six month period from receipt of the proceeds; and
- (6) Wages, salaries, commissions and compensation due a debtor for services rendered during the 31 days before the date of the proceeding. [Haw. Rev. Stat. §651-121](#).

Funds also exempt from execution include: pensions ([Haw. Rev. Stat. §§651-124](#) and [653-3](#)), insurance/annuities ([Haw. Rev. Stat. §431:10-231](#)), welfare assistance, proceeds from life or industrial insurance ([Haw. Rev. Stat. §431:10-232](#)), workers' compensation, disability benefits ([Haw. Rev. Stat. §§651-124](#)), unemployment benefits or compensation ([Haw. Rev. Stat. §386-57](#)) and prisoner's wages ([Haw. Rev. Stat. §353-22](#)).

## **II. Debt Collection Licensing, Bonding, and Regulations**

#### **a. Licensing and Exemptions**

Hawaii has a Collection Agencies Act that regulates collection agencies and specifically exempts attorneys, real estate brokers, salespersons, financial institutions, in-house employees collecting debt of the employer and public officers from its reach. Haw. Rev. Stat. Chapter 443B.

All collection agencies that collect debts from any person who resides or does business in Hawaii must be registered with the Department of Commerce and Consumer Affairs and must comply with the state's law and rules. Haw. Rev. Stat. Chapter 443B. Collection agencies are those which collect debts for others for compensation, as well as those which collect their own debts but create the impression that a third party collector is involved, those which regularly repossess merchandise for others, and those which regularly accept assignments of claims.

Licensed attorneys acting within the scope of their profession do not fall within the definition of "collection agency." [Haw. Rev. Stat. §443B-1](#).

Under certain limited conditions, an out-of-state collection agency can request to be designated by the State of Hawaii as exempt from registration in Hawaii. However, Act 52, which became effective on July 1, 2012, has restrictions and limitations on what an exempt out-of-state collection agency can do. For example, an exempt out-of-state collection agency cannot have any agents or employees in Hawaii who collect debts for another person. Additionally, it cannot bring or maintain any action in any Hawaii court to collect debts of its clients.

For information regarding licensing, people may contact the Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division at [www.hawaii.gov/dcca/areas/pvl/programs/collections](http://www.hawaii.gov/dcca/areas/pvl/programs/collections) .

#### **b. Other laws**

Hawaii's Collection Practices Act is in Haw. Rev. Stat. Chapter 480D. It applies to a debt collector who is not a collection agency and who attempts to collect a consumer debt of a natural person (incurred primarily for personal, family or household purposes), and which debt is owed to the collector, not to a third party.

### **III. Suit Process**

#### **a. Jurisdiction and claim value**

The State District Court's Regular Claims division has a jurisdictional limit of \$25,000 (exclusive of interest, attorney's fees and costs). It has exclusive jurisdiction for summary possession cases regardless of the amount.

The Circuit Court has concurrent jurisdiction with the state District Courts for claims of \$10,000 and above. The Circuit Court has exclusive jurisdiction for claims in which the amount in controversy exceeds \$25,000 (non-jury demand) or \$5,000 (jury demand). Again, this amount does not include interest, attorney's fees and costs.

#### **b. Complaint**

For state District Court filings, the court has several pre-printed versions of a complaint, including one for assumpsit claims. The courts strongly encourage using the official court forms in all appropriate instances. A complaint can be either verified or unverified. The complaint is verified by having the plaintiff sign the declaration section at the bottom of the court form or attach an affidavit. For Circuit Court filings, the law firm should prepare the complaint and include the Court's Civil Information Sheet form.

For credit card debt, a creditor can establish the debtor's contractual liability by submitting the cardholder's application and/or by offering evidence that the cardholder incurred charges on the account and made payments thereon and by showing evidence of the amount owed on the account. A creditor must authenticate the records to the court through written and signed affidavits/declarations. For a debt purchaser, there also needs to be a showing that it is the current owner of the debt, offering documentation on chain of title or assignment.

Note: Under Hawaii Court Records Rule 9, all documents filed by any party with the Court shall not include personal information or account number.

#### **c. Service of Process**

A summons is required in all courts. A summons must be signed by the clerk under the seal of the court and contain the names of the court, parties and the date when issued. The summons is directed to the defendant and must state the name of the plaintiff's attorney or the plaintiff's address, when a defendant must appear and have a defense prepared, and the possibility of a default judgment, if the defendant fails to appear or file a written answer. It must also contain a prohibition of service between 10:00 p.m. and 6:00 a.m. on private premises, unless otherwise directed by the court. Note: even if one

were to draft one's own complaint without using the district court form, the court clerks prefer the use of the court form summons.

A person not a party and not less than 18 years old can serve process. Haw. Rules of Civil Procedure Rule 4(c). District Court Rules of Civil Procedure Rule 4(c).

**d. Answer**

For the State District Court, once a defendant is served with the complaint and summons, the defendant needs to appear in court to answer the complaint or file a written answer. The day set for answer to the complaint is determined by the day the complaint was served. On the answer day, which is sometimes called the return day, the defendant must appear in court to answer or must file a written answer. Note: corporations must be represented by counsel. If the defendant admits the allegations and if the complaint is verified, the court will enter a judgment by confession, if the complaint is verified. If a general denial is entered by the defendant, the matter is set for further proceeding. A default by the defendant, at the return of a verified complaint allows the plaintiff to directly file a judgment.

For the State Circuit Court, an answer must be filed within 20 days of service of the complaint and summons.

**e. Attorney's fees, pre-judgment interest, and post-judgment interest**

Attorney's fees can be awarded under several Hawaii statutes. The most commonly used statute in a collection case is [Haw. Rev. Stat. §607-14](#), which provides for attorney's fees in assumpsit actions up to 25% of the recovery.

Hawaii statute permits the court to award pre-judgment. [Haw. Rev. Stat. §636-16](#). If there is no express written contract fixing a different rate of interest, interest shall be allowed at the rate of 10% per year. [Haw. Rev. Stat. §478-2](#).

Judgments accrue interest at the rate of 10% per year. [Haw. Rev. Stat. §478-3](#). Post-judgment interest is calculated on the total judgment amount, less the amount of any prejudgment interest included in the judgment. [Larsen v. Pacesetter Systems, 74 Haw. 1, 837 P.2d 1273, 843 P.2d 144 \(1992\)](#).

**f. Judgment execution remedies**

A judgment may not be enforced until 10 days after entry. [Haw. Rev. Stat. §641-3](#), District Court/Circuit Court Rules of Civil Procedure Rule 62(a). A judgment may be

enforced for ten years after the date of entry and can be extended past the initial ten year term, up to a maximum of twenty years from the date of the original judgment. [Haw. Rev. Stat. §657-5](#).

For Hawaii real property in the Regular System, a judgment becomes a lien when it is recorded in the Bureau of Conveyances. [Haw. Rev. Stat. §636-3](#). For real property in the Land Court system, a judgment must be recorded in the Land Court. [Haw. Rev. Stat. §§501-102 and 501-151](#).

#### **IV. Court Filing Fees**

The State District Court's Regular Claims division handles all civil actions in which the debt, damages to the property, or the value claimed does not exceed \$25,000, except cases involving summary possession or ejectment for which there is no monetary limit. The fee to file a District Court Complaint is \$145.00.

For claims exceeding \$25,000, creditors must file in the State Circuit Court. The fee to file a Circuit Court Complaint is \$300.00.

There is currently no electronic filing for the State District Court or the State Circuit Court.

#### **V. Process Service Options & Costs**

##### **a. Process Server Fees**

If a creditor uses a process server, a \$25.00 server cost is permitted, plus an additional sum based on the mileage the process server had to travel to serve the summons and complaint. Depending on the accuracy of the information about the debtor, and depending on the amount of attempts to serve the debtor, the mileage fees may vary.

##### **b. Garnishment Fees**

There are no additional court fees associated with the procedure to file garnishment documents in court. It is necessary for garnishment documents to be served on the employer (wage garnishment) or financial institution (bank garnishment). A process server fee to serve a garnishment summons is \$15.00, plus an additional sum based on the mileage the process server had to travel to serve the document.

##### **c. Debtor Exams**

A process server fee to serve an order to appear at a debtor's examination is \$25.00 plus an additional sum based on the mileage the process server had to travel to serve the document.

**d. Service by Publication**

When the debtor cannot be located for personal service, the plaintiff can seek permission from the court to serve the debtor by mail ([Haw. Rev. Stat. §634-24](#)) or by publication ([Haw. Rev. Stat. §634-23](#)).

**VI. Significant Debt Collection Cases Brought by Hawaii's Attorney General**

None

**VII. Debt Collection Ethics Opinions from the State Supreme Court related to debt collection**

None

**VIII. Other Miscellaneous Laws/Cases Relevant to Practice of Law in Hawaii**

None

*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.*