

New Hampshire Debt Collection Laws

By Jay M. Niederman
Niederman, Stanzel & Lindsey

First written as a part of [The National List of Attorneys](#) series “50 White Papers in 50 Days” and published in the blog [NL Insider](#) on 3/21/2013.

I. Laws Relating to New Hampshire Debt Collection:

a. Statute of Limitations:

- Open Accounts and Written Contracts: [RSA 508:4](#) sets a three-year limitation on all such actions, as well as all matters not covered under other statutes of limitations.
- Sales of Goods: [RSA 382-A:2-725](#) sets a four-year limitation on all contracts involving the sales of goods, as defined by the Uniform Commercial Code.
- Negotiable Promissory Notes: [RSA 382-A:3-118](#) sets a six-year limit on negotiable promissory notes as defined in the Uniform Commercial Code.
- Domestic and Foreign Judgments: [RSA 508:5](#) sets a 20-year limit on domestic and foreign judgments as well as “Contract Under Seal.”
- Estates: [RSA 556:1](#) and [RSA 556:5](#) set six months for demand and then six months thereafter for suits against estates.
- Arbitration Awards: [RSA 542:8](#) sets a one year limit for Superior Court confirmation of arbitration awards.
- For suits on open account and promissory notes, the statute may be tolled by payment on account or a subsequent acknowledgment and promise to pay.
- If a contract is payable in installments, the applicable period runs separately for each payment period until acceleration. [General Theraphysical, Inc v. Dupuis 118 N.H.227, 385 A.2d 227 \(1978\)](#).

b. Bad Check Laws and Civil Penalties:

- Civil: [RSA 544-B:1](#) governs Civil Penalties for Bad Checks. It applies to dishonor for lack of funds, issuing a check against an invalid account or issuing a stop payment without cause. Following dishonor, the holder of the check must provide notice of nonpayment as described in [RSA 544-B:2](#). If the check is not paid within 10 days after notice, the maker is liable for the amount of the check plus court costs, service costs and collection costs. In addition, the maker is responsible for \$10 per day that the check remains unpaid, up to a maximum of \$500.
- Civil: In addition, [RSA 358-C:5](#) allows for a creditor or debt collector in a consumer credit transaction to impose a charge of not more than \$25.00 for a bad check, unless otherwise

expressly authorized by the written agreement with the consumer.

- Criminal: RSA 638:4 provides that a person who issues a bad check is subject to prosecution in the jurisdiction in which the check was issued or passed. The penalties range from a Class A felony to a misdemeanor depending on the amount of the check and whether the defendant has two or more prior offenses. Use of the criminal process generally precludes simultaneous resort to civil remedies.

c. General Garnishment and Exemptions:

New Hampshire has no meaningful garnishment procedure. Although [RSA 512](#) provides for garnishment or “trustee process” on wages, [RSA 512:21\(I\)](#) exempts wages earned by the defendant after service of the garnishment documents. As a result, a creditor seeking to employ that remedy cannot acquire an ongoing garnishment order.

New Hampshire does have a procedure for post-judgment petitions for periodic payment of judgments. Under [RSA 524:6-a](#), a judgment creditor may petition the court for an order of periodic payments. The debtor is required to appear and make a financial disclosure including income, expenses, assets and liabilities. Based upon this disclosure, the court may enter an order compelling payments from income or sale of assets. Failure to appear or failure to pay can constitute civil contempt of court.

In entering a periodic payment order, the Court may not consider property or income deemed exempt. The most common exemptions are as follows:

- [RSA 511:2](#) exempts certain property from execution. The most common exemptions are: wearing apparel, household furniture to the value of \$3,500, provisions and fuel to the value of \$400, tools of the debtors occupation to the value of \$5,000, one automobile to the value of \$4,000, jewelry to the value of \$500, interest in any other property up to \$1,000 plus \$7,000 of any otherwise unused exemptions, and the debtor’s interest in a qualified retirement plan with no dollar limitation.
- [RSA 480:1](#) exempts a debtor’s homestead interest in the amount of \$100,000. For typical joint ownership between husband and wife, therefore, the homestead exemption would be \$200,000.
- [RSA 282-A:159](#) exempts unemployment benefits. The exemption does not apply to expenses for necessities incurred during the period of unemployment.
- Social Security Benefits are exempted ([Todd v. Romano, 131 N.H. 96, 550 A.2d 111 \(1988\).](#))
- [RSA 281-A:52](#) exempts workers compensation benefits, except for certain medical bills related to the injury and certain attorneys fees.
- [RSA 167:25](#) exempts State welfare benefits.

d. Other Items Relative to New Hampshire Collections:

- **Interest:** [RSA 336:1\(II\)](#) establishes the interest rate, both prejudgment and post judgment at a percentage determined annually by the State Treasurer based upon the prevailing US Treasury Bill rate. It is calculated as simple interest and is not compounded. [Metropolitan Property & Liability v. Ralph 138 N.H. 378, 640 A. 2d 763 \(1994\)](#). The [applicable rates](#) for the last 10 years are as follows: 2002: 4.4%, 2003: 7.6%, 2004: 3.0%, 2005: 4.0%, 2006: 5.7%, 2007: 6.8%, 2008: 6.0%, 2009: 3.5%, 2010: 2.2%, 2011: 2.2%, 2012: 2.2%. The rate for 2013 will be 2.1%.
- **Pre-Judgment Attachment Liens:** New Hampshire collection practice often involves the acquisition of a prejudgment attachment to secure any non-exempt asset of the defendant. The most common attachments are against real estate and bank accounts. Attachments are available ex parte in appropriate emergency situations under [RSA 511-A](#) and with prior notice under [RSA 511-A:8](#).
- **Mechanics Liens:** [RSA 447](#) requires that a suit be filed and a court order be acquired allowing the mechanics lien attachment. The time limit to perfect the lien is 120 days after the work is performed or the material is provided. The requirement of suit and an actual court appearance increases the costs and fees necessary to acquire a mechanics lien attachment in New Hampshire. There is one further major limitation on mechanics' liens: If a property owner fully pays the general contractor prior to receiving notice, the lien rights of the unpaid subcontractor or material provider are extinguished. [Westinghouse v. Electromech, Inc, 119 N.H. 833, 409 A.2d 1141 \(1979\)](#).
- **Judgment Liens:** The entry of a judgment does not constitute a lien upon a debtor's property in New Hampshire. The only means to acquire such a lien is to petition the Court for a post-judgment attachment. Even that lien will expire after six years.

e. Note on the status of New Hampshire Courts:

As of this writing, the New Hampshire Court System is in a state of change. The entire Court System is in the process of converting to an e-filing system. In addition, the Superior Courts have just converted from the prior common law pleadings to a system closer to that of the Federal rules.

II. Debt collection licensing, bonding and other regulations.

a. Creditor/lender

- [RSA 399-A](#) is titled "Regulation of Small Loans, Title Loans and Payday Loans." It defines a "Small Loan" as a loan or line of credit for \$10,000 or less involving interest and other charges described in [RSA 399-A:1\(XIV\)](#). [RSA 399-A:1\(XVI\)](#), defines "Title Loan" as one made to finance the purchase of an automobile, payable with a single payment within 60 days or less. [RSA 399-](#)

[A:1 \(IX\)](#) defines a “Payday loan” as a short-maturity loan other than a title loan. [RSA 399-A:2](#) states that “no person shall engage in the business of making small loans, title loans or payday loans in this state or with consumer located in this state without first obtaining a license from the [Banking] Commissioner.”

- [RSA 399-D](#): is titled “Debt Adjustment Services.” It applies to businesses that counsel consumer debtors and set up debt plans for consumer debtors. It requires that any person engaged in these services first obtain a license from the Banking Department.
- There are a number of somewhat arcane provisions that can be of concern to out-of-state creditors seeking to pursue New Hampshire collections. In particular, under [RSA 293-A:15.02](#), “A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.” Following Federal constitutional law, however, this statute is inapplicable to any transactions involving interstate commerce. [R.C. Allen v. Acres 111 N.H. 269, 281 A.2d 162 \(1971\)](#).

b. Collection agency

Except as provided in the above sections, there are no licensing, bonding or other regulations governing collection agencies in New Hampshire.

c. Debt buyer (including statutes and rules regarding documentation)

At present, there are no licensing, bonding or other regulations governing debt buyers in New Hampshire.

d. Lawyer not licensed to practice within New Hampshire

[RSA 311](#) prohibits the practice of law by those not admitted to the New Hampshire Bar. [RSA 311:1](#) contains exceptions for those appearing pro se and a limited provision for representation by any citizen of good character. Generally, though, an out-of-state attorney seeking to appear before a New Hampshire Court needs to seek admission pro hac vice under [Superior Court Rule 19](#) or [Circuit Court-District Division Rule 1.3](#). New Hampshire Courts are usually strict in requiring the local New Hampshire attorney to retain a degree of involvement in the case and to appear at all hearings.

III. Practices related to:

a. Commercial collections:

- New Hampshire has recently established a Business and Commercial Dispute division of the Superior Court pursuant to [RSA 491:7-a](#). This court is particularly geared toward the needs of complex commercial and business litigation. However, it is limited in nature and generally not appropriate for a simple commercial collection, just because it happens to be based upon a commercial transaction.

- Other than the Business and Commercial Dispute Court, there is somewhat of a disparity in the level of sophistication in the various New Hampshire courts. New Hampshire is a largely rural state, and many of the courts lack the level of commercial background and experience that might be found in more urban, commercial centers throughout the country.

b. Consumer collections

In addition to the Federal Fair Debt Collections Practices Act, consumer collections in New Hampshire are subject to three statutes:

[New Hampshire Unfair, Deceptive or Unreasonable Collection Practices Act, RSA 358-C](#) - In general, this law follows the Federal Fair Debt Collections Practices Act. There are, however certain areas that differ and in some instances, are more restrictive. The most important are:

- Coverage: The New Hampshire Act applies to creditors of a consumer debt as well as third-party debt collectors.
- Transactions Covered: The New Hampshire Act is more limited than the Federal. It applies to consumer credit transactions involving four or more installments, and transactions in which a finance charge may be imposed. The New Hampshire Act excludes debts arising from real property leases.
- Calls to place of employment: Under the New Hampshire Act, calls to a consumer debtor's place of employment are allowed only if the debt collector "is unable to contact the debtor at his residence." Even in that event, the debt collector may only make one call per month to the debtor at work, unless the debtor provides written permission to be called more often at his employment.
- Discussions with persons other than debtor: The New Hampshire Act is more restrictive than the Federal. Under it, a consumer debt collector may communicate "information relating to a debt" only to "a person residing with the debtor and reasonably believed to be a relative or family member over the age of 18." (Emphasis added).
- Penalties for violation: The New Hampshire Act imposes penalties of \$200 plus costs and legal fees for each violation, plus actual damages proximately caused. In addition, though, violation of RSA 358:C automatically constitutes a violation of RSA 358-A, discussed below.

[New Hampshire Act for Regulation of Business Practices for Consumer Protection, RSA 358-A.](#)

- This Act states, "It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state." It goes on to give examples that are not exclusive.
- The Act is not limited to consumer transactions and is not limited to third-party debt collectors.
- Penalties for violation are severe. These may include the greater of actual damages or \$1,000 plus legal fees. If the violation was intentional, double or triple damages may be awarded. It also

allows for class actions, as well as possible criminal enforcement by the New Hampshire Attorney General.

[The New Hampshire Statute Governing Retail Installment Contracts or Evidence of Indebtedness, RSA 361-C](#)

- This Act requires that any provision for award of attorneys' fees in a retail installment contract also awards fees to a prevailing debtor.
- Even absent such provision, the Act provides for the deduction of debtor's legal fees in the event of a partial defense, counterclaim or set-off.

c. Secure versus Unsecured matters

- Security Interests: Filing Office for UCC Financing Statements: Under RSA [382-A:9-501](#), financing statements are filed in the office of the New Hampshire Secretary of State.
- Security Interests: Repossession Right of Secured Creditor: Under RSA [382-A:9-609](#), a secured party may take possession after default either "pursuant to judicial process" or "without judicial process, if the creditor proceeds without breach of peace." In the absence of language in the contract, therefore, there is no requirement notice prior to Repossession.
- Security Interest-Replevin: The only "judicial process" for a secured creditor to repossess collateral in New Hampshire is Replevin under [RSA 536-A](#). It is a somewhat awkward remedy that is started by filing a petition in Superior or Circuit Court. After a preliminary hearing, the Court may order a replevin to issue upon the creditors' posting a bond for double the value of the collateral. The sheriff is then authorized to take possession of the collateral and hold it pending final hearing.
- Security Interest: Notification Before Disposition of Collateral: RSA [382-A:9-611](#) requires that a secured creditor provide very specific information before disposing of secured collateral. [RSA 382-A:9-613](#) includes a form of notification in commercial cases and [RSA 382-A:614](#) includes a form of notification in consumer cases.
- Security Interests: Manner of Disposition of Collateral Following Default: [RSA 382-A:9-610](#) follows the standard approach that the secured party may dispose of the collateral by public or private sale, but that all aspects of the disposition must be "commercially reasonable." There is no set formula for determining commercial reasonableness, and most New Hampshire Courts approach this issue on a flexible basis, recognizing the nature of a secured-party disposition.
- Real Estate: Mortgage Foreclosure: Most mortgages in New Hampshire contain statutory powers of sale. Although judicial foreclosure is available, most foreclosures are conducted by publication and sale under [RSA 479:25](#). The case of [Murphy v. Financial Development Corp](#), 126 N.H. 536, 495 A2d 1245 (1985) imposed a duty upon the foreclosing creditor "to exercise due diligence in obtaining a fair price." While the Court declined to establish a specific formula, most banks and

other secured lenders approach the issue by establishing an “upset price” which is usually 60% of the appraised value. In addition, as a result of the Murphy opinion, most real estate foreclosures are now conducted by professional auctioneers with substantial advertising.

IV. Costs related to court filing fees

- Small Claims Division of Circuit Court, District Division (Civil collection cases up to \$7,500-([RSA 503](#)): A complete list of fees can be found in [Rule 3.3](#). The most common are as follows: entry of small claim below \$5,000: \$72.00 plus \$25.00 surcharge; entry of small claim above \$5,000 (but less than jurisdictional maximum of \$7,500): \$127.00 plus \$25.00 surcharge; petition for periodic payment: \$25.00; writ of execution: \$25.00; certification of judgment: \$10.00; exemplification of judgment: \$25.00.
- General Civil Division of Circuit Court, District Division (Civil collection cases up to \$25,000 - ([RSA 502-A](#)): A complete list of fees can also be found in [Rule 3.3](#). The most common are as follows: civil action summons or counterclaim: \$130.00 plus \$25.00 surcharge; registration of foreign judgment: \$150.00 plus \$25.00 surcharge; petition for periodic payment: \$25.00; writ of execution: \$25.00; certification of judgment: \$10.00; exemplification of judgment: \$25.00.
- Superior Court - ([RSA 491](#)) (Civil collection cases from \$1,500 with no upper dollar limitation): a complete list of fees can be found at the [fee page](#) of the Superior Court Rules. The most common are as follows: original entry of any action at law or equity: \$205.00; cross claim or counterclaim: \$207.00; motion for periodic payments: \$25.00; writ of execution: \$25.00.

V. Process-serving options

In New Hampshire, civil process is served by the county sheriff. Generally, there is no private service of process.

There are certain limited exceptions. These include certified mail service of small claims petitions, certified mailings of petitions for periodic payment of judgment, individual service of subpoenas and provisions for alternate service by mail or publication, when sheriff service is not possible.

In addition, New Hampshire has two “long arm” statutes for service upon defendants who are out of the state but subject to its jurisdiction. [RSA 510:4](#) allows for service upon nonresident defendants by sheriff’s service upon the Secretary of State and certified mailing to the defendant or by other substituted service. [RSA 293-A:10](#) allows for service upon nonresident foreign corporations by registered mail or other substituted service, if the corporation has no registered agent in New Hampshire.

VI. Cases brought by the State's Attorney General related to debt collection: None

VII. Case law and other unique aspects of New Hampshire debt collection

Attorney's Fees: Fleet Bank v. Christy's Table, 141 NH 285 (1996) held that the amount of an attorney's fees award will not be determined exclusively by the amount specified in the contract or even based upon the percentage agreed between the attorney and the creditor. The court will make the determination based upon the amount of time and effort spent in pursuing the collection.

Stay of Execution to Compel Payment Order: Quality Carpets, Inc. V. Carter, 133 N.H. 887, 587 A.2d 254 (1991) held that the Court has the power to stay execution on a civil judgment if the debtor proposes a reasonable payment order under RSA 542:7.

Debt Responsibility: New Hampshire is not a community property state. The separate interests of husband and wife are clearly recognized and, in general, the assets of one spouse cannot be reached to satisfy the debts of the other. Despite the above, the New Hampshire Supreme Court has held one spouse may be held liable for medical and other "necessities" of the other. St. Joseph's Hospital v. Rizzo, 141 N.H 09 (1966); Cheshire Medical Center v. Holbrook, 140 N.H. (1995).

VIII. Ethics opinions passed down from State Supreme Court related to debt collection: None

IX. Any additional laws or case examples relevant to debt collection: None

X. Other sources of information

- New Hampshire Deed Registries: <http://nhdeeds.com>
- New Hampshire Secretary of State Corporate Records: <https://www.sos.nh.gov/corporate/soskb/csearch.asp>
- Index to New Hampshire Statutes: <http://www.gencourt.state.nh.us/rsa/html/indexes/default.html>
<http://www.gencourt.state.nh.us/rsa/html/indexes/default.asp>
- Index to New Hampshire Court Rules: <http://www.courts.state.nh.us/rules/>
- New Hampshire Courts Web Site: <http://www.courts.state.nh.us/>

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.

©The National List of Attorneys, 1/1/2013