

## Debt Collection in Michigan

### I. Fair Debt Collection Practices Act

#### A. History

1. The FDCPA is a federal consumer protection statute designed to deter abusive debt collection practices and provide consumers with some redress against debt collectors engaging in such practices.

2. Promotes consistent state action to protect consumers against collection abuses.

3. Original FDCPA exempted attorneys collecting debts, but the exemption was removed in 1985.

#### B. Definitions 15 USCA 1692a

1. Consumer – any natural person obligated or allegedly obligated to pay any debt. NOT a corporation.

2. Creditor – person who offers or extends credit creating a debt or to whom a debt is owed.

3. Debt – any obligation or alleged obligation of a **consumer** to pay money arising out of a transaction in which money, property, insurance or services which are the subject of transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.

4. Debt collector – any person who uses instrumentality of interstate commerce or the mail in any business with the principal purpose of collecting debts, or one who regularly collects or attempts to collect debts owed, due or asserted to be owed

or due another. An attorney engaged in litigation IS a debt collector as defined by the act. See Heintz v Jenkins, 115 S. Ct. 1489 (1995).

5. Debt collector does not include any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor or any officer or employee of the US or any state to the extent that collecting or attempting to collect any debt is in performance of his official duties.

### C. Parameters

1. When communicating with a third party to obtain information about the consumer, the debt collector may not indicate that a debt is owed. 15 USCA 1692b

2. Debt collector may not communicate at any unusual time and place or at time known to be inconvenient. (stick to 8am to 9 pm).

3. If there is an attorney, you must go through the attorney.

4. Communication at consumers' place of employment is prohibited if the debt collector knows or has reason to know that consumer's employer prohibits such communication.

5. If the consumer notifies the debt collector in writing that consumer refuses to pay a debt or wishes debt collector to cease further communication, debt collector must cease except to notify consumer that efforts to collect are being terminated or escalate (litigation).

6. Harassment, oppression, abuse are all prohibited (think violent, obscene, advertisements, incessant calls and calls without disclosure of identity). 15 USCA 1692d.

7. False, misleading or deceptive means are prohibited (don't threaten litigation if you don't intend or can't do it, don't say litigation has begun if it has not, don't state or imply that action such as arrest or seizure (garnishment, etc.) will occur unless your debt allows it. 15 USCA 1692e.

8. Can't collect any amounts including interest, fees, charges or expenses unless authorized by the agreement that created the debt or permitted by law. 15 USCA 1692f.

9. Within five days of the initial communication with the consumer, the debtor collector shall send consumer written notice containing the amount of the debt, the name of the creditor to whom the debt is owed, a statement that unless the consumer disputes the validity of the debt within 30 days it will be assumed valid, and that the dispute must be done in writing. Debt collector will then provide written verification of the debt.

D. Venue 15 USCA 1692i

1. If dealing with enforcement of an interest in real property, file in the district where the real property is located.

2. If no real property, file where the consumer signed the contract or where the consumer resides at the commencement of the action.

E. Civil Liability 15 USCA 1692k

1. Amounts generally determined by severity of violations and noncompliance.

F. Defenses 15 USCA 1692k

1. One year statute of limitations from violation, bona fide error, outside the scope of the definition, etc.

## II. Filing a Collection Action

### A. Debtor

1. First and foremost you need to correctly identify your debtor and determine precisely who is liable on the debt
2. Locate your debtor using name, address, social security number or date of birth. There are many on line resources for these purposes.

### B. Good Business?

1. Clients often need to consider the cost of litigation in comparison to the amount owed. What is the likelihood of collecting on the judgment even if you get one? Is the debtor employed, are there assets?

2. Remember, the judgment will be worthless if the debtor's only source of income is an exempt one (ex. Disability and social security).

3. Is the business still operating, profitable?

4. Do you have any personal guarantees?

5. Is your client susceptible to any counterclaims or violations of FDCPA?

6. Informal discovery is advisable to determine if litigation is prudent.

### C. Consumer presuit notification

1. Include notification similar to "I am a debt collector attempting to collect a debt for a creditor and information obtained will be used for that purpose.

### III. Collecting the Judgment

#### A. Just paper

1. Whether obtained by default or through a full blown trial, the judgment is still only a piece of paper.
2. You must wait 21 days before attempting to enforce a judgment.

#### B. After entry

1. After entry of a judgment defendants often seek installment payment orders to prohibit garnishment of their wages.
2. These are often granted if the defendant petitions the court and can show that its liabilities exceed its assets.
3. Note that the installment payment order does not prohibit the plaintiff from garnishing sources OTHER than wages (bank accounts, tax refunds, etc.) or executing on assets.

#### C. Writs of Garnishment

1. 3 types
  - a. Periodic garnishment (wages, rents)
  - b. Non-periodic garnishment (bank accounts) (one and done)
  - c. Income tax refunds (early in the year)
2. The request and writ of garnishment is completed and filed with the court. It must then be served on the garnishee, such as the bank or employer.
3. Within 14 days of service of the writ, the garnishee must complete and file a disclosure statement detailing the liability of the garnishee to the defendant. If

the garnishee does not file the disclosure, you can file a motion for judgment against the garnishee.

4. The debtor may then object to the garnishment within 28 days. If there is not objection, payment is made after 28 days.

D. Seek a request and order to seize property

1. The request and order to seize property orders the sheriff or court officer to seize and sell the debtor's property to satisfy the judgment.

2. It must be served by a court officer or sheriff.

3. The court officer must first (if individuals) attempt to satisfy the judgment by seizing personal property. Then real estate can follow if personal property is insufficient.

4. Officers can lock businesses and send employees home.

5. Officers are required to break into buildings OTHER than houses or attached garages.

E. Debtors Examinations

1. Subpoenas for exams must be issued by the court.

2. The court sets a date and time for the debtor to appear and be sworn.

3. The parties are then usually sent to a conference room where the debtor is asked questions about assets, income, etc.

4. A bench warrant can issue if the debtor does not appear.

F. Judgment Lien Act MCL 600.2801-2819

1. A judgment lien attaches to the debtor's interest in real property if the judgment is filed with the county register of deeds in which the property is located.
2. It must be certified by the court clerk and recorded with the county.

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