

Idaho Debt Collection Laws

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I. Summary of Idaho Collection Activities

Debt Collection in Idaho is a straightforward process, with the Fair Debt Collection Practices Act still being the main codification of rules for consumer debt collection. While the state does regulate the commercial practice of debt collection, and actively pursues violation of debt collection rules, both state agencies and the courts generally foster an environment in which legitimate creditors can easily pursue the obligations owing to them.

II. Idaho Laws Pertaining to Debt Collection

Fair Debt Collection

To date, Idaho has not enacted its own state fair debt collection law. As such, practitioners of debt collection are subject to various federal laws. Most relevant, the provisions of the [Fair Debt Collection Practices Act](#) (FDCPA) govern consumer collection practices in Idaho.

Licensing of Debt Collectors

The state has adopted the [Idaho Collection Agency Act](#) (**I.C.A.A.**; I.C. § 26-2221, *et. seq.*), in part to regulate the activities of those doing business as debt collectors within the State of Idaho. Under the Act, various collection activities cannot be conducted within the state without a collection agency permit.

These activities include, but are not limited to: operating as a collection agency, operating as a debt or credit counselor or credit repair business, soliciting or advertising for the right to collect any account for another, and collecting or receiving payment for others of any account or bill. Collection agencies are

licensed by the Idaho Department of Finance, and more information can be found on their website; <http://finance.idaho.gov/>. Additionally, the Department of Finance provides an [online searchable database](#) allowing the public to research whether a particular debt collection entity is licensed.

Idaho Statutes of Limitation and Other Time Limits for Collection of Debts

In Idaho, a collection action based on a written contract must be brought within five years ([I.C. § 5-216](#)). If a collection matter is based on an oral contract, the action must be brought within four years ([I.C. § 5-217](#)). A foreclosure action upon a mortgage must be brought within five years of the date of maturity of the instrument of indebtedness ([I.C. § 5-214A](#)). An action upon a judgment or decree from a U.S. court, or any other state or territory court (a foreign judgment) must be brought within six years of the date of entry ([I.C. § 5-215](#)). If a debtor is absent from the state, then the statute of limitations for a particular action tolls (is suspended) until the debtor returns to the state ([I.C. § 5-229](#)).

Judgment Time Limit, Recording & Renewal

A State Court judgment is valid for five years upon entry ([I.C. § 11-101](#)). Following its entry in an Idaho District Court, a judgment may be recorded with any county clerk's office within the state. A recorded judgment becomes a lien on any real property of the judgment debtor located in the county. The lien continues for five years from the date of judgment ([I.C. § 10-1110](#)). Further, a judgment may be renewed for an additional five years, upon motion to the court which originally entered the judgment ([I.C. § 10-1111](#)).

Idaho Bad Check Laws

In Idaho, passing bad checks may subject the perpetrator to civil as well as criminal penalties. Under [I.C. § 28-22-105](#), the drawer of a dishonored check must pay the face amount within 15 days after receiving [Notice of Dishonor](#) from the holder. If the check does not provide for payment of interests and costs, or if the holder does not have the right to collect a set fee - noticed either by written agreement or posted notice at the point of sale (i.e. at the counter/check out), the drawer will be responsible for payment of 12% interest per annum from the date of dishonor until paid, not to exceed \$20.00 or the face value of the check, whichever is less ([I.C. §28-22-105](#)). In the event the holder pursues court action for failure to pay following the 15 day notice period, reasonable attorney's fees are awarded as part of damages, in most instances.

Additionally, under [Idaho Code Section 18-3106](#), any person who issues a check, and knowing at the time of issuance, that they have insufficient funds in their bank or depository institution, is criminally liable. If found guilty, the person is subject to imprisonment up to three years, and/or a \$50,000 monetary fine. The decision to enforce Idaho's bad check criminal statutes is assessed by county prosecutors. For instance, the Bannock County Prosecuting Attorney's office [states on its website](#) that it prosecutes

violations of I.C. § 18-3106 under limited circumstances and on a case by case basis. This decision is based on policy considerations and practical problems in bringing such criminal charges.

III. Pursuing a Debt Collection Matter in Idaho

Reducing an Obligation to a Money Judgment

Appropriate rules regarding both consumer (ie: FDCPA) and commercial collections should be adhered to when making an initial demand upon an Idaho debtor. If demand goes unanswered, generally the next step is to file suit in the State court of proper jurisdiction. In Idaho, collection matters are filed as a civil action in the appropriate District or Magistrate Court: the Magistrate division hears civil matters involving complaints of under \$10,000, while any matter exceeding that figure is referred to District Court.

As of this writing, the cost for filing a complaint in a state court is \$96.00. Following the Complaint's certification, service can be effected either by a private process server or a county sheriff. The costs of service vary, but a conservative, statewide estimate for service of an individual at a known, reliable address is usually between \$50.00 and \$100.00.

If the debtor fails to timely respond to a complaint within 20 days, a Plaintiff/collector may move for a default judgment, pursuant to [IRCP 54\(c\)](#). As part of an application for default judgment (or any judgment), a Plaintiff can seek an award of costs and attorney's fees, the latter of which, under [IRCP 54\(e\)\(5\)](#) and/or [I.C. § 12-120](#), are awarded as a matter of right, in an amount determined by the court.

Should a debtor/defendant timely file an answer, many collection practitioners in the state choose to proceed with a Motion for Summary Judgment, pursuant to [IRCP 56](#), *et. seq.* Given their relative success, summary judgment motions are favored amongst Idaho collection practitioners: State courts generally grant judgment to Plaintiff-Creditors upon an undisputed showing of the validity of the debt owed by the debtor. In most courts throughout the state, the validity of the debt can be shown by evidence of the contract or agreement entered into by the debtor/defendant, as well as proof of the amount owed. Collection matter that resolved by actual trial are the exception in the state. Given the cost of litigation, creditors will often seek resolution through settlement than proceed to full trial.

Post Judgment

As noted above, following an entry of judgment (either by default, motion, or at the conclusion of a traditional trial), [I.C. § 11-101](#) allows that a state court judgment shall be valid and enforceable for a period of five years. Additionally, under [I.C. § 10-1111](#), upon a Motion to Renew brought within five years of the original entry date, a judgment shall be renewed for an additional five years.

Once Judgment is entered in favor of the Plaintiff/Creditor, they are now considered a Judgment Creditor. The next step for the Judgment Creditor is to record its Judgment in any in which it believes the Judgment Debtor may reside or have property interests within. After recording the judgment, and subject to a multitude of exceptions, Idaho offers judgment creditors the ability to levy on a debtor's money, property and real estate. The following is a non-exclusive list of statutory provisions and exceptions, as they relate to levying on specific property.

- **Wages.** Under [I.C. § 11-207](#), a judgment creditor may garnish a debtors wages. Statutory limitations dictate that a creditor can garnish 25 percent of the debtor employee's "disposable earnings," or the amount by which the employee's wages exceed 30 times the current Federal minimum hourly wage, whichever is less.
- **Bank Accounts.** A judgment creditor may generally garnish a judgment debtor's bank accounts by having the sheriff serve a writ upon the debtor's financial institution. Bank Garnishments are subject to statutory exemptions noted above and below, however it is the debtor's duty to file a Claim of Exemption and prove that particular monies in a bank account were exempt. This can generally be accomplished by tracing the origin of the funds.
- **Home.** Any attempt to levy on a debtor's home or property is subject to Idaho's Homestead Exemption, which is codified at [I.C. § 55-1001](#). The homestead exemption protects a debtor's home and land's net value up to \$100,000.00. The exemption applies only to a debtor's residence, not additional homes or properties. Further, any proceeds of sale (up to \$100,000) are protected for one year, if the money is intended to purchase another home Insurance proceeds paid for home damage are also protected.
- **Personal Property.** Personal Property, including household furnishings, jewelry, professional equipment and tools, and motor vehicle, is generally exempted up to a total value for all items of \$7500.00. This total is subject to specific limits on individual categories. For specific amounts as to individual items, refer to [Idaho Code Section 11-605](#).

Following a court issuance of a Writ of Execution, all garnishments are effected by the county sheriff. In populace counties in the southwest part of the state, and in the northern panhandle, the entire garnishment process can take up to several months. In more rural areas, the time can be considerably shorter.

In each instance of garnishment, the debtor is provided with a Notice of Exemption, Instructions to Debtor & Third Parties, and a Claim of Exemption form, per [I.C. § 8-507 & 507C](#). A debtor then has 14 days to deliver to the sheriff the Claim of Exemption. Should a debtor claim a specific exemption from garnishment, the sheriff has 1 day to notify the judgment creditor. Thereafter, a judgment creditor must file with the District Court, within 5 days after receiving the Notice, a Motion in Opposition to Claim of

Exemption. If the judgment creditor fails to file a Motion, the sheriff is required to release any property of the debtor that they are holding/in possession of.

Following the return of an unsatisfied execution against the debtor's property by the sheriff, a judgment creditor may petition the court for an order requiring the debtor to appear and answer under oath questions regarding his property ([I.C. § 11-501](#)). At such debtor's examinations, the judgment creditor can require the debtor to produce particular documents, including but not limited to: financial records, tax returns, deeds, certificates of titles, and schedules of personal property, jewelry, investments and other securities. Should the debtor fail to appear as ordered, a judgment creditor can motion the court to find the judgment debtor in contempt.

IV. Recent Updates in Idaho Collection Practice

Both the Office of the Idaho State Attorney General and the Idaho State Department of Finance are publicly committed to ensuring that debt collection is conducted legally and responsibly throughout the state. The Department of Finance lists as [one of its goals](#), the promotion of financial literacy and the education of state citizens of their rights and responsibilities in collection matters.

The Office of Idaho State Attorney General Lawrence G. Wasden has pursued violations of debt collection laws and debt collectors engaging in wrongful practices with some vigor. In early 2012, the A.G.'s Office announced that it had joined in a multi-state settlement with NCO Financial Systems, Inc. The [settlement](#) stemmed from a three year, multi-state investigation of allegations of deceptive debt collection practices by NCO.

In his annual Consumer Protection Report for 2011, the Attorney General noted that his office had collected a record \$8 million in consumer restitution related to wrongful consumer collection activities. One of the areas of significant activity was mortgage foreclosures. The report noted that in 2011 mortgage-foreclosure-related complaints lodged with the Idaho Attorney General's Office decreased by 120 percent over the previous year. The Office had received 116 mortgage complaints in 2011, down from 261 in 2010.

Earlier in 2011, the A.G.'s Office issued a special report on the status of the housing and foreclosure crisis in Idaho. That [report was based on a review of national events](#) and their impact on the Idaho housing and loan market, as well as consumer complaints received by the A.G.'s Office between 2008 and 2010 regarding mortgage foreclosures, home loan modification practices, and home loan origination services. The **Attorney General's Report on the Idaho Housing Crisis and How Stakeholders Can**

Facilitate Cooperative Solutions can be accessed at:

<http://www.ag.idaho.gov/consumerProtection/foreclosure/IdahoHousingCrisisReport.pdf>.

On the basis of that report, Attorney General Wasden joined with the Idaho Bankers Association in proposing H.B. 331, which was enacted in 2011 and amended [I.C. § 45-1506](#). Under the new law, lenders are required to notify borrowers in writing of their opportunity to request mortgage loan modification review. Additionally, lenders must notify borrowers in writing of any postponement to trustee's sales. H.B. 331 also prohibits for-profit mortgage modification companies from operating within the state, unless they are licensed by the Department of Finance. Finally, in February, 2012, the state announced that it had joined with the majority of other states and the Federal Government in settlement of its claims against the five largest mortgage origination and servicing institutions. Idaho estimated that the share it would receive in settlement was over \$113 million.

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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