

New Mexico Debt Collection Laws

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As of March 1, 2013, Kanter & Grubestic, PA, has changed its name to [Western States Law Group, LLC](#), in recognition of its offices in New Mexico, Colorado, Nevada and Washington. Reginald J. Storment joins Dana as a partner in the Albuquerque office. Reginald has over 15 years experience in the debt collection industry with a concentration in student loans. Robert J. Hopp, a long-time member of the National List, joins Reggie and Dana as a partner in the Colorado office. Robert has extensive experience in the debt collection industry, with a concentration in mortgage defaults and will use his expertise to grow the firm's business and to ensure all work is produced timely, efficiently, accurately and at a Best-Of-Class quality.

Founded in 1973, Kanter & Grubestic, PA, now Western States Law Group, LLC, is based in Albuquerque, New Mexico. Elvin Kanter, founder of the firm, initially collected on commercial accounts, adding retail collections in 1999. Today, the firm concentrates on retail collections and subrogation. The firm provides a full range of creditor services to businesses in New Mexico, as well as national companies doing business in New Mexico. While the firm's office is in Albuquerque, we file suit in all thirty-three judicial districts, as well as in Colorado, Nevada and Washington.

Dana K. Grubestic, Elvin's daughter, is a partner in Western States Law Group. Her practice areas include retail collections, subrogation and criminal defense. Dana received her undergraduate degree from Vanderbilt University and her law degree from the University Of New Mexico School Of Law. She is a member of the [National Association of Retail Collection Attorneys](#) (NARCA) and the New Mexico and Colorado bars.

I. New Mexico Debt Collections Laws

a. Statute of Limitations

NMSA 1978 §37-1-1 et seq. governs New Mexico's statute of limitations for the collection of open accounts, written contracts, and judgments entered by the Court. In New Mexico, the statute of limitations for [open accounts](#) is four years, while the statute of limitations for written [contracts](#) is six years. In New Mexico, if a creditor can provide a signed credit card agreement, the six year statute of limitations applies. The cause of action accrues "on the last item therein," which can either be the last payment made on the account or the last statement sent to the debtor. Once entered, a judgment is enforceable in New Mexico for fourteen years and cannot be renewed.

b. Bad Check Laws

In New Mexico, it is a crime to intentionally issue a bad check, punishable by incarceration of thirty days to three years, depending on the amount of the check.

Civil penalties for issuing a bad check are found at [NMSA 1978 §56-14-1](#) 1987. Issuing a bad check allows the plaintiff to recover from the defendant damages in an amount equal to one hundred dollars (\$100) or triple the amount for which the check is drawn, whichever is greater; provided that damages recovered under shall not exceed the amount of the check by more than five hundred dollars (\$500). Plaintiff must send a certified demand letter to the defendant ten days prior to commencing action advising the defendant that if payment is not made within ten days of demand, plaintiff may recover treble damages.

c. General Garnishment Exemptions

Garnishments are governed by [NMSA 1978 § 35-12-1](#) et seq. Wages can be garnished up to (1) seventy-five percent of the defendant's disposable earnings for any pay period; or (2) an amount each week equal to forty times the federal minimum hourly wage rate, whichever is greater [NMSA 1978 §35-12-7](#) 1979. Wage garnishments continue until the amount demanded is satisfied. Judgment creditors are allowed to recover additional fees and costs incurred in bringing the garnishment.

Bank garnishments are subject to claims of exemptions by the debtor. The judgment creditor must serve on the garnishee a Notice of the Right to Claim Exemptions and a Claim of Exemption form. The garnishee is responsible for serving those documents on the judgment debtor. If claims of exemptions are not made, the creditor can garnish the full balance of the bank account, as long as the debtor is not claiming government benefits.

Other general property interests exempt from execution include homesteads in a dwelling or mobile home not exceeding \$60,000, or \$120,000 if debtor is married; a vehicle in which the debtor's equity does not exceed \$5000.00; tools of the trade; worker's compensation and unemployment benefits; and public assistance and welfare benefits. However, these exemptions must be claimed by the debtor or the exemptions are waived.

II. Debt Collection Licensing, Bonding, and Other Regulation

The requirements for creditor and collector licensing are governed by [NMSA 1987 §61-18A-1](#) et seq. Unfortunately, the statute is not entirely clear in its definition of a collection agency, which has resulted in litigation over the issue, *infra*. In general, creditors/lenders need not apply for a collection license to collect their own debt, nor do New Mexico attorneys who collect debt on behalf of their clients [NMSA](#)

[1978 §61-18A-2 1987](#). Collection agencies must obtain a license to collect debt in New Mexico, [NMSA 1978 §61-18A-7](#) 1993. The application must contain the name of the applicant, the name under which the applicant will do business and the physical address of the office of the business for which the license is sought. In the case of an individual, the application shall state the full residential address of the applicant; in the case of a partnership, the application shall state the true names and complete residential addresses of all partners; in the case of a corporation, the application shall state the true names and complete residential addresses of all directors and officers, the true names and residential addresses of all holders of ten percent or more of the corporation's outstanding stock and other securities, and the number of shares or units of each and of all classes held by each and the total number of shares or units of each class issued and outstanding; and in the case of a non-stock corporation or an unincorporated association, the true names and complete residential addresses of all officers, directors and trustees [NMSA 1978 §61-18A-8 1987](#).

A collection agency must acquire a surety bond in the amount of five thousand dollars (\$5000.00) [NMSA 1978 §61-18A-15 1987](#). The original fee for a collection agency license is five hundred dollars (\$500.00) and the license must be renewed yearly (\$300.00) [NMSA 1978 §61-18A-30](#) 1993.

III. Debt Collection Practices

a. Commercial Collections

New Mexico has adopted Article 2 of the Uniform Commercial Code. Article 2 governs businesses and merchants transacting in the sale of goods. The New Mexico Uniform Commercial Code can be found in [NMSA 1978 §55-1-101](#) et seq.

b. Consumer Collections

Collection of consumer accounts is governed under the New Mexico Collection Agency Regulatory Act, [NMSA 1978 §61-18A-1](#) et seq, hereinafter "CARA." A debtor under this chapter is defined as "any natural person obligated or allegedly obligated to pay any debt." Debt is defined as "any obligation or alleged obligation of a debtor to pay money arising out of a transaction in which the money, property, insurance or services that are the subject of the transaction are primarily for personal, family or household purposes," specifically excluding commercial transaction from CARA.

CARA does not provide any additional requirements to collect consumer debt. Of course, the FDCPA applies in New Mexico. The District Courts require documentation in the form of an affidavit of the amount owed and proof of ownership of the debt. For debts less than \$25,000, non-binding arbitration before an attorney appointed by the court is mandatory. In the Metropolitan and Magistrate Courts, a complaint can be filed without any documentation.

c. Secure versus Unsecure Matters

New Mexico has adopted Article 9 of the Uniform Commercial Code. Article 9 governs transactions creating a security interest in personal property. The New Mexico Uniform Commercial Code can be found in [NMSA 1978 §55-1-101](#) et seq.

IV. Courts Costs

The filing fee in District Court for a civil action with the amount in controversy \$10,000.00 or greater is \$132.00. The filing fee for entry of foreign judgment is also \$132.00. In the First, Second, Fourth, Fifth, Seventh and Thirteenth districts, e-filing is mandatory and there is a \$6 fee for each document filed. E-filing in all thirteen judicial districts will be mandatory in the near future. By the end of March, e-filing will be mandatory in all district courts.

If the claim is under \$10,000.00, the complaint may be filed in Small Claims Court, and the filing fee for a complaint is \$77.00

V. Process-Serving Options and Costs

a. Sheriff's Fees

Sheriff's fees for service of process vary depending on mileage, but typically fall between \$25 and \$50. This expense may be recovered.

b. Process Server Fees

Process Server fees vary depending on mileage, but typically fall between \$40 and \$75. This expense may be recovered.

c. Garnishment Fees

There are a number of costs and fees associated with garnishing wages or attaching bank accounts. If the garnishment is filed in a District Court where e-filing is mandatory, there is a \$6.00 e-filing fee. The writ must be served on the garnishee, which can cost anywhere between \$10.00 and \$40.00. Some banks hire attorneys to answer their writs and the attorneys charge \$185.00 to \$225.00, which will be deducted from the debtor's bank account, if the bank is holding property of the debtor; otherwise, the creditor is responsible for paying the fees. The fees may be recovered.

d. Debtor's Exams

Orders for judgment debtor's exams must be served on the Defendant with service fees ranging from \$25 to \$75, as described above. To conduct a judgment debtor's exam, there is an additional charge by the attorney to attend the hearing, exam the judgment debtor under oath, and provide a report to the creditor .

e. Other Court related fees

Under certain circumstances, a creditor may serve process on the debtor via publication in a newspaper in local circulation. The cost of purchasing notice space varies from paper to paper. Generally, costs run from \$185.00 to \$250.00 for the required three weeks of publication.

VI. Cases brought by the State's Attorney General Related to Debt Collection

N/A

VII. Significant Case Law Related to Debt Collection

As stated above, there has been litigation concerning the definition of a "collection agency." [NMSA 1978 §61-18A-2C](#) defines a collection agency as:

"Any person engaging in business for the purpose of collecting or attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, where such person is so engaged by two or more creditors. The term also includes any creditor who, in the process of collecting his own debts, uses any name other than his own, which would indicate that a third person is collecting or attempting to collect such debts."

The question of whether a debt buyer, who sues in its own name on its own behalf, is a collection agency has been raised a number of times, although there are no reported cases on the issue. At this time, given heightened scrutiny, the conservative approach is to obtain a collection agency license.

VIII. Ethics Opinions from Supreme Court Related to Debt Collection

N/A

IX. Additional Laws or Cases Pertinent to Practice of Law in Your State

On December 15, 2010, the Attorney General enacted a rule that requires demand letters to contain the following language based upon its interpretation of the Unfair Practices Act, [NMSA 1978 § 57-12-1](#), et seq. (1967).

WE ARE REQUIRED BY NEW MEXICO ATTORNEY GENERAL TO NOTIFY YOU OF THE FOLLOWING INFORMATION. THIS INFORMATION IS NOT LEGAL ADVICE: THIS DEBT MAY BE TOO OLD FOR YOU TO BE SUED ON IT IN COURT. IF IT IS TOO OLD, YOU CAN'T BE REQUIRED TO PAY IT THROUGH A LAWSUIT. YOU CAN RENEW THE DEBT AND START THE TIME FOR THE FILING OF A LAWSUIT AGAINST YOU TO COLLECT THE DEBT IF YOU DO ANY OF THE FOLLOWING: MAKE ANY PAYMENT OF THE DEBT; SIGN A PAPER IN WHICH YOU ADMIT THAT YOU OWE THE DEBT OR IN WHICH YOU MAKE A NEW PROMISE TO PAY; SIGN A PAPER IN WHICH YOU GIVE UP ("WAIVE") YOUR RIGHT TO STOP THE DEBT COLLECTOR FROM SUING YOU IN COURT TO COLLECT THE DEBT.

[12.2.12.9 NMAC](#)

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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