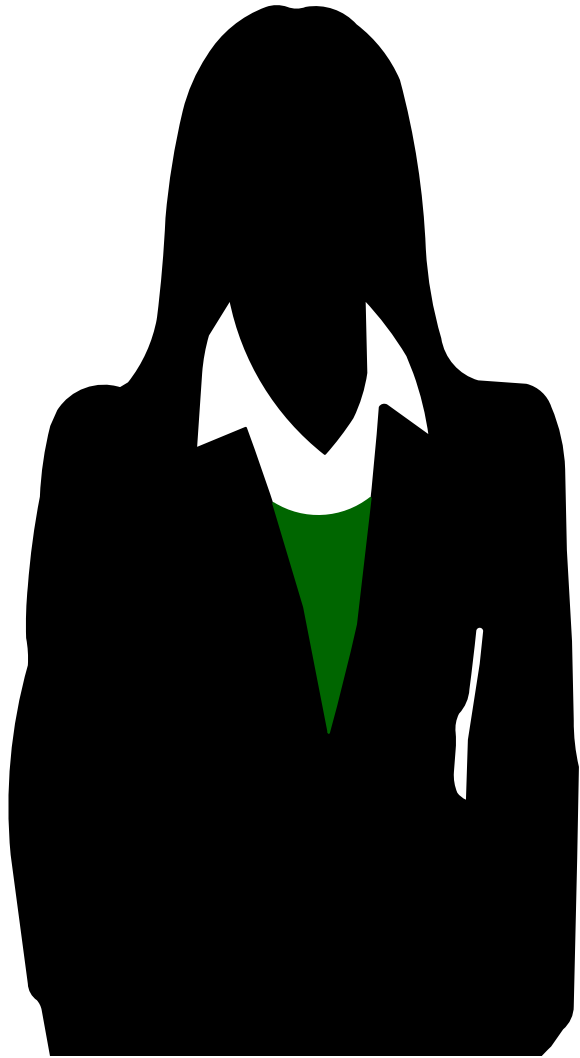


 **Law Office of James R. Vaughan, P.C.**
Arizona, Nevada, and Washington Collection Attorneys



WE
FIND
MONEY



Collections in a Prop-209-Affected World
September 5, 2023

By Eric Logvin, Managing Partner
eric@recoveryatty.com

Using the Courts to Collect

Writs of Earnings and Non-Earnings: Complicated, But...

- Are form-based and automation-heavy, thereby driving efficiency
- Can be systematized
 - By a law firm or creditor
 - By a vendor (process server)
 - By a court clerk
 - By a Garnishee
- Require fixed 3rd party costs that can be reliably predicted
- Include the ability to charge attorney's fees
- Have results can be reasonably predicted (by everyone)

Using the Courts to Collect

Alternative Methods of Collection:

- Discovery: Subpoenas and Judgment Debtor Exams
- Writ of Special/General Execution
 - Executing on Real Property
 - Taking vehicles or “stuff”
- Replevin – a judgment for the recovery of specific known items
- Non-Earnings Writs that result in Safe Deposit Box Drill-Outs
- Other Provisional Remedies

Using the Courts to Collect

Considerations with Alternative Methods of Collection:

- Have forms/pleadings that require manual work
- Much more difficult to systematize
- Require 3rd party costs that cannot be reliably predicted
- Usually don't allow for awards of attorney's fees
- Many variables can impact success, such as:
 - Timing of the execution – *who knows!?*
 - Interactions between parties can impact the execution
 - Presence/quality of the assets

Limitations to a Debt Collector's Behavior

Fair Debt Collection Practices Act (FDCPA):

- The main federal law that governs debt collection practices.
- Covers the collection of debts that are primarily for personal, family, or household purposes.
- Collectors from using abusive, unfair, or deceptive practices to collect debts.
- Under the FDCPA, “debt collectors” *may* include collection agencies, debt buyers, and lawyers.
- The FDCPA doesn't cover business debts.

Other Concerns:

- Lawyers' ethical obligations
- Client's willingness allow for some activities
- Client's willingness to pay for some activities
- Profit! Law Firms are businesses!

Limitations to a Debt Collector's Behavior

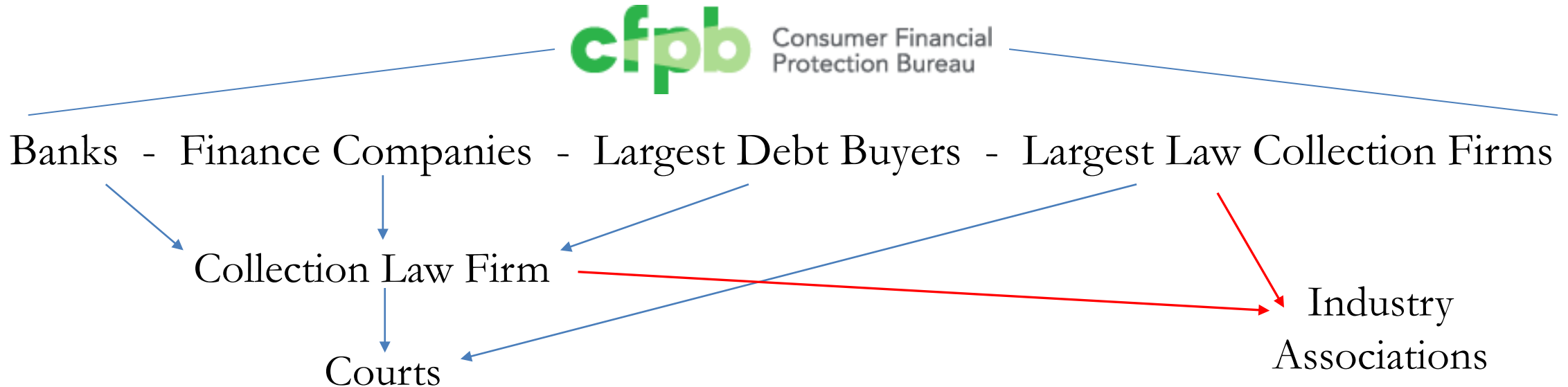
Some Limits/Expectations are Voluntary:

National Creditors Bar Association Code of Conduct: <https://www.creditorsbar.org/code-of-conduct>

Receivables Management Association, International Code of Ethics: <https://rmainl.org/about-rmai/code-of-ethics/>

Limitations from the Government?

Eric's Opinion of Information Flow



CFPB says: Hey Consumers, tell us your complaints and stories

Consumers say: Complaints! Horror Stories!

CFPB Says: "Hey, *large creditor bank*, we don't like consumers getting arrested for not paying their debts."

Bank Says: "Neither do we! We don't do that!"

CFPB Says: "Are you sure? We have 2,000 complaints. Ask your attorneys."

Bank Says: "HEY LAWYERS, ARE YOU DOING THIS? QUIT IT."

Lawyers Say: "Well the law says we can... but... copy that."

Post-Judgment Discovery

Subpoenas – usually to financial institutions or creditors.

Typical Language:

If known, please produce a statement or documentation indicating the party's:

- Current residential address (physical or mailing).
- Current phone numbers, including home and cellular.
- Current employer's name and or address.

If any of the above listed people have loans with you, please provide the following:

- The original loan application(s) or basis for credit inquiry.
- Copies of the last three payments made, if by check, ACH, electronic, or any other method.

Post-Judgment Discovery

Judgment Debtor Exams – Not Especially Useful Against Consumers

Plus, Voluntary Restrictions Now Exist

Capias Policy

While operating as an RMAI certified business, the Law Office of James R. Vaughan, P.C. (“the Firm”) does not seek or support a writ of *capias* or otherwise promote the arrest or detainment of a consumer on a consumer collection matter.

Responsibilities

The primary responsibility for enforcement of this policy and its operating procedures rests with the Law Firm’s President and Compliance Officer, Eric Logvin. Secondary responsibility rests with Lindsey Flewelling, the firm’s Assistant Compliance Officer.

Writs of Special Execution

Definition: The court’s command to the sheriff or other officer of the county to “sell certain *specific property*, or to deliver certain specific real or personal property to the party adjudged to be entitled thereto.” A.R.S. § 12-1552(A)(2) (emphasis added).

Requirements (Justice Ct.): The writ must “describe the judgment and command the sheriff or constable to execute it according to its terms, whether the judgment is to make a sum of money, or to deliver personal property or possession of real property, or to do some other thing.” A.R.S. § 22-244(B).

Superior Court Requirements: A.R.S. § 12-1554.

Writs of Special Execution

Which Officer Must Act: Must be issued to the sheriff of the county (or constable) where the property, or at least a portion of the property, is situated. A.R.S. § 12-1557; A.R.S. § 22-244(B).

Indemnification Bond: The officer can require a judgment creditor to obtain an indemnity bond before levying on property. A.R.S. § 12-1564.

→ Cost of the last bond a JRV client obtained: 1% of double the judgment amount

Out of County Certificate: If the writ from a justice of the peace is sent to a county outside the county where the judgment was given, then the clerk of the **Superior Court** must issue a certificate stating that the issuing officer is “an acting justice of the peace in the county where the judgment was given.” A.R.S. § 22-245(A).

Writs of Special Execution

Storage Costs: The judgment creditor is responsible for paying all “costs incurred in transporting and storing the levied property.” A.R.S. 12-1565(B).

Those costs are “added to the amount due on the execution and are a part of the execution” but they may not all be recovered. *Id.*

Timing: The execution “shall be returnable in sixty days.” A.R.S. § 22-244(C).

Note: Executions on real property cannot be issued by the Justice Court. A.R.S. § 22-246.

Writs of General Execution

- A General Execution does not specify any particular piece of property to be seized
- Functions Like a Special Execution.
- The Constable or Sheriff seizes non-exempt property belonging to the Judgment-Debtor
- Applies to any item or items believed to be able to satisfy the amount of the judgment
- Property is sold at auction and the payments are applied to the judgment

Replevins

Definition: A Judgment for the “recovery of specific articles”

Requirements:

- 1) the assets’ value must “be separately found by the verdict or decision” and
- 2) the judgment must “be that plaintiff recover the specific articles if they can be found, and if not, then their value as assessed with interest thereon at the legal rate from the date of the judgment.” A.R.S. § 22-243.

Note: Compliance with Section 12-2401 et. seq. is a prerequisite for replevin.

Replevins

Establishing Value = The Affidavit:

1. Must sufficiently describe the property
2. Must provide the “actual value of the property”
3. Must show that the plaintiff is either:
 - a. the owner of the property or lawfully entitled to its possession
4. Must show that the property hasn’t “been seized under any process, execution, or attachment against the” plaintiff’s property “or, if so seized, that it is by statute exempt from such seizure.”

Replevins

After the affidavit to obtain possession of the property is filed:

1. The justice of the peace must order the constable to “take the property specified in the affidavit from the defendant and deliver it to the plaintiff.” A.R.S. § 12-1302.
2. The constable must obtain a bond from the plaintiff for double the amount of the value of the property, plus costs and attorney’s fees. A.R.S. 12-1303.
3. The constable must then take the property as the order for replevin directs unless the defendant gives the constable a redelivery bond. A.R.S. § 12-1304.

Provisional Remedies (A.R.S. § 12-2401 *et. seq.*)

AKA Pre-Judgment Seizure

Any provisional remedy may be issued by **any judge** of the superior court or justice of the peace of this state **before judgment** and **without prior notice to the party against whom it will operate.**

The process begins with the creditor filing an application. A.R.S. § 12-2404

Provisional Remedies (A.R.S. § 12-2401 *et. seq.*)

Primary Reason for Application: Leaving the State or Defrauding the Creditor

1. When the party is about to remove permanently from the state and has refused to secure the debt, or
2. When the party has secreted property for the purpose of defrauding creditors, or
3. When the party has disposed of property, wholly or in part, with intent to defraud creditors, or
4. That such party is about to dispose of property with intent to defraud creditors.

Provisional Remedies (A.R.S. § 12-2401 *et. seq.*)

Owner/Lessor

When the moving party is the owner or lessor or otherwise is lawfully entitled to the possession of the property claimed, has satisfied the requirements of sections 12-1301 (affidavit) and 12-1303 (bond), and is seeking a provisional remedy in the nature of replevin.

(except that a provisional remedy under this section may not be obtained to enforce a security interest in consumer goods which is not a purchase money security interest)

To Obtain Jurisdiction

When any provisional remedy is required to obtain jurisdiction.

Provisional Remedies (A.R.S. § 12-2401 *et. seq.*)

Requirements: two statutory notices must be issued by the court and served on the defendant.

- 1) Notice about the Provisional Remedy A.R.S. § 12-2402(E)
- 2) Notice about the ability to request a hearing A.R.S. § 12-2405

After service with the application and notices, the defendant has 10 days to file a written request for hearing on the provisional remedy. A.R.S. § 12-2407.

Provisional Remedies (A.R.S. § 12-2401 *et. seq.*)

An affidavit of default, with a proposed order, may be filed with the clerk. A.R.S. § 12-2408.

Within five days (of default), the justice of the peace must then review the entire file and make specific, written findings about the provisional remedy. A.R.S. § 12-2409(A).

“Within 5 days, decide on 5 items”

If the requirements have been met, the remedy shall be issued. The order must include the findings.

The defendant may obtain attorney’s fees for opposing the provisional remedy or having it quashed. A.R.S. § 12-2411.

Some Notable Exemptions

Exemptions do not apply to process used to enforce a “**security interest** in property, or to **obtain possession of leased property.**” A.R.S. § 33-1122.


Household goods – up to an aggregate fair market value of \$6,000 / \$15,000.00 with an annual adjustment beginning on January 1, 2024. A.R.S. § 33-1123.

Personal items – listed with valuations in Section 33-1125.

Money held in a financial institution’s account—up to \$300.00 / \$5,000.00 with an annual adjustment beginning on January 1, 2024. A.R.S. 33-1126(A)(9).

Current Realities for Creditors

- We can't advise clients how to truly apply Prop 209.
- Many clients have put significant limitations or a halt on new post-judgment work.
- Many local and regional creditors have now paused/changed their lending models.
- Creditor's Rights Attorneys are exiting the business/state.

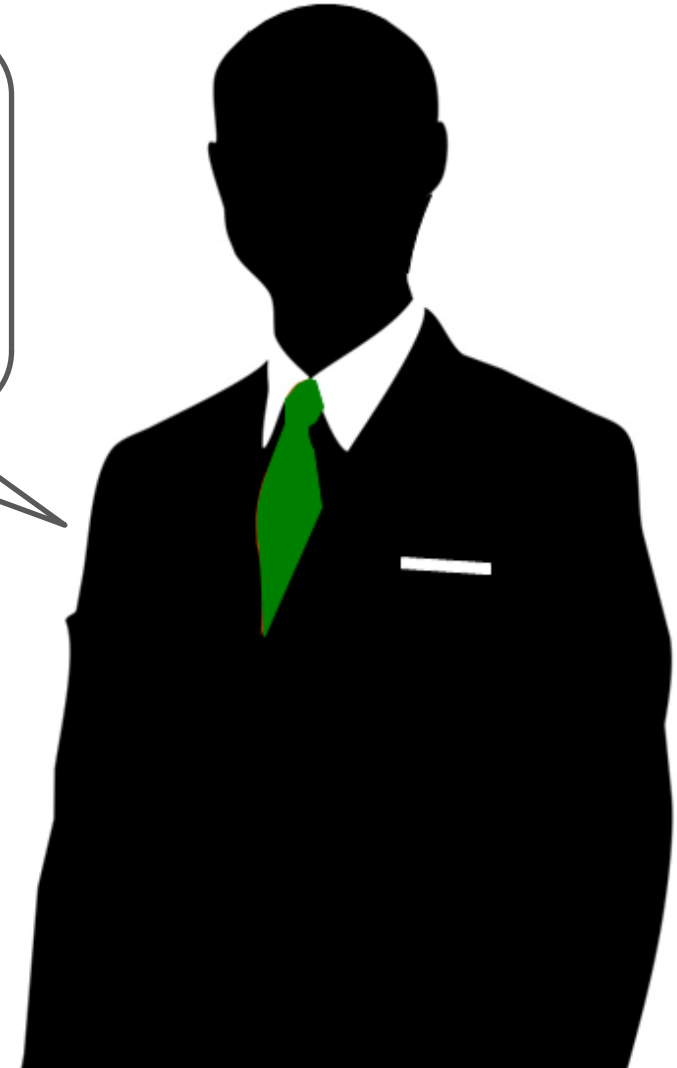


Contract Date?
Judgment Date?
Writ File Date?
Writ Issue Date?
Writ Serve Date?

 **Law Office of James R. Vaughan, P.C.**
Arizona, Nevada, and Washington Collection Attorneys



WE
FIND
MONEY



Collections in a Prop-209-Affected World
September 5, 2023

By Eric Logvin, Managing Partner
eric@recoveryatty.com