

Illinois Debt Collection Laws and Procedures

Submitted by Sam J. Fratantoni, Arthur B. Adler & Associates, Ltd.

Published by The National List of Attorneys

www.nationallist.com

Sam J. Fratantoni received his law degree from Loyola University Law School in 1982 and received his undergraduate degree, magna cum laude, from Loyola University in 1979. He joined the firm of Arthur B. Adler & Associates in 1985, where he has been practicing exclusively in the area of Collections and Creditors' Rights. The firm handles retail and commercial collection matters throughout the state of Illinois and has been doing so since its inception in 1972.

Statute of Limitations

Depending on the type of debt that is involved, different limitations periods shall apply. Written instruments have a 10-year limitations period while oral contact actions are limited to five years ([735 ILCS 5/13-206](#)) and ([735 ILCS 5/13-205](#)). The limitations period for Bad Checks is 3 years ([810 ILCS 5/3-118\(c\) & \(d\)](#)) - with some exceptions. Sale of goods contacts, even if they are in writing, have a four year statute of limitations, while credit cards have now been determined to have a five year limitations period (Portfolio Acquisitions, LLC v. Feltman, 391 Ill. App. 3d 642 (Ill. App. Ct. 2009)).

When calculating the statute of limitations, exclude the first day and include the last, unless the last day is Saturday, Sunday or a holiday, and then it shall also be excluded ([5 ILCS 70/1.11](#)). If the debtor makes another payment, after default, it will extend the statute of limitations and restart the clock -- provided it is made within the original statutory period. If, however, the payment is made on a written contract, it will restart the clock, even if the payment is made outside the original ten year statutory period ([735 ILCS 5/13-206](#)).

Judgments

Judgments are good for 20 years ([735 Ill. Comp. Stat. 5/12-108\(a\) \(2010\)](#)). However, the judgment must be revived if it is more than seven years old ([735 Ill. Comp. Stat. 5/12-108\(a\) \(2010\)](#)). Once revived, the creditor can continue or initiate supplemental proceedings to collect the amounts owing, together with statutory interest, which is 9% – simple interest. [735 ILCS 5/2-1303](#). Any foreign judgment that is registered in the state will be accorded full faith and credit and be treated as an Illinois judgment thereafter ([735 ILCS 5/12-652](#)). When registering the foreign judgment, be sure it is currently enforceable in the originating state ([Logemann Holding, Inc. v. Lieber 793 N.E.2d 135 \(2003\)](#)).

If the debt has originated in a state other than Illinois, there have been concerns about which state's statute of limitations should be used. Illinois has taken the position that the statute of limitations is a

procedural matter requiring the application of Illinois law ([Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 770 N.E.2d 177 \(2002\)](#)).

Bad Check Statutes

There are two statutes available to creditors seeking to recover on a bounced check. Under the Deceptive Practices statute, the debtor must have an intent to obtain control over property (which includes real or personal rental property) when paying by check. The statute also covers checks used to pay for property, services or labor of another, or to pay certain taxes due the state. If checks are written for the foregoing reasons, they will be considered a deceptive practice, if debtor knows that the check will not be paid by the bank (real or fictitious) ([720 ILCS 5/17-1\(B\)1](#)).

Similarly if a person issues a check over \$150 to pay for amounts owing on a credit transaction, for property, services or labor, or to pay the full amount owed for those things, it will be considered a deceptive practice if:

- 1) the person knows the check will not be paid by the bank (real or fictitious) and,
- 2) the person does not, within seven days, put funds in the bank to cover the check amount, once he is notified by either the bank or payee that the check has bounced ([720 ILCS 5/17-1\(B\)2](#)).

The other action for bad checks can be brought under [810 ILCS 5/3-806](#). This section does not require any inquiry into the debtor's intent. This statute provides a cause of action, if the bad check is returned "NSF," or if the drawer does not have sufficient credit at, or an account with drawee bank. While there is no allowance for treble damages, this statute does provide that if suit is brought, the creditor may recover the check amount as well as costs and attorney fees. Additionally, the payee is entitled to interest ([810 ILCS 5/3-806](#)). The current interest rate is 9% ([815 ILCS 205/4\(1\)](#)).

For those who do not wish to litigate, this bad check statute allows the payee to recover costs and expenses provided the appropriate written demand letter is sent ([810 ILCS 5/3-806](#)).

Post Judgment Remedies/Actions

Wage Garnishment: A judgment creditor may, under Illinois law, garnish wages to satisfy the judgment. The filing fee for this proceeding is based on a sliding scale relative to the size of the claim. Average costs are between \$35 and \$90.

Two statutory formulas must be used by the employer in calculating the amount which will be deducted from the judgment debtor's pay. First, the employer must calculate 15% of the debtor's gross pay. The employer then determines the amount by which the debtor's net pay exceeds 45 times (if debtor is paid weekly) the minimum wage (currently \$8.25 per hour) [735 ILCS 5/12-803](#). The judgment creditor is

entitled to receive the lesser amount for each pay period until the judgment is satisfied, the employee is terminated, or other order of court ends the withholding. If a debtor's net pay does not exceed 45 times the minimum wage, the judgment creditor will receive nothing. Failure of the employer to withhold per garnishment order can subject the employer to the entry of a final judgment against it for the full amount that is then due and owing by the debtor to the creditor ([All-Steel Employees Credit Union v. Singh, 345 Ill. App. 3d 1005 \(2d Dist. 2004\)](#)).

If the judgment debtor is already being garnished by another creditor, subsequent garnishments are "stacked" behind the first and will be honored in the order received. As the garnishee debtor can normally not be garnished more than once at the same time, subsequent garnishments must wait their turn ([735 ILCS 5/12-803](#)). However, if a withholding order is in place (i.e., child support) and the amount being withheld by that prior order is less than 15%, the employer must withhold the difference up to the 15% statutory maximum on the subsequent garnishment. While wage garnishments cannot be set aside by subsequent federal or state withholding orders to recover delinquent taxes, they can be trumped by a subsequent child support order that is properly served upon the employer ([735 ILCS 5/12-808\(c\)](#)).

As with any legal action, the judgment creditor must proceed with care, as Illinois law provides penalties for wrongful garnishment ([735 ILCS 5/12-817](#)) (see also [Schak v. Blom, 334 Ill. App. 3d 129 \(1st Dist. 2002\)](#)).

Bank Garnishment: Illinois allows the bank account of a judgment debtor to be attached through garnishment ([735 ILCS 5/12-701 et seq.](#)). The filing fee for this proceeding is based on a sliding scale relative to the size of the claim. Average costs are between \$35 and \$90.

Once the bank is served with the garnishment, it must freeze any and all amounts it holds on behalf of the judgment debtor. Those funds are held until further order of court. The debtor, however, may assert a number of exemptions to avoid the bank garnishment; most notable is the "wild card" exemption, which allows the debtor to exempt all monies in his bank account up to \$4000 ([735 ILCS 5/12-1001\(b\)](#)). This is not an automatic exemption, as debtor is required to appear in court to claim it. However, once the debtor comes to court to claim the exemption, it is routinely granted.

Any retirement funds, such as Social Security or pension funds and annuities are exempt, as are disability payments and life insurance policies ([735 ILCS 5/12-704](#) and [5/12-804](#)). Others who are named as joint account holders are considered "adverse claimants" under the law and are entitled to notice prior to the entry of any order concerning the funds in the account. Provided that the adverse claimant is not also a judgment debtor, he has the right to a hearing, in which he can attempt to establish his ownership interest in the funds being held pursuant to the garnishment ([735 ILCS 5/12-710](#)). If the adverse claimant can

provide sufficient evidence that some or all of the funds in the account belong to him, and not the judgment debtor, then those funds will not be subject to garnishment.

Primarily in Cook County, the judgment creditor may choose to use the Citation to Discover Assets (Non-Wage) in place of the Non-Wage Garnishment. While they essentially accomplish the same results, the Citation has the added advantage of not only freezing any money in the debtor's account on the day the Bank is served, but it continues to freeze any other funds that are subsequently deposited into the debtor's account after the Citation is served – up until the court enters a turn-over order ([735 ILCS 5/2-1402](#)).

A bank's failure to respond to a bank garnishment can result in the entry of a final judgment order against the bank for the same amount owed by debtor to the judgment creditor ([735 ILCS 5/12-706](#)).

Citations to Discover Assets: If the judgment creditor does not have the debtor's employment, banking or other asset information, Illinois provides for a debtor examination in court ([735 ILCS 5/2-1402](#)). The Citation is served upon the debtor and requires him to appear in court to be examined under oath regarding his financial situation and assets. The Citation may also request that debtor bring to court his prior tax returns, titles to vehicles and any other relevant documentation that will help the judgment creditor locate assets and determine the debtor's ability to pay. Once the Citation is served upon the judgment debtor, it acts as a lien against all of the debtor's assets and prohibits the transfer of those assets until further order of court ([735 ILCS 5/2-1402\(f\)](#)). If personal property is discovered, the judgment creditor can ask that the property be turned over to the Sheriff for sale – with the proceeds paid to the creditor ([735 ILCS 5/2-1402\(e\)](#)). Failure of the debtor to appear in response to a served Citation can result in the issuance of a Rule to Show Cause as to why the debtor should not be held in contempt of court ([735 ILCS 5/2-1402](#)). If debtor fails to appear after being served with the Rule to Show Cause, the Court may, if certain requirements are met, issue a body attachment (writ for arrest) ([735 ILCS 5/12-107.5](#)).

Note that the debtor has certain exemptions that he can assert, and these are found in ([735 ILCS 5/12-1001](#)). Included in these exemptions are payments from retirement plans, including Social Security. Also included are the homestead exemption of \$15,000; \$2400 for any equity in a motor vehicle; and the \$4,000 wild card exemption.

Judgment Liens: Judgment creditors may file a lien against the real estate of the judgment debtor ([735 ILCS 5/12-101](#)). This is accomplished by recording a memorandum of judgment with the recorder of deeds in the county in which debtor is believed to own real estate. The filing fee is approximately \$40. The memorandum, once recorded, will attach to all property owned by the judgment debtor in that county

for a period of seven years. Prior to the expiration of the seven years, the judgment must be revived ([735 ILCS 5/2-1602](#)) in order to retain the lien holders position against the real estate. The lien also attaches to any property that the judgment subsequently purchases in that county. The lien can also be foreclosed in certain instances. However, prior mortgages and liens must be taken into consideration to determine if there is equity that can be reached by the foreclosure process. In addition, Illinois homestead exemptions (\$15,000 for each spouse) must be considered ([735 ILCS 5/12-901](#) et seq).

Licensing Requirements

Collection Agencies: The primary statute in Illinois requiring licensing in the area of debt collection is the Illinois Collection Agency Act. ([225 ILCS 425](#) et seq). Under the Act, anyone acting as a collection agency must obtain a collection agency license. An entity is considered to be acting as a collection agency when, among other things, it engages in the collection of debts for others or buys accounts, bills or other indebtedness and engages in collecting the same ([225 ILCS 425/3](#)). Debt collection is defined as any act or practice in connection with only consumer debts [225 ILCS 425/2](#)). Even out-of-state debt buyers must be licensed, if they buy and sue on consumer accounts in Illinois ([LVNV Funding, LLC v. Trice, 952 NE 2d 1232 \(2011\)](#)).

To obtain the collection agency license, a \$750 fee must accompany the application, along with a bond for \$25,000. The applicant must also provide an employment history, financial statement, employee identity listing and trust account financial report. Note that [recent amendments](#) have altered the requirements for bonds and trust accounts for debt buyers. If the applicant has more than one location, a branch application will also be necessary. Corporations, whether foreign or domestic, must submit additional information regarding their incorporation. All of the necessary forms can be found on the website of the [Department of Financial and Professional Regulation](#). Be aware that the application approval process may take months. Renewals are scheduled on a three-year cycle, with the next cycle ending in May of 2015.

Specifically exempted from the licensing requirements of the statute are: original creditors attempting to collect their own debt, banks, credit unions, attorneys, loan and finance companies and insurance companies. ([225 ILCS 425/2.03](#))

Collection Practices/Tips

Commercial: Debts that do not involve transactions for personal, family or household purposes are considered outside the scope of the Fair Debt Collection Practices Act ([15 U.S.C. §§ 1692](#)). These debtors are presumed to possess a higher level of sophistication than their consumer counterparts. In certain instances, the debt being pursued may be a combination of consumer and commercial

transactions, in which case the creditor is advised to strictly follow the requirements of the FDCPA and Illinois Collection Agency Act ([225 ILCS 425](#) et seq).

When collecting commercial debts one must determine the exact nature and name of the business debtor. If suit is filed against the wrong business name, the action will be considered void from its inception ([Tyler v. J.C. Penney Co. \(1986\)](#), [496 N.E.2d 323](#) and [Dunavan v. Heritage House Nursing Home, 460 N.E.2d 75\(1984\)](#)). Illinois law does allow for mistakes involving misnomers to be corrected in certain limited circumstances ([735 ILCS 5/2-401\(b\)](#)). However, even where the law allows for correction of the misnomer, valuable time, resources and energy will likely have already been wasted pursuing the wrong entity. When the correct entity is identified, one must still determine if it is still viable.

Corporations and LLC's that have been dissolved or terminated present substantial challenges. Consider whether resources should be devoted to pursue collection action in these situations. If substantial sums are involved, and the creditor has reason to believe that the debtor corporation has transferred assets improperly ([National Acceptance Co. of America v. Pintura Corp., 94 Ill. App. 3d 703 \(1981\)](#), or otherwise acted improperly, prior to dissolution, Illinois provides a method to hold officers and even directors personally liable. If they can be shown to actively or passively have participated in the wrongful act (for officers) or failed to exercise ordinary care in supervising a subordinate (for directors) personal liability can arise, [Zahl v. Krupa, 365 Ill. App. 3d 653, 660 \(2006\)](#).

In addition, corporations that fail to "act as corporations" can be "pierced" under Illinois law, thereby making the principal(s) personally liable. The court will look at whether the principal(s) and the corporation maintain a separate existence from one another and whether treating the two separately would promote injustice. Things such as commingling personal and corporate funds, not maintaining any corporate formalities and inadequate capitalization will be some of the evidence considered by the court in entertaining an action to pierce the corporate veil ([Wachovia Bank, N.A. v Banco Panamericano Inc. 674 F.3d 743 \(2012\)](#)).

Once the correct party is identified and it is determined that they are still viable, all documents relating to the transaction from which the debt arose must be compiled. The court will require that:

- 1) there was an actual agreement between the parties, which included some form of consideration;
- 2) that the debtor did not perform his part of the agreement;
- 3) that the creditor did substantially perform; and
- 4) there was a determinable loss sustained by the creditor as a direct result of the breach ([Barille v. Sears Roebuck & Co., 289 Ill. App. 3d 171, 175 \(1997\)](#)).

Signed contracts are a great starting point, but often the agreement simply involves purchase orders and receipts for the delivery of goods. Gather all documents relating to the transaction, including any correspondence between the parties prior to, and after, default. These additional documents and messages can be very helpful in establishing the above elements, when the more traditional documents are not available.

Once judgment is obtained, the judgment creditor may attach bank accounts of the business. An advantage to pursuing commercial debtors is that exemption laws on bank garnishments do not apply ([735 ILCS 5/12-1001](#)). However, if debtor has a business account at a bank that has provided a business loan to the debtor, the bank may assert a right of set-off against the funds in the account. In order to actually obtain the funds, the bank must first properly assert its rights in the garnishment proceedings ([Obergfell v. Booth, 218 Ill. App. 492](#) and [Bee Jay's Truck Stop, Inc. v. Dept. of Revenue of Ill., 407 N.E.2d 755, 759 \(1980\)](#)).

The judgment creditor of a debtor corporation may also levy against the debtor's business ([735 ILCS 5/12-158 et seq](#)). However, the creditor should determine if liens already exist against the property. A UCC (<http://www.ilsos.gov/uccsearch/>) search should be conducted as well as a judgment search to see if there are any filings or prior pending actions that may create a prior lien. If there are prior liens, the Sheriff will likely not proceed with sale.

Illinois cases have also supported an action against an officer of a corporation personally, if the officer wrote a bad check to obtain property, knowing there were no funds in the corporate account to cover the check. If the officer fails to pay on demand, and acted with intent to defraud, he may be personally liable ([Veteran Supply Co., v. Swaw, 192 Ill. App.3d 286 \(1989\)](#)).

Lastly, if judgment is obtained, the creditor may serve the judgment debtor/corporation with a Citation to Discover Assets (Debtor Exam). Care should be taken to direct the Citation to a specific person who will have knowledge of the businesses assets, or lack thereof. If the party fails to appear, the creditor can then issue a Rule to Show Cause against that same party and, even an attachment, if necessary.

Consumer: Collection matters that involve transactions arising out of personal, family and household matters are considered consumer accounts and fall under the Fair Debt Collection Practices Act ([15 U.S.C. §§ 1692](#)). They also fall under the Illinois Collection Agency Act ([225 ILCS 425 et seq](#)), which mirrors many of the protection provisions of the FDCPA, if a party, other than the original creditor, is pursuing the collection of the account. Damages for violations involving a single individual are statutorily limited to \$1000, and/or the actual damages suffered by the debtor, plus attorney fees. Violations that

affect a number of debtors can result in a class action. In those situations, damages are capped at \$500,000, or 1% of the debt collector's net worth, plus attorney fees ([15 U.S.C. §§ 1692k](#)).

Collectors and debt buyers who pursue the collection of consumer accounts are required be licensed prior to proceeding with any collection activity (see licensing above and the discussion of the TRICE case that follows).

Elements necessary to prove breach of contract matters in consumer cases are the same as those outlined above for commercial contract actions. As with any collection case, all documents relative to the transaction that gave rise to the debt should be retained and provided to the collection firm. The same rules of evidence will apply to both commercial and consumer matters. However, in small claims cases, the rules of evidence may be relaxed ([Supreme Court 286\(b\)](#)).

Once judgment is obtained, creditors may attempt to collect the judgment by way of wage garnishment, bank garnishment, Citation to Discover Assets and by placing a judgment lien against real estate.

Secure/Unsecured Creditors: Those holding a security interest in personal or real property have always maintained an advantage over creditors who are unsecured, provided that the collateral has maintained its value and can still be foreclosed, repossessed or obtained through Replevin. Illinois allows each of these actions for creditors seeking satisfaction of outstanding debts and who maintain a valid security interest in the property they are pursuing.

Those creditors who hold a note secured by a mortgage against real estate may proceed with foreclosure, as can a judgment creditor who has a filed a judgment lien against real estate ([735 ILCS 5/15-1101 et seq](#)). However, consideration must be given to any prior liens and to the current homestead exemption laws that provide each spouse with a \$15,000 exemption ([735 ILCS 5/12-901 et seq](#)). This remedy is best pursued when the lien holder is in the first position with no prior liens, and the amount due is substantial.

Where the creditor maintains a security interest in personal property, the creditor may repossess the property, provided there is no breach of the peace ([810 ILCS 5/9-609\(b\)\(2\)](#)). The secured creditor may file a Replevin action to obtain a court order directing the sheriff to seize the property ([735 ILCS 5/19-108 et seq](#)). The creditor must supply a bond for the sheriff, which is usually for twice the value of the collateral. Another similar action that can be taken is called a Detinue. This common law remedy does not involve the sheriff and does not require a bond. Rather, the pleadings seek a judgment that orders the debtor to return the collateral, where the creditor can show superior right to title and possession (*Felt v. Williams*, 2

III. 206 (1835)). Debtor's failure to abide by such an order can be grounds for contempt and subsequent arrest.

In Chapter 13 matters, secured parties are given priority treatment on repayment plans, while unsecureds may receive only a small percentage of their claims. In Chapter 7 bankruptcies, the unsecured creditor will, as a matter of course, receive nothing, while the secured creditor's claim cannot be discharged. Of course, there are exceptions where the secured creditor's secure position may be limited to the actual value of the collateral. Consequently, a security interest in an automobile that has depreciated substantially, may afford the secured creditor the right to be secure only as to the current value of the vehicle. The balance of the claim will be treated as unsecure.

Filing Fees

There are 102 counties in the state of Illinois. Most collection actions are filed in state court and end up in the Circuit Court for the county in which the debtor resides. Each circuit court has its own filing fee schedule that utilizes a sliding scale based on the amount of the claim. The following is a list of the five most populous counties in the state together with their web site information.

Cook County	– http://www.cookcountyclerkofcourt.org/
DuPage County	– http://www.dupageco.org/courtclerk/
Lake County	– http://www.lakecountyil.gov/circuitclerk/Pages/default.aspx
Will County	– http://www.willcountycircuitcourt.com/
Kane County	– http://www.cic.co.kane.il.us/

This link provides phone and address information for the Clerk of each Circuit Court in the state:

http://www.state.il.us/court/CircuitCourt/CircuitCourtJudges/CCC_County.asp. On average, filing fees for claims of \$5,000 or less will usually be in the range of about \$85 to \$225 depending on the county. As the claim amount increases, the fee will increase and generally top out at around \$340 for cases of \$15,000 or more (in the most expensive counties).

Service of summons varies by county. All counties except Cook allow service by special process servers on the initial service. Private process service ranges between \$30 and \$75. In Cook County, the creditor must use the sheriff (for the 1st attempt only). The cost is \$60 for each defendant, regardless of whether service is successful. The County Sheriffs in the rest of the state average between \$30 and \$75 for service – depending on what part of the county debtor resides.

Garnishment and Citation filing fees also vary by county, but they average between \$25 and \$45 for smaller balances and \$50 and \$90 for larger balances. The cost to record a judgment lien is variable as well, but averages around \$35.

The cost to issue a new summons averages around \$6 around the state. Copies of judgment or other orders entered by the court average around \$2, while certified copies average \$8. Certified exemplified transcripts average around \$18. Generally there is no charge to file a revival action, other than the cost to serve the revival summons. If a case must be transferred from one county to another, the fee is usually equivalent to the filing fee for a new suit in the new county.

Relevant Recent Case Law

The two most relevant recent cases in Illinois, aside from the Feltman case referenced earlier, are the [Shah](#) and [Trice](#) cases. Both involve the collection of purchased or assigned debt. In the Shah case, the Illinois Appellate Court ruled that in order for a plaintiff to properly plead and establish an assignment of an account, the [Illinois Collection Agency Act](#) requires that the contract of assignment include three things: 1) the effective date of the assignment; 2) the consideration provided for the assignment and; 3) that the account assigned be identified in the contract of assignment ([Unifund v Shah, 407 Ill. App. 3d 737](#)) (Also see [225 ILCS 425/8b](#)). The court went on to hold that a collection agency who is assigned a debt may sue in its name only, and that the agency can establish the three requirements above by using multiple documents. The Illinois legislature has clarified this point with an amendment to the Illinois Collection Agency Act ([225 ILCS 425/8.5](#)), which specifically limits the requirements of [225 ILCS 425/8b](#) to situations involving the assignment of a debt for collection only, and not to debt buying situations. This amendment is effective January 1, 2013.

In the second case, [LVNV Funding, LLC v. Trice. 952 N.E.2d 1232 \(2011\)](#), the Illinois Appellate Court ruled that anyone who purchases and sues on purchased debt in Illinois must be registered as a collection agency under the [Illinois Collection Agency Act](#). The [Trice](#) case made it clear that licensing was necessary for even “passive” debt buyers.

Lastly, the Chicago City Council recently passed a law requiring debt collectors to obtain a Chicago business license, if they collect against debtors residing in Chicago. The [ordinance](#) takes effect July 1, 2013. Aside from statutory penalties, a failure to comply can result in revocation of the debt collector's license, which then cannot be reinstated for a period of four years. The statute does not apply to attorneys, and it mirrors much of the language of the Illinois Collection Agency Act and the FDCPA.

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.