

Minnesota Debt Collection Laws

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<http://www.gurstel.com/home>

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In 1997, Gurstel Chargo was formed in Minneapolis to assist businesses with their fiscally-driven matters. <http://www.gurstel.com/home>. Throughout the years, the firm has expanded in practice discipline and growth to include offices in Arizona, Iowa, and most recently in Nebraska. The firm is a business-focused firm with three business lines that include retail collections, commercial collections and financial recovery. The practice blend is structured to provide clients with sophisticated and occasionally unlikely solutions to their fiscally-driven matters. Amy M. Goltz, the director of retail litigation, practiced at a national collection law firm for several years prior to joining Gurstel Chargo. Ms. Goltz is admitted to practice in Minnesota, Wisconsin, Iowa, Nebraska and the U.S. District Court for the District of Minnesota. Ms. Goltz earned her Juris Doctor from William Mitchell College of Law, where she graduated with honors. Daniel J. Bernhard, an associate in the firm's retail litigation department, served for several years as a judicial law clerk for the Chief Civil Judge in Hennepin County District Court. Mr. Bernhard earned his Juris Doctor from William Mitchell College of Law, where he graduated with honors.

Statute of Limitations

The general rule in Minnesota is that a creditor may only bring a lawsuit to collect on an open account or written contract if the lawsuit is brought within the applicable limitation period. Generally, a six-year limitation period governs contract claims, unless Minnesota's adoption of the Uniform Commercial Code prescribes otherwise. [Minn. Stat. § 541.05 subdiv. 1 \(2011\)](#).

In 2004, Minnesota adopted the Uniform Conflicts of Laws-Limitations Act, which requires the law of the state governing the contract (including that state's limitation periods) be applied to the claim. [Minn. Stat. §§ 541.30 – 541.36 \(2011\)](#). While this means that the limitation period on a claim being pursued in Minnesota can be severely reduced, the foreign state's laws for starting and stopping the limitation period also apply. [Minn. Stat. § 541.32 \(2011\)](#). In this regard, many states (like Minnesota) have "tolling statutes" that stop the limitation period from running when the person is not amenable to service within that state. [See Minn. Stat. § 541.13 \(2011\)](#).

Judgments

In Minnesota, judgments are also limited by time. Judgments (other than those in certain family-law settings) survive for ten years from the date of entry. [Minn. Stat. § 548.09 \(2011\)](#). Notably, every docketed judgment obtained in Minnesota that requires the payment of money also becomes a lien upon all real property (except Minnesota's registered property) within the docketed county. *Id.* The lien survives

so long as the judgment remains valid. *Id.* Judgments may be moved via transcription and then docketed in other counties as well. *Id.* To extend the life of the judgment and judgment lien, judgments can be renewed for an additional ten years. [Minn. Stat. § 541.04 \(2011\)](#).

Foreign judgments (any judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in Minnesota) are treated similarly. [Minn. Stat. § 548.27 \(2011\)](#). The date of entry of a foreign judgment is the original date of entry in the foreign jurisdiction and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as if the foreign judgment was obtained in Minnesota. *Id.*

Bad Check Laws and Civil Penalties

Checks, drafts, orders of withdrawal, or similar negotiable or nonnegotiable instruments issued in Minnesota carry with them civil penalties for the issuer, whenever such instruments are dishonored. [Minn. Stat. § 604.113 \(2011\)](#). Specifically, the person issuing the check is immediately subject to a service charge, not to exceed \$30, so long as notice of the service charge is conspicuously displayed on the premises when the check was issued. Civil penalties can increase considerably where the person receiving the check issues a notice of dishonor pursuant to Minnesota law. If the amount of the dishonored check is not paid within thirty days after mailing of a proper notice, the check issuer is liable to the payee for the amount of the instrument, the aforementioned service charge, a civil penalty of up to \$100 or the value of the instrument (whichever is greater), interest, and in limited circumstances, reasonable attorney fees. *Id.* Proof of identity commonly becomes a problem in this area, but in Minnesota, the instrument can become prima facie evidence of the issuer's identity so long as the person receiving the instrument adheres to certain, simple-to-implement, protocols.

Garnishment Exemptions Generally

In Minnesota, an assortment of both state and federal laws establish various categories of property that can be exempt from a creditor's garnishment attempts. If a Minnesota resident declares bankruptcy, 11 U.S.C. § 522(b) of the Bankruptcy Code permits a debtor to elect either exemptions provided for by Minnesota state and non-bankruptcy federal law, or exemptions expressly set forth in the Federal Bankruptcy Code.

Minnesota's state and federal non-bankruptcy exemptions, which are similar to those in other states, include the following:

- homestead property up to a determined amount ([Minn. Stat. § 510.01](#)),
- the family Bible, library and musical instruments ([Minn. Stat. § 550.37](#)),
- a burial plot (*id.*),

- a motor vehicle up to a determined amount (*id.*),
- wearing apparel, one watch, utensils, and foodstuffs (*id.*),
- household furniture, appliances, phonographs, radios, and televisions up to a determined amount(*id.*),
- wedding rings up to a determined amount (*id.*),
- implements, professional books, office furniture, tools and business library up to a determined amount (*id.*),
- farm machines and implements up to a determined amount (*id.*),
- funds received by or payable to a surviving spouse or child at the death of a spouse or parent up to a determined amount (*id.*),
- loan valued or accrued dividend under an un-matured life insurance contract up to a determined amount (*id.*),
- a certain percentage/amount of disposable earnings (*id.*),
- unemployment compensation or local public assistance benefits ([Minn. Stat. § 268.192](#)),
- veterans benefits ([Minn. Stat. § 550.38](#))
- disability, illness or unemployment benefits ([Minn. Stat. §§ 268.192, 550.39](#)), <https://www.revisor.mn.gov/statutes/?id=550.39>,
- ERISA qualified plans, 11 U.S.C § 522(b)(3)(C) retirement funds, and stock bonus, pension, profit-sharing or similar benefits ([Minn. Stat. § 550.37](#)),
- payments on account of wrongful death (*id.*),
- payments on account of personal bodily injury (*id.*).

With regard to payments on account of personal bodily injury, Minnesota has drawn a distinction between monies flowing from the action and monies flowing from settlement. [Midland Credit Mgmt. v. Chatman](#), 796 N.W.2d 534 (Minn. Ct. App. 2011). In addition, some of the exemptions noted have been determined to be unconstitutional by Bankruptcy District Courts.

Minnesota Licensure

In Minnesota, no one may operate a “collection agency” or engage in the business of collecting for others without first having applied for and obtaining a collection agency license. [Minn. Stat. § 332.33 \(2011\)](#).. While this language is broad, certain exclusions exist. Specifically, the term “collection agency” does not include persons whose collection activities are confined to and are directly related to the operation of a business *other than* that of a collection agency. [Minn. Stat. § 332.32 \(2011\)](#). Such persons can include, but are not limited to, banks when collecting accounts owed to the banks and when the bank will sustain any loss arising from uncollectible accounts, abstract companies doing an escrow business, real estate brokers, public officers, persons acting under order of a court, lawyers, trust companies, insurance companies, credit unions, savings associations, and certain loan or finance companies. *Id.* A collection agency licensee who desires

to carry on business in more than one place must also have a license for each place where the business is to be conducted. [Minn. Stat. § 332.33 \(2011\)](#).. Each collection agency licensee must also notice file and maintain a corporate surety bond in an amount prescribed by law. [Minn. Stat. § 332.34 \(2011\)](#)..

A collection agency is only exempt from Minnesota’s licensing and registration requirements if all of the following conditions are met:

- (1) the agency is located in another state that regulates and licenses collection agencies, but does not require a Minnesota collection agency to obtain a license to collect debts in the agency's state if the agency's collection activities are limited in the same manner;
- (2) the agency's collection activities are limited to collecting debts not incurred in Minnesota from consumers located in Minnesota; and
- (3) the agency's collection activities in Minnesota are conducted by means of interstate communications, including telephone, mail, electronic mail, or facsimile transmission. [Minn. Stat. § 332.3351 \(2011\)](#)..

Minnesota Collection Practices Today and Tomorrow– Secured or Unsecured Debt

In Minnesota, collection activity can be fundamentally broken down to activity based on secured debt or unsecured debt. Secured debt comes in multiple variations and is typically handled from a commercial standpoint based on Article 9 of Minnesota’s adoption of the Uniform Commercial Code. [Minn. Stat. Ch. 336 \(2011\)](#).. Here, where the debtor defaults on the obligation, the secured party may generally collect or repossess, then sell or retain, the collateral subject to the security interest, in order to satisfy the obligation in whole or in part before proceeding with other post-judgment collection efforts. If the interest is properly attached and perfected, a secured creditor takes priority over competing claims to the collateral from unsecured creditors, buyers not in the ordinary course of business, and the debtor’s bankruptcy trustee. Agricultural liens and consignments are also types of personal property collateral that are covered. [Minn. Stat. §§ 336.9-102, 336.1-201 \(2011\)](#).. Cases involving these claims are typically resolved in Minnesota District Court.

Consumer collection of unsecured debt may also be resolved in district court, but another option is available that can provide a speedier and more cost effective approach for the parties. Minnesota’s version of “small claims” court, otherwise known as [Conciliation Court](#), is being modified to handle a larger caseload within the state.. Minnesota’s conciliation court now handles certain claims up to \$10,000 for general claims, \$4,000 for consumer credit cases; and \$15,000 for forfeitures. These limits may increase in time. Conciliation court procedure is simpler and the filing fee is considerably lower than filing in district court. Claims best suited for conciliation court include claims by creditors for unpaid debts, claims by employees for unpaid wages, claims by tenants for return of security deposits, claims by

landlords for damage to property, and claims about the possession or ownership of personal property (again, valued at \$10,000 or less).

Minnesota also has procedure in place that can, in effect, lower the cost of litigation in district court. In either the commercial or consumer arena, Minnesota is one of only a few states that allows a suit to be initiated prior to ever filing the case with the district court. [Minn. R. Civ. P. 3.01 \(2011\)](#). Many civil district court suits are therefore resolved without ever incurring a filing fee – a benefit to all parties as well as the courts. This procedure, however, is currently in flux. Specifically, Rule 5 of the Minnesota Rules of Civil Procedure may require filing within one year of commencement or the action will be dismissed with prejudice (unless the parties within that year sign a stipulation to extend the filing period). An alternative proposal requires filing within one year of commencement or the action will be dismissed without prejudice, but filing would be required to reinstate the action.

http://www.mncourts.gov/Documents/0/Public/Court_Information_Office/Civil_Justice_Ref_Task_Force_Supp_Rpt_May_2012.pdf

Court Fees and Costs

Costs related to court filing fees in Minnesota vary by county. The link to fees can be found here to the extent they are available online: <http://www.mncourts.gov/?page=1020>. As a general matter, court filing fees in Minnesota are higher than in other states, in part due to the service procedure noted above. Because cases can, and often are, resolved without filing, the Minnesota judiciary recoups lost filing income with higher average filing costs than other jurisdictions. Other court costs may include, but are not limited to, a motion filing fee of \$100 in contested matters, a jury fee of \$100 when requested, foreign judgment filing fees (around \$70 if under \$7,500 or less, around \$325 if over \$7,500), fax fees and other nominal miscellaneous administrative fees.

Service of Process and Other Costs of Collection

Because approximately forty percent of Minnesota's population resides outside the greater Minneapolis – St. Paul metropolitan area, choice of effective service methods can be an important consideration. Unless otherwise ordered by the court, the sheriff or any other person not less than eighteen years of age and not a party to the action may make service of a summons or other process, thereby commencing the suit. [Minn. R. Civ. P. 4.02 \(2011\)](#). Process service companies often provide the most cost-effective route to effectuate proper service. Costs for these services in Minnesota can vary between \$30 and \$50 depending on the company and service location. Alternatively, service by county sheriff may be used and in many instances may be preferred; however, such service is typically costlier, ranging between \$30 and \$100 depending on the county. Despite the added costs, service by sheriff can be helpful when running up against statute of limitations issues, in that an additional sixty days may be, in effect, added to the limitation period. [Minn. R. Civ. P. 3.01\(c\) \(2011\)](#). If process is brought to the sheriff's office before

expiration of the limitation period, and service is effected by the sheriff within the next sixty days (or the first publication is made), the date of commencement relates back to the date process was first brought to the sheriff's office. *Id.* Attorneys must be vigilant to ensure service is effected within those sixty days.

Other costs to consider in Minnesota include costs of post-judgment collection remedies. The cost to issue a garnishment in Minnesota is typically around \$15, along with \$55 to order a writ from the court. Garnishments can be served by first-class mail. Additional post-judgment collection remedies that add cost, and should be tailored in use to a particular case, include demands for financial disclosure, post-judgment discovery, issuance of subpoenas, and post-judgment depositions.

Attorney General Cases

Minnesota is fortunate to have an active Attorney General's Office that looks to protect debtors from unscrupulous collection practices, while maintaining an even playing field among the various collection agencies and firms. Information, notable cases and other resources can be found at:

<http://www.ag.state.mn.us/Consumer/Finance/DealingWithDebt.asp>.

Recent Debt Collection Cases

In Savig v. First National Bank, the Minnesota Supreme Court ruled that a judgment creditor could garnish a joint account in an attempt to attach funds, even though not all account holders were judgment debtors; the burden to establish net contributions into a joint account is on the account holders during the garnishment proceedings; and a presumption exists, although rebuttable, that a judgment debtor owns all funds in a joint account. 781 N.W.2d 335 (Minn. 2010). In Lind v. Midland Funding, L.L.C., the United States Court of Appeals for the Eighth Circuit put to rest constitutional due process issues arising out of joint account garnishments similar to those in Savig. 688 F.3d 402 (8th Cir. 2012). Other debt collection litigation in Minnesota includes the application of the Uniform Conflicts of Laws-Limitations Act, as noted above.

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.