

Nevada Debt Collection Laws

Submitted by Ronald H. Reynolds, Senior Partner, Reynolds & Associates

<http://reynoldslawyers.com/>

Published by The National List of Attorneys

www.nationallist.com

Ronald H. Reynolds, a third generation Nevadan, is the senior partner at Reynolds & Associates and has been a practicing attorney for 36 years. He received his Bachelor's Degree at Brigham Young University and Juris Doctor from Gonzaga University. In his various capacities, he has been active as a speaker at seminars and has authored numerous articles. He specializes in business law, collections, financial institutions and general corporate representation. Mr. Reynolds is an AV rated attorney with Martindale-Hubble and, throughout his career in litigation, has taken part in molding Nevada law in the areas of creditors' and employers' rights and duties.

Every state has its debt collection nuances, both in law and in practice. If you're going to be issuing credit or purchasing debt in Nevada, you will find it helpful to get some background on the basic contours of the collection process. Understanding the basics of associated licensing, fees, regulations, and exemptions will help you to better evaluate your investment opportunities and avoid some of the common pratfalls that may make eventual collection a headache. There's no substitute for consulting with an experienced local attorney, but the following should at least provide you with an overview of some of the basics.

I. Foundational Debt Collection Laws

a. Statutes of Limitations

Any of a number of different statutes of limitations can apply in different collection scenarios. The Nevada statute of limitations on open accounts is four years. [NRS 11.190\(2\)\(a\)](#). Written contracts, however, are subject to a statute of limitations of six years. [NRS 11.190\(1\)\(b\)](#). Credit card accounts typically qualify as open accounts, but when backed up by a written application/agreement, or the position that signing the back of the card indicates agreement to the terms and conditions, then the six-year statute may be applicable. Obviously, a certain ambiguity exists as to which statute of limitations applies. Nevada courts will generally follow the 9th Circuit ruling that "if a substantial question exists about which of two conflicting statutes of limitations to apply, the court should apply the longer as a matter of policy," so a credit card account founded upon a written agreement should qualify for a six-year statute. [Marshall v. Kleppe, 637 F. 2d 1217, 1244 \(9th Cir. 1980\)](#) (citation omitted). Domestic and foreign judgments are also subject to a six-year statute of limitations. [NRS 11.190\(1\)\(a\)](#).

b. Bad Check Laws and Civil Penalties

In Nevada, intentionally writing a bad check is a criminal act, punishable as either a misdemeanor or felony, depending upon the size of the check and the frequency of the act. [NRS 205.130](#). On the civil side, certain penalties attach, as well. Regardless of intentionality, issuing a bad check or using an invalid debit or credit card creates a liability to repay the payee/issuer/creditor the full amount charged, plus damages equal to three times the charged amount (subject to a minimum damages award of \$100 and a maximum of \$500). [NRS 41.620](#). A seller who has received a bad check may also charge the drawer an additional fee of \$25 per check. [NRS 597.960](#).

c. General Garnishment Exemptions

Wages may only be garnished if the debtor's weekly net take-home pay exceeds 50 times federal minimum wage (i.e., at [the current rate](#), \$362.50). [NRS 31.295](#). Up to 25% of all net take-home pay in excess of that threshold amount is available for garnishment, subject to higher priority claims that come out first. *Id.* For example, garnishment for child-support payments or on a government agency's claim takes precedence over other creditors. See, e.g., [NRS 31.249\(5\)](#). So if, by way of illustration, child-support payments garnished from a debtor's wages account for 20% of a debtor's net take-home pay, only 5% of the debtor's take-home pay remains available for garnishment by other creditors. Writs of garnishment continue until either the amount demanded is satisfied or 120 days have passed since the date of service (whichever comes first), after which time, a creditor must file for a renewal of garnishment to continue collection. [NRS 31.296\(1\)](#).

Creditors may attach other personal property, including funds contained in bank accounts in the debtor's name, but only subject to certain exemptions. Funds exempt from execution include child and spousal support payments; Social Security benefits; pensions; welfare assistance; proceeds from life or industrial insurance; disability, illness, and unemployment benefits or compensation; veteran's benefits; personal injury compensation payments not exceeding \$16,150; wrongful death compensation; compensation for loss of future earnings; payments as restitution for criminal acts; tax refunds from earned income credit. Some argue an additional exemption of an amount equal to 50 times the federal minimum wage or 75% of the debtor's weekly disposable earnings, whichever is greater. See [NRS 21.075\(2\)](#), [21.090-100](#).

Furthermore, if a bank account has received an electronic deposit from the United States Department of the Treasury on any of the 45 days prior to service of the writ of execution, the first \$2,000 of the debtor's funds at the bank is not subject to execution. [NRS 21.105\(1\)](#). If no such electronic deposit occurred, only the first \$400 is not subject to execution. [NRS 21.105\(2\)](#). As these alternative provisions designate funds not *subject* to execution (as distinguished from funds *exempt* from execution), debtors need not file a claim of exemption to benefit; rather, banks can (and typically do) simply not surrender the applicable portion of funds to the sheriff. In addition to funds unavailable to creditors as not subject to execution, a debtor may also claim up to \$1,000 of property as *exempt* from execution. [NRS 21.090\(z\)](#). This

ultimately means that for any round of bank account attachments, at minimum (assuming no other exemptions apply), between \$1,400 and \$3,000 may fall beyond the creditor's reach.

Other general property interests exempt from execution include homesteads in a dwelling or mobile home not exceeding \$550,000 equity (unless the debt claim stems from a medical bill); vehicles in which debtor's equity does not exceed \$15,000; up to \$500,000 held in retirement or pension plans, 401ks, or qualified tuition program trusts; vehicles specially equipped to provide mobility to the permanently disabled; and prosthesis or similarly prescribed equipment. Additionally, annuities and proceeds therefrom have recently become fully exempt. See [NRS 687B.290](#).

II. Debt Collection Licensing, Bonding, and Regulations

a. Creditor/Lenders, Debt Purchasers, and Licensed Attorneys

Creditors/Lenders need not apply for special collection licensing in Nevada to engage in collection of their own claims. See [NRS 649.020](#). They merely need to obtain the same standard business licensing all other merchants must gain to do business in Nevada. For specific regulations related to issuing or changing terms and conditions for a credit card, see [NRS 97A.140](#).

Debt purchasers similarly do not qualify as collection agencies under Nevada law, and likewise do not need to obtain collection licensing. See [NRS 649.020](#).

Attorneys licensed to practice law in Nevada can be retained by their clients to collect, solicit, or obtain payment on their clients' claims without obtaining any additional licensing, so long as they do so in the usual course of the practice of the attorneys' profession. [NRS 649.020\(f\)](#).

b. Collection Agencies

For all other persons or entities engaged in collecting or soliciting the right to collect on behalf of another's claim, a license must be obtained from the State Commissioner. Each application for a collection agency license must be accompanied by a nonrefundable fee of up to \$500 ([currently set at \\$375](#)), and additional costs may be assessed to cover expenses incurred for the regular investigation of collection agency records ([currently comprising an annual fee of \\$60 per examiner hour](#)). [NRS 649.295\(1\)](#). The issuance of a new license costs between \$200 and \$600 ([currently, \\$300](#)). [NRS 649.295\(2\)](#). Annual renewal requires a fee of no more than \$500 ([currently, \\$375](#)) and again, additional expenses for examination ([\\$60 per examiner hour](#)). See *id.*

Collection agencies are not permitted to operate without a licensed manager. [NRS 649.305](#). To obtain a valid manager's certificate, an applicant is required to pay an application fee of not more than \$500 ([currently, \\$190](#)) and an investigation fee of not more than \$150 ([currently, \\$115](#)), in addition to an annual certificate fee of not more than \$40 ([currently, \\$30](#)). [NRS 649.295\(4\)-\(5\)](#).

Finally, collection agencies must post an initial bond of \$35,000 at the time of their application, and this bond is subject to an increase up to a total of \$60,000, depending on the licensee's average monthly trust account balance. [NRS 649.105](#).

A person/entity not licensed to collect in Nevada can apply with the Commissioner for a certificate of registration as a foreign collection agency. [NRS 649.171\(1\)](#). To qualify, the person/entity must not have any in-state employees engaged in the collection of claims and must not maintain any business locations in-state as a collection agency. [NRS 649.171\(2\)](#). Collection claims must be limited to those against in-state residents on behalf of residents of another state (i.e., non-Nevadans), and collection activities must be limited to interstate communications by phone, fax, or mail. *Id.* Additionally, applicants must pay an application/investigation fee of at least \$200 ([currently, \\$500](#)), and yearly renewal and examination fees [of \\$200 and \\$60 per examiner hour](#), respectively. *Id.* Finally, foreign collection agencies must comply with all the same basic requirements as in-state collection agencies, including depositing/maintaining a bond and not operating without a certified manager. *Id.*

c. Lawyers Not Licensed to Practice in Nevada

Attorneys not licensed to practice in Nevada who wish to collect on behalf of another's claim must either obtain a license to practice law in Nevada or obtain a collection agency license (or a foreign collection agency license, if the lawyer intends to reside out-of-state).

III. Practices Specific to Various Types of Debt

Both law and judicial practice in Nevada have become increasingly debtor-friendly. As such, creditors must be extremely careful to expressly comply with all the requirements of law in their collection efforts.

a. Commercial Collections

In the case of commercial accounts, successful collection quite often depends on actions taken long before the debtor has defaulted. The most important thing creditors can do to ensure a return on their extensions of credit to commercial entities is to properly document and perform due diligence when originating new accounts or lines of credit. All too often, creditors fail to properly learn and document who they are extending credit to. Creditors should be careful to obtain and record the entity's Employer Identification Number (tax id), vendor/credit references, and banking information (e.g., by requesting a voided check), confirm status of incorporation or other registration with the Secretary of State, and obtain similar personal information from anyone personally guaranteeing the debt. Without any of this information, creditors will find it increasingly difficult to identify and locate its debtors, if enhanced collection or litigation efforts become necessary.

b. Consumer/Retail Collections

Nevada courts have been cracking down on claim documentation, and especially in the case of retail debt collection (although the same rules hold true for commercial debt). In the case of credit card debt, [NRS 97A.160](#) requires issuers bringing court action to establish the debtor's contractual liability by one of two ways: either by submitting the cardholder's written application for a credit card, or by offering evidence that the cardholder incurred charges on the account and made payments thereon. In practice, however, many of the (state) justice court judges of Reno and Las Vegas will refuse to apply the six-year statute of limitations, if creditors do not produce a written application/agreement, enforcing instead only the four-year statute applicable to open accounts (i.e., without a written contract). Furthermore, Nevada courts will refuse to enforce a higher-than-statutory pre-judgment interest rate on the debtor's unpaid balance unless the creditor submits a copy of the written contract authorizing a higher rate. See [NRS 17.130\(2\)](#), [NRS 99.040\(1\)](#). As the current statutory rate (the [prime interest rate](#) plus 2 percent) is 5.25%, you can see why having a copy of the written agreement can be important. So while creditors are technically free to choose their method of establishing the debtor's liability, best practice is to supply the court with a written contract.

In addition to providing proof of contractual obligation, creditors must also be prepared to provide evidence of the amount owed on account. [NRS 97A.160\(1\)\(b\)](#). This evidence can be in the form of photocopies of billing statements, or can come from the issuer's digital or microfilm/microfiche records. *Id.* In either case, however, creditors must authenticate these records to the court via written and signed affidavits. Nevada courts regularly find these affidavits insufficient for judgment unless they fully satisfy several requirements. [NRS 97A.160\(2\)](#) lists these authentication requirements, offering either of two options for compliance. Under one option, the affiant must specifically affirm that he or she is the custodian of the records offered as evidence, that the offered records "were made in the ordinary course of the issuer's business," and that the records "are true and accurate copies of the originals retained by the issuer." Per [NRS 97A.160\(2\)\(a\)](#), a creditor may *alternatively* follow the authentication requirements applicable to banking and financial institution records, as set forth in [NRS 52.450-.480](#). However, as these latter provisions come from the portion of Nevada code set aside for rules of evidence, some judges may require compliance with their additional requirements, notwithstanding the apparent choice provided by [NRS 97A.160](#). [NRS 52.450-.480](#) require essentially the same phrasing as [NRS 97A.160\(2\)\(b\)](#) (as listed above), but require the addition of an assertion "that the original record was made at or near the time of the act or event concerning which information was recorded, by or from information transmitted by a person with knowledge of the act or event." [NRS 52.460\(1\)](#). The evidentiary rules provide a form for the affidavit, and state that affidavits submitted for authentication purposes "must be substantially in the form prescribed." [NRS 52.460\(1\)](#). This form may be found in [NRS 52.260\(3\)](#), and contains the essential phrasing proscribed above.

Authentication can often prove more difficult for a *debt purchaser*, because many judges will require that the affidavit be made by the custodian of records for the *issuer*, not just the current owner of a debt, because the statutory language requires assertions about the issuer's records and record-keeping practices. See [NRS 97A.160\(2\)\(b\)](#), [EDCR 2.70](#), [WDCR 26](#). Accordingly, debt purchasers would be well advised to request and obtain an affidavit from the issuer that meets the above mentioned requirements, and to do so at the time of purchasing the debt (instead of waiting until litigation becomes necessary).

Purchasers of credit card debt also need to comply with [NRS 97A.165](#), which requires additional information in the complaint. Debt-purchaser complaints must contain the name of the issuer, the last four digits of the account number originally assigned by the issuer, all subsequent account numbers assigned to the credit card debt by all assignees of the debt, and the date of default on the debt. [NRS 97A.165\(1\)\(a\)](#). *Debt buyers* also must carefully document the chain of title on their purchased debt, with affidavits corresponding to each assignment event making clear that the assigner has waived (in favor of the assignee) any and all future rights to collection on the assigned account, transferring all right, title and interest, together with original documentation, to the assignee.

In addition to authenticating the debt by affidavit, creditors must also affirm to the court that judgment on the debt is not prohibited by law. If a creditor is seeking default judgment, this would include asserting by affidavit (typically the same affidavit authenticating records and debt) that the debtor is not an infant or an incompetent person (see [NRCP 55\(b\)\(2\)](#)), and that to the best of creditor's knowledge, the debtor is not in the military service of the United States (see [50 USC § 521\(b\)\(1\)](#)).

c. Secured Debt

In the case of credit secured by interest in a vehicle, certain restrictions apply to repossession and resale/lease of the vehicle upon default. The reposessor must provide or mail written notice of intent to resale/lease the repossessed vehicle at least 10 days before actually reselling or leasing the vehicle. [NRS 482.516\(1\)](#). Furthermore, such notice (along with an itemization of the balance and all costs or fees) must be provided within 60 days of repossession, or else the debtor is not liable for any deficiency after resale or lease. *Id.*

In light of the economic downturn and mass decline in the housing market, Nevada legislators have also recently enacted a number of laws that affect the ability of creditors to collect on loans secured by interests in real property. For example, *all* property lien holders and mortgage holders now have only six months from date of a foreclosure sale or short sale to bring a deficiency judgment against the borrower. (Previously, junior lien holders and secondary mortgage holders had six years). [NRS 40.4639](#). Additionally, mortgage/lien purchasers are now limited to recovering only whatever amount they paid to purchase debt (plus interest and reasonable costs). [NRS 40.459\(c\)](#). This means that those who purchase mortgages for pennies on the dollar can no longer pursue judgment on the full balance of the

note—deficiency judgments will be calculated relative only to those pennies actually paid by the debt purchaser. This rule applies also to those who purchase *junior* mortgages/liens. [NRS 40.4636\(2\)](#).

Furthermore, if the creditor / beneficiary of a deed is a financial institution, they cannot seek a deficiency judgment *at all* after foreclosing on a property—notwithstanding a deficiency balance—if the home foreclosed upon was the borrower’s primary residence, was purchased using the mortgage in question, and hasn’t been refinanced since the loan was secured. [NRS 40.455\(3\)](#). The same rule applies to junior mortgage or lien holders, but as junior mortgages/liens are rarely used to finance the *purchase* of the home offered as security, this law typically will not apply to prevent junior claims from obtaining a deficiency judgment. [NRS 40.4638\(1\)](#). In the case of a short sale, as opposed to a foreclosure sale, financial institution mortgage or lien holders can pursue deficiency judgments against borrowers—even if the real property was a primary residence—so long as the short sale agreement doesn’t include an express waiver of the right to recover the balance owed after sale. See [NRS 40.458\(1\)](#).

Other laws are designed to tighten up the *procedures* for short sale or foreclosure. Financial institutions now have a maximum of 90 days in which to respond to a short sale offer by the borrower. [NRS 668.051](#). Mortgage holders must offer proof of ownership before a foreclosure sale can take place. [NRS 107.080\(2\)\(c\)](#). Assigned/purchased mortgage debt cannot be enforced unless the assignment has been recorded with the county. [NRS 106.220](#). And banks accustomed to using in-house trustees for foreclosure sales must now look to third parties, as trustees and beneficiaries of a foreclosure sale can no longer belong to the same entity. [NRS 107.028\(2\)](#).

IV. Court Filing Fees

Fees associated with filing a lawsuit will vary from venue to venue, but getting a feel for the basics in Las Vegas and Reno should help you identify ballpark figures. In Clark County (which includes Las Vegas), claims not in excess of \$10,000 are typically filed in the Las Vegas Township Justice Court. Filing fees are set by statute, and run from \$49 to \$196, depending on the claim size. See [NRS 4.060\(1\)](#), [4.063\(1\)](#), [4.065](#), and [4.071](#). For claims over \$10,000, creditors must file in the 8th Judicial District Court of the 9th Circuit Court of Appeals, at [\\$270 for the first plaintiff, and \\$30 for each additional plaintiff](#). For Washoe County (which includes Reno), filing fees for claims in Reno Justice Court are at the same statutory rates as in Las Vegas Township Justice Court. For claims over \$10,000, filing in the 2nd Judicial District Court of the 9th Circuit is [\\$260 for the first plaintiff and \\$30 for each thereafter](#). Electronic filing is now mandatory and is free for Reno and federal courts, but Las Vegas and all of Clark County charge \$3.50 per document. Additionally, there is a filing fee for motions that is generally \$200, depending on the jurisdiction.

V. Process Service Options & Costs

Once you've paid filing fees, there are still a number of other costs standing between you and legal enforcement of your claim. These costs will vary and depend on a number of factors, including the accuracy of your information about the debtor, where the debtor is located, and what particular process servers charge. That being said, it is possible to offer here some typical figures and ranges for the variety of services you'll utilize, and fees you'll pay to help you obtain full satisfaction of debt.

a. Sheriff's Fees

If you choose to use the county Sheriff or local constable's office to serve process on your suit, you'll pay a flat fee and an additional sum based upon the mileage the sheriff has to travel to serve the summons and complaint. This amounts to \$17 plus \$2 per mile driven getting to the defendant's location. [NRS 248.275](#). Additional charges will be made if serving a husband and wife at the same address, as well as for each attempted service.

b. Process Server Fees

Private process servers offer a bevy of customizable services, so their rates vary, based upon not only location, but also on, for example, how many attempts are requested, how many locations included, and how quickly service is sought. That being said, private process servers in Clark County typically charge between \$65 and \$100, with rates reaching and potentially exceeding \$150 for the inclusion of various bonus services.

c. Garnishment Fees

There are a number of costs and fees associated with garnishing wages or attaching bank accounts. In Nevada state justice courts, the cost of issuance for writs of attachment, garnishment, or execution is \$6. [NRS 4.060\(1\)\(f\)](#). District courts in both locations charge \$10. [NRS 19.0302\(1\)\(i\)](#). In addition to issuance costs, creditors must also pay to have writs *served* upon the appropriate bank or employer. Sheriffs' service fees for writs are similar to those for summons and complaints, running \$18 base, plus \$2 per mile between the server and the location served. See [NRS 248.275\(1\)](#). These service fees apply per suit, so no costs are reduced if a creditor seeks service of writs on multiple claims at the same location at the same time—sheriffs will bill the full amount for service of each writ, as if a separate trip were made in every case. See *id.* In addition to costs of service, local sheriffs/constables are entitled by law to a collection fee, in the form of a 2% commission on the first \$3,500 collected and 0.5% thereafter. [NRS 248.275\(2\)\(b\)](#). This commission is typically deducted from the amount collected by the executing officer, to the debtor's detriment (i.e., the debtor's balance on the claim is reduced only by the amount the creditor receives, which is less than the total amount taken from the debtor's assets, because the sheriff/constable has deducted a commission). Finally, the creditor must pay the garnishee (employer) an interrogatories fee of \$5 in conjunction with execution of a writ of garnishment. [NRS 31.270\(2\)](#).

Garnishees are also entitled to an additional \$3 per pay period (not to exceed \$12 per month), but they typically deduct this fee before forwarding garnished wages. [NRS 31.296\(2\)](#).

d. Debtor Exams

Pursuant to [NRS 21.270\(1\)](#), a judgment creditor is entitled to an order requiring the debtor to appear for an examination. In Nevada, there are no filing fees associated with this procedure. However, the subpoena must be served on the defendant, so typical service fees will apply (as laid out above). Additionally, the debtor/witness is entitled by law to a \$25 fee for each day's attendance for such examination, as well as a mileage reimbursement for each mile necessarily and actually traveled by the shortest practical route from and returning to the debtor's place of residence. [NRS 50.225\(1\)](#).

e. Service by Publication

Under certain circumstances (see [NRCPC 4\(e\)\(1\)](#)), a creditor may serve process on the debtor via publication in a newspaper in local circulation. The cost of purchasing advertising/notice space for such purposes varies quite a bit from paper to paper. In Clark County, these costs can run anywhere from \$130 to \$600. In Washoe County, options are limited, and costs are typically quite high. Publishing in the Reno Gazette will run \$400-\$650, and these costs are rising. Publishing in other counties is similarly expensive.

VI. Significant Debt Collection Cases Brought by Nevada's Attorney General

The Attorney General has not issued any substantial opinions dealing with collections. The last relevant opinion, AGO 98-20, June 24, 1998, merely confirms a collection agency's right to collect interest in cases where the original creditor did not, when it was contractually or statutorily permitted.

VII. Debt Collection Ethics Opinions from the Nevada Supreme Court

The Supreme Court has issued no ethics opinions specific to collections, but has adopted and mandated specific rules governing attorneys that affect collections. Relevant provisions include a duty of truthful communication (NRPC 1.4 and 4.1); the duty to not take a case without full disclosure, when there is a conflict (NRPC 1.7); the duty to not prosecute or defend a case by a false contention or non-meritorious claim (NRPC 3.1); a duty of the attorney to not imply that he is disinterested when dealing with an unrepresented person, and he should therefore not give legal advice other than to secure counsel (NRPC 4.3).

VIII. Other Miscellaneous Laws / Cases Relevant to Practice of Law in NV

Nevada is the divorce capital of the world. Therefore, collections and divorces often cross paths. The "It is not my debt, it is my Ex's" is a recurring defense. The court put an end to this in [Marine Midland](#)

[Bank v. Monroe, 104 Nev. 307, 756 P.2d 1193 \(1988\)](#) (creditor of a husband and wife was not bound by divorce decree assigning debt to husband because creditor was not a party to the proceeding).

Other Nevada case law relative to the practice of collections appears consistent with the majority view of sister states.

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.

© The National List of Attorneys, 1/1/2013