

Louisiana Debt Collection Laws

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Couch, Conville & Blitt (“CCB”) is a multi-state law firm, which focuses primarily upon a consumer and commercial legal collection and creditors' rights practice. CCB represents a variety of local, regional and national businesses, including several publicly traded entities and some of the nation's largest lenders. The Firm serves as a regional legal resource for many of its clients, with its offices in Louisiana, Mississippi, Alabama, and Tennessee.

Members of the Firm have published and lectured extensively on a variety of legal and business issues, including creditors' rights, law office management, effective case management, legal collections, disaster planning and recovery, FDCPA, FCRA, GLBA and other laws impacting the lending and collection industry. Additionally, the Firm is deeply involved in the National Association of Retail Collection Attorneys. Several attorneys in the Firm have been recognized as local and national leaders in the practice of legal collections.

Christopher J. Couch is a founding member of Couch, Conville & Blitt. He manages the firm and its multi-state legal collection practice. His practice further focuses in the areas of Creditors' Rights, Commercial Litigation, General Business Counselling, and Collateral Lending. He represents a wide variety of clients, including collateral lenders, national banks, finance lessors, credit grantors, debt purchasers, collection agencies, local corporations, and several publicly traded corporations.

Bradley J Chauvin is the Lead collection counsel and Senior Louisiana Litigator with the firm. He has been with the firm and its predecessors for over 20 years. He has gained a reputation as an aggressive advocate for his clients, but a Fair opponent. He has had extensive experience in prosecuting and defending creditors' claims. His practice includes commercial and consumer legal collections for many of the Firm's local and national clients.

Michael D. Troendle is an Associate Louisiana Litigator. His practice focuses upon consumer legal collections and creditors' defense.

I. Statute of Limitation (Prescription)

In Louisiana, a statute of limitations is functionally equivalent to a “prescriptive period.”

(http://hlr.rubystudio.com/media/pdf/state_v_allproperty.pdf) Prescription is interrupted—the prescriptive “clock” pauses—upon the filing of a suit in a competent court and proper venue.

<http://www.legis.state.la.us/lss/lss.asp?doc=110486>) Interruption continues as long as the suit is pending. <http://www.legis.state.la.us/lss/lss.asp?doc=110525>) However, if the case is dismissed without prejudice or abandoned, the “clock” is presumed to have run throughout the course of the suit, and if the prescriptive period has elapsed, the right to assert the claim is terminated.

a. Contracts—Generally

Louisiana courts have held that the prescriptive period for a general contract is ten years.

<http://www.legis.state.la.us/lss/lss.asp?doc=110525>) Generally, prescription begins to run on either the date of last payment or the on the date the contract is breached.

<https://bulk.resource.org/courts.gov/c/F2/706/706.F2d.638.82-3725.html>) Louisiana law provides that the general ten-year period applies to all contracts, unless a more specific period is applicable. Thus, even though credit cards are based upon contract, a more conservative prescriptive period is applicable due to the Code and Jurisprudence.

b. Open Accounts—Credit Cards

In Louisiana, an “open account” is defined as an account for which purchasers customarily purchase goods and services on credit without giving consideration and receive monthly statements of account. The prescriptive period for an open account is three (3) years.

<http://www.legis.state.la.us/lss/lss.asp?doc=110518>) Louisiana courts have held that a credit card is considered an “open account” and, therefore, is subject to a prescriptive period of three years, as well. Prescription on a credit card account begins to run from the date of the last charge, purchase, payment or credit entry on the account.

c. Notes

Promissory notes, whether negotiable or not, are subject to a prescriptive period of five (5) years.

<http://www.legis.state.la.us/lss/lss.asp?doc=110524>) This prescription commences to run from the day payment is eligible.

d. Money Judgments

A money judgment rendered by a trial court prescribes by the lapse of ten years from its signing if no appeal has been taken, or, if an appeal has been taken, it is prescribed by the lapse of ten (10) years from the time the judgment becomes final.

<http://www.legis.state.la.us/lss/lss.asp?doc=110527>) An action to enforce a money judgment rendered by a court of another state or a possession of the United States, or of a foreign country, is barred by the lapse of ten (10) years from its rendition; but such a judgment is not enforceable in this state if it is prescribed, barred by the statute of limitations of the other state, or is otherwise unenforceable under the laws of the jurisdiction in which it was rendered.

II. Debt Collector Licensing Requirements

Any collection agency or debt collector doing business in this state must register with the Louisiana Secretary of State. <http://www.legis.state.la.us/lss/lss.asp?doc=408390>) This requirement does not apply

to individual collectors working at a law firm. Further, a licensed Louisiana attorney is exempt from this license requirement. However, an attorney not licensed to practice law in Louisiana is required to register under this law.

III. Communicating with Consumers

a. Call Recording

Louisiana is a “one party” consent state for purposes of recording phone communications.

(<http://www.legis.state.la.us/lss/lss.asp?doc=78938>) Thus, there is no requirement under state law to obtain the consent of a consumer before initiating a collection call.

b. Days of Rest

There are certain “days of rest” during which no collection calls may be made.

(<http://www.legis.state.la.us/lss/lss.asp?doc=107679>) A law firm must be careful to observe these “days of rest” to ensure that a consumer’s rights are protected.

c. Voice Messages

Inevitably, collection calls will go unanswered. When this happens, the collector is often faced with the prospect of leaving a message on an answering machine. Since answering machine messages may be overheard by a third party, “debt collectors” must carefully examine such risks. Currently, there are no Louisiana court decisions addressing liability for third party disclosures via voice messages. Further, the Fifth Circuit Court of Appeals is silent on this issue.

IV. Demand Letters

Louisiana law generally requires “amicable demand” to be issued prior to the commencement of a suit. The issuance of a demand letter can preserve statutory rights to attorney’s fees. A written demand for money due must set forth the correct amount owed and that the consumer may be liable to the claimant for reasonable attorney fees, when judgment on the claim is rendered in favor of the claimant.

(<http://www.legis.state.la.us/lss/lss.asp?doc=107205>) In consumer collection matters, the demand may also serve as a vehicle to meet applicable Federal notice laws.

V. Jurisdiction and Venue

Louisiana has many different court systems in which collection cases are filed. These include: District Courts, Parish Courts, City Courts, and Justice of the Peace or Small Claims Courts. Firms must decide the appropriate forum to file suit. There are several factors to consider such as jurisdiction based on amount in controversy and size of docket. Additionally, Federal laws related to consumer collections also impact the selection of venue.

VI. Service of Process

Subsequent to filing suit, service of process is made by the sheriff of the parish where service will be made or of the parish where the pleading is pending. (<http://legis.la.gov/lss/lss.asp?doc=111169>) If the sheriff is unable to make service or cannot do so within ten days of the request, a party, by motion, can have a personal process server appointed to make service, as long as the person is the age of majority, not a party and a resident of the state. (<http://legis.la.gov/lss/lss.asp?doc=111171>) The plaintiff has ninety days from filing the petition within which to request the appropriate sheriff to serve the defendant. (<http://legis.la.gov/lss/lss.asp?doc=111147>) A failure to request service can result in the dismissal of the suit.

Louisiana authorizes two forms of service upon natural persons: personal and domiciliary.

(<http://legis.la.gov/lss/lss.asp?doc=111153>) Personal service is made when a proper serving officer (the sheriff or court appointed process server) tenders the citation to the person upon which service is requested. (<http://legis.la.gov/lss/lss.asp?doc=111154>) The officer may effectuate personal service anywhere he is legally authorized to go to reach the person to be served.

(<http://legis.la.gov/lss/lss.asp?doc=111155>) Domiciliary service is effectuated when the appropriate officer leaves the citation at the dwelling house or usual place of abode of the person to be served with a person of suitable age and discretion residing in the domiciliary establishment.

(<http://legis.la.gov/lss/lss.asp?doc=111156>)

Louisiana also provides for service on corporate parties. Such service is effectuated when the appropriate serving officer makes personal service on a registered agent of the corporation or, in the absence of a registered agent, the Secretary of State. (<http://legis.la.gov/lss/lss.asp?doc=111162>)

Service fees depend on whether service is effectuated by the sheriff or by a private process server. Sheriff fees for service are usually \$20 and may be included in the cost of the suit or paid separately. Service fees for a private process server depend on the entity making service, but this option typically costs more than \$20.

VII. Judgments

a. Consent Judgments

Consent Judgments are not defined by statute. They are simply a compromise between the parties. A Consent Judgment is an agreement whereby the parties settle the dispute concerning the obligation sued upon and mutually request judicial recognition of the settlement.

(<http://www.legis.state.la.us/lss/lss.asp?doc=110114>) A Consent Judgment receives binding force and effect from the consent of the parties and the subsequent execution by the court. Consent Judgments are executable judgments and can only be rescinded or annulled as result of an error of fact, or of principal cause of the agreement.

b. Default Judgments

If a defendant in the principal or incidental demand fails to answer within the time prescribed by law [usually fifteen days (<http://legis.la.gov/lss/lss.asp?doc=111105>)], judgment by default may be entered against him. (<http://legis.la.gov/lss/lss.asp?doc=111284>) The judgment may be obtained by oral motion in open court or by written motion mailed to the court. A judgment of default is confirmed by proof of sufficient service, lack of formal response by the defendant, and evidence sufficient to establish the claim. In those proceedings in which the sum due on an open account is sought, a hearing in open court shall not be required unless the judge, in his discretion, directs that such a hearing be held.

(<http://legis.la.gov/lss/lss.asp?doc=111285>)

c. Summary Judgments

In the event that an Answer is filed and the parties cannot resolve the claim via a Consent Judgment, the plaintiff will typically attempt to obtain a Summary Judgment. To succeed on a Motion for Summary Judgment, the movant must demonstrate that there is no genuine issue of material fact for the court to decide, and that the movant is entitled to judgment as a matter of law.

(<http://legis.la.gov/lss/lss.asp?doc=112309>) The plaintiff may file a Motion for Summary Judgment any time after the Answer has been filed but many courts prefer to conclude the discovery phase of the case as well. The majority of the litigation that CCB performs is motion practice, such as summary judgments. This allows CCB to attain judgment for clients quickly.

VIII. Judgment Enforcement

a. Examination of the Judgment Debtor

Upon ex parte motion by the judgment creditor, the court will order the judgment debtor to appear in court not less than five days from the date of service of the motion and to produce at the examination any financial records regarding his property requested in the motion.

(<http://legis.la.gov/lss/lss.asp?doc=111461>) At the examination, the judgment creditor will be permitted to question the judgment debtor under oath as to his financial condition and assets.

(<http://legis.la.gov/lss/lss.asp?doc=111464>) Moreover, all costs associated with the examination will be taxed against the judgment debtor unless the court determines that the examination was unnecessary.

(<http://legis.la.gov/lss/lss.asp?doc=111465>)

b. Garnishment

Louisiana maintains two types of garnishment procedures: wage and bank. The property exempt from seizure by garnishment under Louisiana law is extensive, but Louisiana Exemptions are similar to the Federal Exemptions. One of the most notable exemptions is the limitation of wage garnishments to only twenty-five percent of the judgment debtor's adjusted disposable earnings.

(<http://www.legis.state.la.us/lss/lss.asp?doc=77632>) Funds in a bank account are subject to garnishment as long as the funds are not exempt under Louisiana Revised Statute 13:3881 or any other law.

Garnishment fees can range from \$40 to over \$500 depending on the jurisdiction.

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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