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ILLINOIS DEFINES "DEBT BUYER" UNDER STATE'S COLLECTION AGENCY ACT

Effective January 1, 2013, the Illinois Collection Agency Act (CAA) has been amended to add debt buyers to those regulated by the CAA. Illinois House Bill 5016, which amended the CAA, defines "debt buyer" as a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third-party for collection or an attorney-at-law for litigation in order to collect such debt. It also defines the terms "charge-off balance," "charge-off date" and "current balance."

The bill further provides that with respect to its activities as a debt buyer in pursuing the collection of accounts it owns, a debt buyer is subject to all of the terms, conditions and requirements of the CAA, except that a debt buyer is not required to:

- File and maintain a surety bond
- Maintain a trust account
- Procure written authorization to refer the account to an attorney for suit; or
- Adhere to the assignment for collection criteria.

The bill also requires debt buyers to initiate actions on consumer debt within the applicable statute of limitations period. Finally, the bill authorizes the attorney general to enforce against debt buyers certain provisions of the CAA as unlawful practices under the Illinois Consumer Fraud and Deceptive Business Practices Act. □

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FEDERAL COURT RULES ON NEW YORK CITY DEBT COLLECTION ORDINANCE

The United States District Court for the Eastern District of New York recently held that New York City's Local Law 15 is inconsistent with the New York Judiciary Law and is without force and effect as applied to the law firm plaintiffs. *Berman v. City of New York*, 2012 WL 4514407 (E.D. N.Y. Sept. 29, 2012). The case involved a suit by law firms and other organizations involved in consumer debt recovery

against the City of New York alleging that amendments to the City's debt collection ordinance to cover debt buyers and attorneys engaged in debt collection violated New York state law and the United States Constitution, and was before the Court on the parties' cross motions for summary judgment.

The amendments under consideration were those set forth in Local Law 15, which included changes to the definition of "debt collection agency" set forth in Section 20-489 of the New York City Administrative Code that were made in 2009. The amendments altered the definition to bring within its scope debt buyers and attorneys regularly engaging in activities traditionally performed by debt collectors. The effect of these amendments was to require such entities to obtain a debt collection agency license.

In examining the plaintiffs' motions for summary judgment, the court agreed with the plaintiffs that Local Law 15 is in direct conflict with New York Judiciary Law Sections 53 and 90 and granted their motion on this issue. The court found that New York law gives the state judiciary supervisory and corrective powers over attorneys and therefore, that regulation of attorneys' conduct is not within the police power of municipalities. It is simply not within the City's power to license attorneys or regulate their professional conduct, the court stated. In attempting to regulate attorney conduct, the court found, the City exceeded its authority, and Local Law 15, along with its accompanying regulations, to that extent are without force and effect.

On the plaintiffs' claims that (i) New York has preempted the entire field of debt collection regulation, (ii) Local Law 15 is inconsistent with certain provisions of New York General Business Law, (iii) Local Law 15 violates the Contract Clause of the U.S. Constitution and (iv) Local Law 15 is unconstitutionally vague, the court granted summary judgment to the defendants. Finally, on the plaintiffs' claims that Local Law 15 violates the Commerce Clause of the Constitution by regulating out-of-state debt buyers, the court found that genuine issues of material fact remain and directed the parties to prepare for trial on that issue. □

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