

Maryland Debt Collection Laws

Submitted Thomas A. Mauro, Esq., Mauro Law Offices, P.C.

www.tmaurolaw.com

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Thomas A. Mauro is the senior member of Mauro Law Offices, P.C. He established his Firm in 1979. He is a graduate of the Georgetown University Law Center and is admitted to practice in Maryland and the District of Columbia and all of the federal and state courts in both jurisdictions. He is also admitted to the United States Supreme Court. Mauro Law Offices is affiliated with Virginia counsel and thus covers the Virginia courts in the Washington, D.C. Metro area. The Firm has been engaged in creditors' rights litigation since 1986 and also maintains a corporate consulting practice.

Overview of Maryland Court Structure

Maryland, like several states in the Mid Atlantic, has a two tier judicial structure at the trial level.

Circuit Court

- Court of general jurisdiction, established in each county and in the City of Baltimore.
- Highest common law and equity court of record in the State.

Court of Special Appeals

- An intermediate appellate court.
- Appeals from final judgments of the Circuit Court may be brought here as a matter of right.
- Appeals to the State's highest court in collection and subrogation cases, the Court of Appeals, must be certified by the Court.

District Court

- A separately created court also located in each county and Baltimore City.
- May be unique among courts of limited jurisdiction among the states, because its function and rules are uniform across the State and, for the most part, are uniformly administered.
- Most steps in the *District Court* are taken by completing a court issued form.
- Generally, the *District Court* has no equity power in collection and subrogation cases, although replevin actions are brought there, regardless of the value of the thing in controversy.
- *The great majority of routine collection and subrogation cases in Maryland are brought in the District Court.*
- As long as there is no problem with service, a plaintiff can expect to have judgment in the *District Court*, either by default or trial, in an average of nine months to a year.
- The statutory post judgment interest rate in Maryland on all judgments is 10.0% per annum.

Jurisdiction by Amount of Claim

- The *Circuit Court* has exclusive original jurisdiction for contract or tort claims exceeding \$30,000.00, excluding interest and attorney's fees.
- The *District Court* has exclusive original jurisdiction over contract or tort claims not exceeding \$30,000.00.
- A party to a claim exceeding \$15,000.00, exclusive of interest and attorney's fees, brought in the *District Court* may remove the claim to the *Circuit Court* by demanding a jury.
- In the rare case where a creditor wants a jury in a claim greater than \$15,000.00, the creditor must bring the claim in the *Circuit Court*.
- Small Claims, which are defined as less than \$5,000.00, exclusive of interest and attorney's fees, may only be brought in the *District Court*.
- Trials in the *District Court* for claims above \$5,000.00 are conducted on the record. Appeals from judgments in these cases are a matter of right to the *Circuit Court*, but are based only on the record and must demonstrate that the judgment was clearly erroneous as a matter of law or fact.
- Either party may bring a *de novo* action in the *Circuit Court* after a judgment on a small claim (less than \$5,000.00) in the *District Court*.

Trial Dates/Deadlines

- Because of its uniform administration, all actions in the *District Court* are filed using a standard form which allows for the creditor's claim to be brought under affidavit.
 - When a case is filed, a trial date is set, generally two to three months off. The plaintiff is given a deadline within which to serve the defendant.
 - If the defendant is served within the deadline and fails to submit a written "Notice of Intention to Defend" on or before the scheduled trial date, the creditor's counsel is not required to appear on the scheduled date, and the Court will enter what is called an "affidavit judgment," as long as the documentation of the plaintiff's verified claim is sufficient.
 - Generally in subrogation cases involving a bodily injury claim, the Court will require a witness to present ex parte proof at a later date.
- If the debtor does appear on or before the scheduled trial date in the *District Court* and indicates his or her intention to defend, the Court will reset the case for trial, at which time the plaintiff must be prepared to prove its case.
 - Discovery in the District Court is limited to 15 written interrogatories, which may include requests for documents identified in the interrogatories.
 - Nominally, a party must provide written responses within 15 days of service. The Rules do not allow any other form of discovery.

- Motions practice is limited and the judges generally defer ruling on most motions to the day of trial.
- If the defendant is not served within the deadline set out in the original summons in the *District Court*, the plaintiff may renew the summons indefinitely, until it either gives up or accomplishes service.
 - If the plaintiff can demonstrate that the debtor is evading service, the plaintiff may move for leave to serve by alternative means, such as posting on the defendant's front door or at the courthouse.
 - If there is no activity in a case for one year or more, on notice to the plaintiff's counsel, the Court will dismiss the case for failure to prosecute.
- For claims brought in the *Circuit Court*, the defendant must be served within 60 days of issuance of the summons.
 - Once served, the Court will generally issue a Scheduling Order on its own, or will require the parties to appear for the establishment of a litigation schedule.
 - In collection cases, the *Circuit Court* generally mandates mediation before a mediator, who is appointed by the Court and must be paid an hourly fee by the parties. If mediation fails, the Court may conduct mediation itself; but it generally sets the case down for a full pretrial conference.
 - All forms of discovery and motions are allowed in the *Circuit Court*.
 - There is no technical limit on the number of times a summons may be reissued.
 - Motions for alternate service may also be brought in the *Circuit Court*. The practitioner should expect to be called to attend scheduling conferences and motions hearings and, of course, must be present at the pretrial conference in the Circuit Court.

Outline of Maryland Collection Law

1. Statute of Limitations

- The Statute of limitations in Maryland for open accounts and writings, such as contracts and promissory notes, is three (3) years from the date of breach.
- Generally, a renewed promise to pay an old debt, which can be proven, renews the running of the limitations period.
- The limitations period for a minor does not start to run until the minor reaches majority.
- The limitations period for a contract signed under seal in Maryland is 12 years.
- Domestic judgments and judgments domesticated in the State expire in 12 years from the date of issuance and can be renewed for a similar period without difficulty.

2. Bad Check Laws

- If a check is dishonored by the drawee, upon presentation the drawer may be charged with a crime and pursued civilly.
- Criminal Charges:
 - Misdemeanor - up to \$100 fine and/or 18 months in prison if the check is under \$500.00.
 - Felony - up to \$1000 fine and/or 15 years in prison if the check is more than \$500.00.
- Failure to pay off bad check within 10 days from the date of notification results in the receiver charging an additional \$25 as a collection fee. Failure to pay within 30 days allows the receiver to charge two times the original check amount, up to \$1,000.
- The *District Court* has exclusive original civil jurisdiction in an action for damages for a dishonored check or other instrument, regardless of the amount in controversy. However, if the amount exceeds \$25,000.00, the defendant upon demand may remove the case to the *Circuit Court*.

3. Garnishments

- Maryland law provides for writs of garnishments issued by the Circuit or District Court on wages and property. In addition, property of a judgment debtor may be seized by the sheriff and sold.
- The garnishee must be served with the writ.
- Post judgment writs on wages and bank accounts do not require posting of a bond, although there are significant costs associated with an attempt to seize and sell real property to satisfy a judgment.
- Generally, the garnishee must withhold 25% of the net wages of the debtor and all of the property in a bank account which is the equivalent of the judgment amount, even in a joint account. But this is subject to challenge. The garnishee identifies such property in its interrogatory answers. If the garnishee does not answer and permits property of the defendant which may be attached or wages to be withdrawn from its possession, the creditor may seek judgment against the garnishee for the value of the property withdrawn.
- The defendant or garnishee may answer the writ by claiming exemptions authorized by law.
- For wage garnishments, the debtor may claim for exemption the greater of 75% of the debtor's disposable wages or 30 times the federal minimum hourly wages in effect at the time of the garnishment, plus any medical insurance payment deducted by the employer from the employee's wages.

- For garnishments on property other than wages, exemptions include:
 - (a) wearing apparel, books, tools, instruments or appliances up to \$5,000.00 in value necessary for the practice of any profession, except those kept for sale, lease or barter;
 - (b) injury, accident disability or death benefits;
 - (c) professionally prescribed health aids;
 - (d) debtor's interest in household furnishings, including pets up to \$1,000.00 in value;
 - (e) plus an additional \$6,000.00, if claimed within 30 days after service of the writ on the entity holding the property.
- Social Security benefits, annuity or retirement benefits from the Armed Forces, Civil Service retirement and disability funds and annuities to widows and surviving dependent children of judges may be exempt.

4. Licensing, Bonding and Other Regulations.

Maryland requires collection agencies, but not creditors or debt buyers, to be licensed. Collection agencies are third parties engaged in the business of collecting debt from consumers. Lawyers or law firms are not exempt from the licensing requirement, if more than 50% of the firm's total business activity consists of employing persons who are not lawyers to collect consumer debts or to solicit such debts for collection. The application and renewal fees for a license are currently \$900.00. The licensee is required to post a surety bond in the amount of \$5,000.00.

The following are excluded from the collection agency licensing requirement: banks, credit unions, mortgage lenders, a person acting under an order of court, a licensed real estate broker or his or her agent collecting rent, savings and loan associations, title companies as to its escrow business, trust companies and lawyers (unless excepted as already noted) and certain other persons who are collecting a debt for another, if they file pertinent information before the State Collection Agency Licensing Board before they try to collect the debt.

Lawyers not licensed to practice in Maryland may not seek to collect debts in the state.

Special rules for purchase debt cases

Because of abuses, real and perceived, in the collection of purchased debt, the Court of Appeals in Maryland, effective January 1, 2012, initiated rules requiring debt buyers to provide more proof before being allowed to obtain affidavit (default) judgments against consumers. Litigants must attach to their complaint what is generally referred to as proof of a "chain of title" for the debt. Noting that such debts are often bought for fractions on the dollar, the new rules require fairly stringent and reliable proof to be filed with the complaint: the correct balance on the debt,

ownership of the debt (chain of title), and that the debt is owed by the defendant actually before the court.

In its report to the Court of Appeals, the rules committee noted that the problem of lax enforcement of proof in debt buying cases “has received national attention and has generated concern in Maryland by the Commissioner of Financial Regulation, the Office of the Attorney General and the District Court.” The courts in Maryland are generally holding the owners of purchased debt to this higher standard, with or without a defense to the claim. Importantly, while Maryland allows the use of business records certificates to introduce business records without a live witness, the courts are split as to whether the plaintiff must produce a certificate from the entity that created the document or whether a certificate from the debt buyer only is sufficient. The prudent litigant will obtain, if it can, a certificate from each party that created the business record.

5. Filing Fees and Service of Process Costs

Filing fees in Maryland are uniform across the State and very reasonable.

- In the *District Court*, the filing fee for a complaint that does not exceed \$5,000.00, exclusive of interest and attorney’s fees, is \$28.00.
- For claims from \$5,000.00 through \$30,000.00 the fee is \$38.00.
- The basic filing fee for an action in the *Circuit Court* in Maryland is \$145.00 and varies slightly from one county to another.
- The fees for post-trial writs are generally \$10.00 in the *District Court* and \$25.00 in the *Circuit Court*. Fees for other submissions fall within this range and can be found online.
- Service of process fees in Maryland for service by the sheriff is \$40.00.
- Private process servers generally charge between \$50.00 and \$75.00 per single service.
- The *District Court* will attempt service by certified mail, return receipt, for a fee of \$10.00.

6. Debtor Exams

Both the *Circuit* and *District Court* allow for debtor’s examination post judgment. The judgment creditor can ask the court to issue an order requiring the judgment debtor to appear in court in person to be questioned under oath. In the *District Court*, thirty days after the date of judgment the judgment creditor must complete a *Request for Order Directing Defendant to Appear for Examination in Aid of Enforcement of Judgment*. The order must be served on the defendant within 30 days of its issuance. The order will let the defendant know when he or she is required to appear. In the *Circuit Court* the same procedure is followed, except that the practitioner must prepare the request for an order, the request must identify an examiner, and the judgment creditor must pay the examiner’s fees.

Many practitioners accomplish a debtor exam through the painstaking process of issuing written post judgment discovery, obtaining first an order to compel answers when none are forthcoming, then an order to show cause, and finally a “body attachment,” which results in the actual arrest of the debtor.

7. General Practice Relating to Collection Law in Maryland

Generally, the courts in Maryland are becoming more and more sensitive to abuses and proof of claim issues in consumer collections. When there is a written contract allowing for the recovery of attorney’s fees, the courts will enforce the contract to an extent. A recent opinion from the Court of Appeals in *SunTrust Bank v. Frank J. Goldman, et al.* and other cases make it clear that the courts will no longer award attorney’s fees based on a percentage of the total award. Upon application, it is necessary for default judgment to demonstrate the reasonableness of the attorney’s fees request, usually by affidavit. Many practitioners submit their affidavits prior to the impending affidavit judgment date. In drafting contracts with attorney’s fees provisions, it may be useful to change the language to include the recovery of actual legal fees. But the courts will continue to require that such fees also be reasonable.

Maryland Consumer Debt Collection Act

Maryland generally follows the national trends in the treatment of consumer debt cases. Maryland has its own version of the Federal Debt Collections Procedure Act (FDCPA), the Maryland Consumer Debt Collection Act. The Act generally tracks the federal statute proscribing the same acts in collecting a debt as does the FDCPA. Abusive language, threats of jail, repeated telephone calls, and the like are proscribed. Civil suits are created which include a fee shifting provision and damages for emotional distress and mental anguish, with or without accompanying physical injury.

Maryland Consumer Protection Act

Maryland also has a wide ranging and powerful Consumer Protection Act, which includes a fee shifting provision. For example, creating a consumer debt, through the use of high pressure or misleading sales tactics, may well lead to a counterclaim based on violation of the Consumer Protection Act against the creditor in the collections action. This is true even if the creditor, in theory, financed the consumer transaction at arm’s length.

There are no such restrictions on commercial collections, although the courts will enforce any violations of the rules of ethics in prosecuting commercial claims.

Judgments obtained in creditors' lawsuits become liens against any property held by the judgment debtor in the State. The liens are automatic for judgments in the *Circuit Court* for the county in which the court sits. Judgments from the *District Court* may be recorded through the use of a simple form and a \$15.00 fee in any *Circuit Court*.

Secured and Unsecured Creditors

A secured creditor in Maryland has the right to have the debtor's assets marshaled. An unsecured creditor does not have the standing to assert such right. The doctrine of marshaling assets and securities is an equitable one, and thus belongs to the court exercising its equity jurisdiction. Generally, the courts will take steps to protect a creditor with a junior secured position, if it is possible to do so.

Finally, while there are no unusual Attorney General or ethics opinions operating in the state at the moment, the state's proximity to Washington, D.C. makes the enforcement activities of the Federal Trade Commission in the area of consumer collections very accessible to the state authorities.

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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