



**DCSD**

## *Debt Counsel for Seniors & the Disabled*

### **Information on Statute of Limitations**

*By Mary Baker, DCSD Attorney*

Every day our office receives calls from clients asking how long they have to stay with our services. Inevitably, the call continues with a discussion regarding the statute of limitations in the client's state. Our traditional response is that the client should at least stay until the statute of limitations (SOL) in their state has expired.

Just because the SOL in your state has expired and you have not been sued does not mean you might still not need legal protection. For these reasons, we try to keep the monthly payments as low as possible so that clients who want to stay after the SOL has expired can afford to stay on and have peace of mind.

Each state has two SOLs. The first one involves a time period that a creditor has to sue the debtor. For example, in California, the SOL is four years. If a creditor has not sued the debtor within that period of time, they are time barred from suing the debtor. That's important because the creditor cannot legally force the debtor to pay the debt without filing a lawsuit and obtaining a judgment. The judgment allows the creditor to garnish wages or bank accounts and put liens on real property. Without the judgment, a creditor cannot take any of these actions, so if the first SOL has expired, the creditor is time barred from ever obtaining the legal means to force the debtor to pay back the debt. Most clients feel comfortable leaving our services once they know that all the creditor can do now is call them and or send them letters.

However, in this day of junk debt buyers coupled with the massive number of people suffering from their inability to pay their debts, mistakes are often made. For example, we have found cases where the SOL has expired and the original creditor decides to sell it to a junk debt buyer. When a junk debt buyer purchases debt, the buyer does so in batches of millions. The individual's entire file is not sent to the junk debt buyer. The file is transmitted electronically from the original creditor to the junk debt buyer and is one line in a list of millions. This is where the mistakes can be made. The junk debt buyer could then try to say that the SOL begins running on the date that the file was transmitted. Based on that inaccurate information, the junk debt buyer could sue a debtor (illegally). Therefore, the unsuspecting debtor who thinks they are home free suddenly finds that he is being sued. Many of our clients faced with this situation have been glad they were able to stay with our services past the expiration of their SOL because now they have someone to turn to for help.

In addition to the above mistake, we find that junk debt buyers can be more aggressive than original creditors and sloppy in their collection efforts. If we're representing you, anytime your

**May 2011**

account changes from one collector to another, we send each of them a notice of representation that contains a cease and desist order. If a collector ignores the cease and desist and contacts you afterwards, we send your case to one of our outside attorneys licensed in your area to file a suit against the collector. If a collector violates your rights under the federal Fair Debt Collection Practices Act (FDCPA), you are entitled to monetary damages and the creditor has to pay your attorney fees if a court rules in your favor. The majority of our cases, however, are settled out of court and our clients do not go to court and do not pay anything.

If a creditor sues you, the second SOL is triggered. That SOL is the amount of time (years) that a creditor has to enforce on their judgment. Each state is different with respect to the number of years. In several states the creditor has 20 years to collect on the debt once they have sued and obtained a judgment. Since most of our clients do not have assets or incomes other than from exempt funds, the original creditor who finds that he cannot enforce his judgment can either keep the debt or sell the debt to a junk debt buyer. Again, when an account is sold to a junk debt buyer we find mistakes in the collection process and frequent violations of the FDCPA. To be continued...

***Hotline Help***

National Suicide Prevention Hotline

(800) 273.TALK (237.8255)

24 hours a day / 7 days a week

National Institute of Mental Health

(866) 615.6464

24 hours a day / 7 days a week

AARP

(888) OUR.AARP (687.2277)

24 hours a day / 7 days a week

**Refer DCSD to a Friend!**

Do you know someone who is suffering in silence like you once were? Help a friend, neighbor, relative or other loved one achieve peace of mind and restore dignity in his or her life. Help US by distributing DCSD cards around your community and make others aware of the service that has been helping you restore dignity to YOUR life! We'd love to talk to anyone whom you think would benefit from our service. Please give your friends and loved ones DCSD cards.

Please call (800) 992-3275 for DCSD cards.

**DCSD Telephone Directory - Toll Free (800) 992-3275**

Applications/ABC Bank Info: ext. 1402 / Elizabeth

Additions to Existing Account: ext. 1501 / Gaby

Billing: ext. 1501 / Gaby

Creditors: ext. 1403 / Mindy

Legal Matters: ext. 1400 / Veronica or Leslie

Refer Family or Friends: ext. 1700 / Sylvia or Bonnie

**Please be ready to provide your client ID number.**

**Update Your Contact Info!**

Have you moved recently, changed your telephone number or got a new e-mail address? Please help us by providing any information that we may not have on file using the form below. **(If you are unsure if we have your current information, please call us before you send this form in.)** Thank you!

Name: \_\_\_\_\_ Client ID: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/ZIP: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_