

LEGAL PROCESS FOR CCB COLLECTION ACCOUNTS

You have done everything possible to collect the balance in-house. Your #1 Collection Agency, Commercial Collection Bureau (“CCB”), has done everything possible to collect the claim voluntarily. Unfortunately, the debtor company is not willing to pay voluntarily. Now what? It may be time to have CCB forward the claim to an experienced creditors’ rights attorney.

Heading down the Legal Highway

Once CCB’s collection efforts have been exhausted and depending on balance size and client’s requirements, the file will be transferred to our Legal Forwarding Department. At that point, a recommendation to send the claim to a local creditors’ rights attorney will be provided for your consideration.

Claim Forwarded to a Creditors’ Rights Attorney

Upon receiving client’s authorization, documentation is sent to the creditors’ rights attorney to support the claim. CCB will also provide a synopsis of interactions with the debtor, collection notes and investigation results to provide a good background on the debtor company and its legal identity (i.e. sole proprietorship, partnership, corporation, LLC, etc.)

Attorney Demands Payment

The attorney will attempt to recover the balance voluntarily via calls and letters. Regardless of CCB’s extensive collection efforts, sometimes a debtor will pay solely because an attorney is involved. The collection attorneys we utilize do their best to secure payment and resolve the account short of litigation whenever possible. If the debtor company pays voluntarily—great! The collection process worked and funds were recovered short of litigation!

Attorney Recommends Litigation or File Close

If the attorney is unable to get the debtor to pay voluntarily, he may recommend the account is closed as uncollectible for various reasons. Or, he will advise as to why litigation may be a prudent next step and the associated costs with moving forward. Client then makes a decision on either having the account closed or moving forward with a lawsuit.

Attorney Files Complaint

If client decides to move forward with litigation, the attorney will prepare the Complaint based on documentation, information, and interactions with the debtor company. It usually makes the most sense to pursue legal action in the county where the debtor is domiciled.

Process Server

Once the Complaint is filed with the local court, a Summons and Complaint is placed with a court officer to serve upon the debtor. The court office may be a private process servicer or a member of law enforcement (local sheriff or the like). Corporate entities are usually served via the company’s registered agent. Personal service is generally needed for individuals (sole proprietors, partners in a partnership, or personal guarantors).

Served and No Response

Once the process server has confirmed serving the debtor, the debtors has about 30 days to file a response. If the debtor does not do so within the allotted time, our attorneys will file a Motion for Default Judgment.

Default Judgment

Once a Default Judgment is entered by the Court, the Defendant (debtor) will have roughly 30 days to respond and file an Appeal. If no Appeal is filed, the Judgment is granted, and the attorney begins attempts to collect/execute on the judgment. If the Defendant files an Appeal, the Court may vacate the Default Judgment so the Defendant can present their position in to the Court.

Served and Answer Filed

Defendants will sometimes file an Answer that is a general denial. That is, it doesn't provide any specifics regarding their reason for nonpayment. This enables the Defendant to prevent a Default Judgment from being entered against them. Debtors may use a general denial as a stall tactic. In other instances, a debtor may be specific in their Answer and also include a Counterclaim.

Discovery

When any Answer is filed, the creditors' rights attorney will serve the debtor with discovery. Discovery enables the attorney to uncover specifics regarding the Defendant's position and secure documentation that may support the Defendant's position. Discovery may include: interrogatories, requests for admissions, documentation requests, and more. Both the Plaintiff and the Defendant have equal rights and the debtor may serve the creditor with discovery. Discovery is enforced by the Court and the Court will set deadlines for responses and completion of discovery.

Alternate Dispute Resolution

Some courts require alternate dispute resolution to reduce caseload for matters that may be settled short of trial. Mediation and Arbitration are options that can be more time and cost effective than awaiting a trial date. Costs for alternate dispute resolution are incurred by each party and varies in amount. Often a witness is required to attend the mediation or arbitration in person or, in some jurisdictions, via telephone. Usually dispute resolution procedures are non-binding, allowing the parties to move forward with trial if need be. Nonetheless, there are occurrences when the mediator or arbitrator's decision is final. The creditors' rights attorney will let us know ahead of time if the alternate dispute resolution is final.

Trial

If the matter proceeds to the point of Trial, the attorney will let us know the date, time, and location of the upcoming trial. The trial will take place where the initial action was filed (normally the debtor's home county). The attorney may request that a witness from your firm appears at trial. The attorney may also need original documentation to be provided. Some courts will allow for witness testimony via telephone and if this is an option, the creditors' rights attorney will request the same. Nonetheless, most courts still require a witness to appear in person. A collection civil trial can usually be completed within one day.

Can I get a Witness?

A witness can usually be a representative from the creditor company that is located near the debtor company. For collection matters, the witness will usually testify that the documentation is accurate, all accounting is up-to-date, and the amount being pursued is still valid and due. If the case is a bit more complex, testimony may be required that addresses exactly what transpired—how was the order received, who authorized the order, did the debtor ever bring up any issues within 30 days of receiving the order, etc. In this scenario, the creditor witness should have intimate knowledge of the transaction. If an out-of-town witness is required, it may behoove the witness to arrive a day before the trial to meet with the attorney, discuss any potential testimony, and get a good idea of what may occur at the trial. Often settlements may be reached at (or before) trial, as such, it's helpful to have a witness present that has settlement authority on the case.

I Shall Counter your Claim! Counterclaim

A Counterclaim is more than an Answer. A Counterclaim is an independent cause of action that requires a formal response. A Counterclaim is often a tactic utilized by the Defendant to offset the Plaintiff's claim. If a Counterclaim is received, the Plaintiff (aka cross-defendant at this point) has 20 days or so to access the situation and file a response. Since a Counterclaim is handled by counsel as a separate matter on an hourly basis, it's important to consider the possible outcomes and options. The creditors' rights attorney handling the initial action is often the best choice to defend your firm from the Counterclaim and you have the option of retaining him or her. Or, you can retain a different attorney to defend the Counterclaim; however, the generally thought is too many cooks spoil the broth, so if the Counterclaim is to be defended, it's usually best for the attorney that brought the initial action against the debtor to defend the claim. Alternatively, if a Counterclaim appears to hold some merit, you may request that the attorney attempt to negotiate a settlement or a mutual dismissal of both the initial claim and the Counterclaim. A cost versus benefit analysis should be considered as the cost to defend a Counterclaim on an hourly basis coupled with expenses associated with providing a witness for trial may exceed the amount of the initial claim.

Collecting a Judgment

Yes, a Judgment has been secured and is final! Now the real work begins... Once the Judgment is issued, the creditors' rights attorney will pursue execution remedies to satisfy the Judgment. There are numerous execution remedies that can be pursued, including wage garnishment, bank garnishment, property levy, keeper attachments and more. Often the attorney will have costs remaining from the initial suit advance and will utilize those funds to move forward with a remedy. If the initial costs have been used, the creditors' rights attorney will propose an execution remedy and will let us know the associated costs. If the balance warrants the expense, you may decide to proceed with the execution remedy proposed. If the juice isn't worth the squeeze at this point, you can allow the Judgment to remain on the debtor's record, hopefully forcing the debtor to address the Judgment in the future when they attempt an action that requires the Judgment to be addressed (perhaps buying or selling a property). The amount of time a Judgment is active depends on the state, but ten to twenty years is generally the norm. Moreover, most Judgments are renewable.

The information above is believed to be accurate at the time of document creation and is for reference only. We are **not** attorneys, and nothing here should be construed as or relied upon as legal advice.