



COMMISSIONER OF FINANCIAL REGULATION
ADVISORY



November 4, 2016

CONSUMER DEBT COLLECTION ACTIONS - Senate Bill 771
(Added Subtitle 12 to Courts and Judicial Proceedings Article)
Effective October 1, 2016

Senate Bill 771, which adds Subtitle 12 to the Courts and Judicial Proceedings Article ("SB 771"), prohibits all creditors and debt collectors from filing a consumer debt collection action past the applicable statute of limitations and defines a "consumer debt collection action" as any judicial action or arbitration proceeding in which a claim is asserted to collect a consumer debt. SB 771 also defines "debt buyer" broadly to encompass anyone who purchases consumer debt from the original creditor or from a subsequent owner of the debt, and regulates activity by the debt buyer or anyone collecting on the debt buyer's behalf. Thus, SB 771 applies to both debts in default and to performing accounts.

Who is a Debt Buyer?

The Act defines "debt buyer" as a person that purchases or otherwise acquires consumer debt from a subsequent owner of the debt.

"Debt buyer" does not, however, include the following:

- a check services company that acquires the right to collect on a paper or an electronic check instrument, including an automated clearinghouse item that has been returned unpaid to a merchant;
- a business entity that acquires consumer debt as a direct result of a merger or acquisition, under specified circumstances;
- a bank, credit union, or savings and loan association that acquires consumer debt as a result of a merger with another bank, credit union, or savings and loan association;
- a licensed mortgage servicer, except when the mortgage servicer or a collector acting on the mortgage servicer's behalf collects or attempts to collect a certain deficiency balance or deficiency judgment;
- a sales finance company or other person that acquires consumer debt arising from a retail installment sale agreement, under specified circumstances;
- a bank, credit union, or savings, and loan association that, in the ordinary course of business, acquires a portfolio of consumer debt, not including debt that has been charged off, from another bank, credit union, or savings and loan association; or
- an attorney, licensed debt collection agency, property manager, or other person that collects or attempts to collect consumer debt in an action under §8-401 of the Real Property Article, provided that the attorney, licensed debt collection agency, property manager, or person is acting on the behalf of an original creditor who is a residential rental property owner.

Statute of Limitations & Burden of Proof on Consumer Debt Collection Actions

SB 771 prohibits a creditor or a collector from initiating a consumer debt collection action after the expiration of the applicable statute of limitations. Notwithstanding any other provision of law, on the expiration of the statute of limitations applicable to the consumer debt collection action, any subsequent payment toward, written or oral affirmation of, or any other activity on the debt may not revive or extend the limitations period. A debt buyer has the burden of showing that the applicable statute of limitations has not passed in any consumer debt collection action.

Proof of Consumer Debt

A debt buyer or a collector acting on behalf of a debt buyer may not initiate a consumer debt collection action unless the debt buyer or collector possesses certain documents demonstrating the existence of the

debt or credit account. For judicial actions, before a court can enter judgment on behalf of a debt buyer, the debt buyer or collector must introduce into evidence specified documents (discussed below), and must make available for examination at trial an individual with knowledge of the facts pertinent to the claims asserted.

For both judicial actions and arbitration proceedings, a debt buyer or collector on their behalf must introduce the following specified documents:

- the agreement between the original creditor and the consumer or other documents that establish the existence of the debt, provide all terms and conditions, and reflect the debtor's assent;
- the charge-off statement or last bill from the original creditor;
- documents showing all charges and credits after charge-off by the original creditor;
- documents establishing the debt buyer's ownership of the account; and
- all other documents necessary to support judgment on affidavit.

The documents specified in SB 771 are the same as those required under Maryland Rule 3-306 for judgments of affidavits. Unless the action is resolved by judgment or affidavit, in a consumer debt collection action brought by a debt buyer or a collector acting on behalf of a debt buyer, including a small claim action in the District Court, a court may not enter a judgment in favor of a debt buyer or a collector unless the debt buyer or collector introduces into evidence the documents referenced above in accordance with specified rules of evidence. This requirement applies in addition to any other requirement of law or rule.

Licensing Requirements

SB 771 did not change any current requirement of federal or Maryland law as to licensing requirements.

For More Information

For more information, please contact Juan M. Sempertegui, Director of Licensing at (410) 230-6102 or via email at Juan.Sempertegui@maryland.gov.



Office of the Commissioner of Financial Regulation
Maryland Department of Labor, Licensing and Regulation



500 North Calvert Street, Suite 402
Baltimore, MD 21202-3651
410-230-6100 | Office 410-333-0475 | Fax
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