

Newsletter

A newsletter on general legal matters

D.C.’s NEW DEBT COLLECTION LAW

By: Michelle L. LaRue, Esq.

Now that the COVID-19 related moratorium on consumer debt case filing has expired, the District of Columbia has enacted a new law, which became effective on January 1, 2023. The Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022 (D.C. Code § 28-3814) changes the current law by expanding its scope and introducing several new consumer protections to D.C. residents dealing with the continuing financial impact of the pandemic.

D.C. Code § 28-3814(m)(2) of the new debt collection law applies to almost all forms of modern consumer debt, including condominium or homeowner’s association fee debt. The law now requires debt collectors to substantiate the debt, which includes providing: (1) the name of the original creditor, (2) the consumer’s account number, (3) documents that establish the consumer’s liability for the debt, (4) the date the debt was incurred, (5) the date and amount of the last payment, and (6) an itemized accounting of the amount claimed to be owed.

The new law also requires a debt collector (other than the original creditor) attempting to collect a charged-off debt to notify the consumer in its first written communication with the consumer that they have the right to request (the documentation and information identified in subsection (m)(1)) certain information and documentation.

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2023 ESTATE TAX UPDATE

By: Laurie Pyne O’Reilly, Esq.

Is having an estate tax problem a good problem to have? Many would say yes. That’s because such taxes are imposed only on persons who die with considerable wealth. (The dying part isn’t such a good thing, but as the saying goes, it is one of the two certainties in life. The other being taxes.)

The federal estate tax currently applies only to estates worth in excess of 12 million dollars. While estate taxes imposed by the states and the District of Columbia vary widely, they affect predominantly those with at least moderate wealth.

This is an update on the current estate tax rates imposed by the federal and state governments in the D.C. metropolitan area.

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D.C.'s NEW DEBT COLLECTION LAW

In addition, the notice must include a warning that the consumer might have protected income or resources that cannot be taken by a debt collector, and that a consumer should consider obtaining legal advice prior to paying the debt. The debt collector must deliver the required information and documents to the consumer within 15 days of a request, and must cease all collection efforts until such information is provided.

D.C. Code § 28-3814 (c) to (e) identifies several consumer protections against threats, coercion, harassment or abuse by debt collectors. These include, but are not limited to, communicating directly with a consumer known to be represented by counsel, use of abusive language and threats that nonpayment of a debt may result in arrest. Subsection (v) bars debt collectors from seeking attorneys' fees in a debt collection lawsuit unless a contract or other document provides for it. Even if there is such a contract, those fees may not exceed 15% of the amount of the debt.

The new debt collection law changes the requirements for service of process, initial filing requirements and the requirements for obtaining a judgment. These revisions ensure that defendants in these cases have the appropriate information regarding the debt they are being sued for and that the plaintiffs establish that they are entitled to a judgment, even in cases where a judgment is entered by default.

The Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022 expands the scope of the old law to include all forms of consumer debt, protects consumers against unfair and abusive practices throughout the debt collection process, and outlines a new judicial process for debt collectors. It provides a more equitable debt collection law for all D.C. residents.

PROTECTIONS AVAILABLE FOR HOMEOWNERS CONTEMPLATING HOME IMPROVEMENTS

By: John E. Arness, II, Esq.

The District of Columbia Consumer Protection Procedures Act ("CPPA" or the "Act") attempts to avoid injustices arising out of the merchants and consumer relationship. The stated purpose of the Act is to:

- (1) assure that a just mechanism exists to remedy all improper trade practices;
- (2) promote, through effective enforcement, fair business practices throughout the community; and
- (3) educate consumers to demand high standards and seek proper redress of grievances.

The protections are limited and are intended for the benefit of consumers seeking redress against "merchants." A "merchant means a person who does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services which are or would be the subject matter of a trade practice." Transactions along the distribution chain do not involve the ultimate retail customer are not 'consumer transactions' that the Act seeks to reach. Rather, it is the ultimate retail transaction between the final distributor and the individual member of the consuming public that the Act covers.

The newly established Department of Licensing and Consumer Protection, or "DLCP", exists to administer to the purposes and functions of the CPPA and become the regulating authority for all consumer-related disputes arising in the District of Columbia. The powers granted the office are recited in D.C. Code §28-3903. The statute outlines at least twenty-six (26) "unlawful trade practices" (see D.C. Code §28-3904) which form the guidelines from which the DLCP imposes regulation and enforcement

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proceedings on merchants and tradesmen doing business in the District of Columbia. "Trade practice" means "any act which does or would create, alter, repair, furnish, make available, provide information about, or directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services"..

Provisions are made to accommodate the acceptance, processing and investigation of any consumer complaints arising under the Act. In addition to the administrative resources available, "any person found to have executed a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Office:

(i) shall be liable to the Office for a civil penalty of not exceeding \$1,000.00 for each violation enumerated in an order pursuant to (D.C. Code §28-3905) paragraph (g)(3);

(ii) may be assessed and made liable to the Office for a civil penalty of not exceeding \$1,000.00 for each violation or failure to adhere to a provision, of an order described in subsections (f), (g) or (j) or a consent decree described in subsection (h)" (of D.C. Code §28-3905).

Furthermore, "any consumer who suffers any damage as a result of the use or employment by any person of a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Office may bring an action in the Superior Court of the District of Columbia to recover or obtain any of the following:

- (1) treble damages;
- (2) reasonable attorneys fees;
- (3) punitive damages;

(4) any other relief which the court deems proper."

Additionally, consumers have the option of filing a claim with the Consumer Claims Arbitration Board pursuant to D.C Code §50-503 with the consent of both parties.

There is in place, therefore, an administrative system calculated to address the problems arising in the field of consumer protection in the District of Columbia. In order to better serve these objectives, numerous procedural statutes and regulations have been enacted over the years to regulate and monitor merchants/tradesmen in the District, and to implement a more efficient system which provides: (1) signals to administrative agencies to scrutinize conduct; and (2) deterrents to unlawful or other actions contrary to public policy.

The home improvement industry is particularly suited for the sort of administrative consumer protection system contemplated in the D.C. Code. The homeowner's lack of knowledge and experience in the home improvement business provides the catalyst for consumer protection legislation in the field. Depending on the nature of the work contracted for, there are often more players involved than the homeowner may realize.

The assumption may be that the individual or company contracted with will take care of all aspects of the job themselves, including supervision and quality control. This may or may not be the case. There are sometimes four, five, six or more separate individually contracting professionals involved in an average remodeling or home addition project. With larger projects, many of these can engage with subcontractors for a portion of the work. Without the benefit of the consumer protection legislation and regulation, and an appreciation for the complexity and overall organization affecting the profession, the homeowner would be a prime target for an

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unscrupulous contractor. The more a homeowner knows about the mechanics of a remodeling job, the better he/she can assure himself that he will not be taken advantage of.

There are generally three areas of protection available to the homeowner in dealing with home improvement contractors: (1) contractual, (2) statutory, and (3) procedural. While the emphasis here is on procedural protections, it must be recognized that the three work closely together and frequently overlap. Because of this, it is important to acknowledge the most general components of each to orient the consumer.

1. The Contract:

The contract the homeowner signs with the home improvement contractor constitutes the first line of defense for the concerned homeowner against the surprises which often surface during any construction or remodeling project. A "home improvement contract" is defined as "any person who enters, or offers to enter, into a home improvement contract with a homeowner." The contract outlines the duties, obligations, and understandings between the contracting parties. It fixes the specifications and time limitations which must be met and fixes liability where problems, both expected and unexpected, arise. Extreme care must be taken to account for delay, unexpected site conditions, and problems arising from the performance or attempted performance of subcontractors. If a door of liability is left open, and one or more subcontractor or sub-subcontractor happen to run over-budget due to some exigency, the homeowner may find himself/herself unnecessarily liable for an amount higher than what he/she thought he/she was obligated to pay. Unless the homeowner has a solid contract with the home improvement contractor making the

contractor responsible for all but the most unforeseeable and unexpected costs, he/she may find himself/herself liable to the subcontractor with no one to look to for restitution. Homeowners are well advised to seek legal assistance before a contract is entered into.

2. Statutory Protections:

Express and implied warranty protections usually give support to causes of action against contractors based on workmanship. The District of Columbia government also provides the consumer with statutory regulations and protections aimed at ensuring quality workmanship in the home improvement business.

The District of Columbia Building Codes set the minimum standards acceptable in the regulation of all phases of the construction process. They seek to ensure that every project undertaken in the construction field meets minimum safety standards and provides uniformity and regulation over the practice of the profession. This has the effect of deterring "shortcuts" taken by contractors designed to save time and money. The applicability of the Building Codes is restricted, therefore, to the regulation of building materials, design, techniques, equipment used, and other mechanical and substantive aspects of the building profession.

3. Procedural Protections:

Procedural regulations have been enacted partly to assist the homeowner in the selection of a reliable contractor. The procedural requirements also provide a framework of checkpoints and deterrents to increase the odds that, once a selection has been made, the work performed will be satisfactory to the homeowner.

a. Permits and Inspections:

The procedural requirements related to the acquisition of permits and the provisions for periodic

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inspections of the work as it progresses are calculated to provide a means of enforcement of the Building Codes. Various components of a building plan must be completed before other components may begin. Additionally, as a practical matter, there are situations where an opportunity to inspect a certain aspect of the construction process would be lost if not required before a subsequent stage was allowed to occlude the prior work. However, the issuance of a permit is not a certification that a particular design complies with the Building Codes.

The permit requirement is also used as a tool to ensure compliance with the city's zoning regulations relating to proposed use, front side and rear yard building restriction lines and height and density requirements.

Inspections are required to ensure that the work being done is the same as that for which the permit was issued, and that the materials and workmanship employed are sufficient in view of the applicable minimum standards as described in the Building Code. Inspections are called for upon completion of each stage of a project for which a permit was required, and at certain other stages and under certain conditions which may be specified.

b. Regulation of Home Improvement Contractors:

The procedural protections provided by the permit and inspection requirements seeking to impose some quality control over a particular remodeling project do relatively little, however, in the way of protecting the homeowner against the many unacceptable approaches or practices which may be used by a particular contractor not necessarily visible from an inspection of the finished project.

The problem facing the DLCP, therefore, was how to try to protect the homeowner against unscrupulous or unskilled home improvement contractors while avoiding a regulatory system which would have a discriminatory or prohibitive effective on anyone who desired to operate in the field fairly and professionally. Too much procedure or regulation could result in forcing the small firm or independent contractor out of business, thereby discriminating in favor of larger firms with greater assets available.

The DLCP's response to the problem is reflected in Chapter 8 of Title 16 of the District of Columbia Municipal Regulations. Chapter 8, entitled "Home Improvements," sets forth a licensing system and other standards enforceable against home improvement contractors and their employees. This chapter, and other related legislative enactments, acts as a tool to even up the perceived unequal bargaining positions occupied by the homeowner/consumer and the contractor/merchant. The regulations result in numerous benefits to the consumer.

The regulations affect contracts for the performance of "home improvement work" in the amount of three hundred dollars or more and provide for an aggregation of contracts with a particular contractor over a period of twelve months to qualify under the monetary minimum. "Home improvement work" is limited to certain activities in the business and does not include work associated with chattels (i.e., items not made a part of the realty) or "work performed by licensed electricians, licensed plumbers and gasfitters, or licensed refrigeration and air conditioning mechanics, so long as the work performed by them is limited to that of their licensed occupations." The regulations create two categories of home improvement contractors: those which are licensed and those which are not.

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Prior to the issuance of such a home improvement contractor license, there are prerequisites calculated to ascertain the suitability of the applicant to hold himself/herself out as a professional in the field. For instance, a contractor must attain a bond or other security "running" to the District of Columbia to provide security to future customers who may suffer a financial injury due to the violative actions or inactions of the contractor and a license applicant must furnish evidence of a minimum insurance coverage for public liability and property damage arising from the practice of the profession over the licensed period. There are numerous other specific requirements relating to the sufficiency and enforceability of the home improvement contract.

4. Conclusion:

The effect of the application of this "Consumer Protection System" is that the homeowner has available to him or her a forum and rigid standards governing all aspects of dealings with home improvement contractors. A few well-spent moments becoming educated on the protections and standards applicable can go a long way towards lessening (but not eliminating) the advantage that those who work in the home improvement industry can have over the homeowner, who may only know that he needs a new kitchen.

The homeowner need not face these complexities alone and is often well advised to seek the assistance of an attorney or the DLCP at various stages of the project contemplated.

2023 ESTATE TAX UPDATE

What is estate tax?

Estate tax is a transfer tax imposed on the value of a decedent's assets owned at the time of death. Property considered to be part of the taxable estate includes all assets owned by the decedent, or over which they retained control, at their death. So, in addition to assets such as real estate, bank accounts and investments titled in the decedent's name, the decedent's taxable estate also includes retirement accounts, life insurance policies, and interests in jointly held property that passes to a survivor, such as jointly owned real estate and joint bank accounts. The decedent's debts reduce the taxable estate, as does the value of property left to the surviving spouse and to eligible charities. A decedent's estate is taxed only to the extent that the net value of assets exceeds the exemption amount applicable in the year of death. Any taxable gifts made by the decedent during their lifetime reduces the amount of exemption available to be applied toward estate assets.

Federal Estate and Gift Tax

The combined federal estate and gift tax exemption amount for decedents dying in 2023 is \$12.92 per person, with spouses having a combined exemption of \$25.84. This is up from \$12.06 million per person and \$24.12 million for spouses in 2022. The estate tax and gift tax exemptions are unified so that tax is owed when combined taxable gifts made during lifetime plus net value of estate assets owned at death total more than the exemption amount. The individual exemptions are "portable" between spouses so that any unused exemption from the first spouse to die may be used to shield the surviving spouse's estate from tax. In order for the surviving spouse to take advantage of this portability

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provision, an estate tax return must be filed within nine months of the death of the first spouse to die, even if there is no tax liability and no tax return otherwise required to be filed.

Federal estate and gift tax rates have remained unchanged since 2013 with a maximum top rate of 40%. The tax rate starts at 18% and increases incrementally up to 40%. The maximum rate is reached when the taxable portion of an estate—that is the portion in excess of the lifetime exemption—is above \$1 million. Thus, a net estate worth \$12.92 million will not be taxed, but an estate worth \$13.92 million will be liable to pay \$400,000 in tax, that is, 40% of one million dollars over the exemption amount. (This assumes no taxable lifetime gifts.)

In addition to the lifetime estate and gift tax exemption, there is an annual gift tax exemption of \$17,000 per donee for gifts made in 2023. This is up from \$16,000 per donee in 2022. This exemption allows a taxpayer to make gifts of up to \$17,000 to as many individuals as desired without the necessity of filing a gift tax return or paying gift tax. The annual exempt amount doesn't reduce the lifetime estate/gift tax exemption amount. Spouses can make gifts totaling \$34,000 per donee—called “split gifts”—without any gift tax consequences, even if the entire gift comes only from one spouse's funds. However, to take advantage of this tax benefit, a gift tax return needs to be filed with the Internal Revenue Service.

It is important to note that, unless legislation is passed making current law permanent or otherwise changing the exemption amounts, the federal estate tax exemption amount will “sunset” in 2026, that is, revert to the exemption amount in effect in 2018, namely \$5.6 million adjusted for inflation. That is an enormous difference, less than half, from the current \$12.92 million exemption.

District of Columbia Estate Tax

By law that took effect in 2021 the estate tax exemption in the District was reduced from approximately \$5.5 million to \$4 million, with annual increases for inflation. The 2022 estate tax exemption, adjusted for inflation, was \$4,254,800. The 2023 exemption amount likewise adjusted is \$4,528,800.

Unlike federal tax law, D.C. law does not allow for portability, so spouses are not entitled to use a portion of their deceased spouse's unused exemption. However, there is no gift tax in D.C., so unlike the treatment of gifts under the federal tax code, gifts made during lifetime do not reduce the estate tax exemption amount.

The rate of estate tax imposed on taxable estates in D.C. starts at 11.2% and runs as high as 16%, with the maximum rate applicable to estates valued at over \$10 million dollars. There is no separate inheritance tax in D.C.

Maryland Estate Tax

Since 2019, the Maryland estate tax exemption amount has been set at \$5 million, with no adjustment for inflation. The 2023 exemption amount remains the same. Unlike the District of Columbia, Maryland allows for portability between spouses, so any unused exemption in the estate of the first spouse to die can be used for the surviving spouse's estate. Making the appropriate tax return filings after the death of the first spouse is necessary in order to preserve the excess exemption amount for the estate of the survivor.

There is no gift tax in Maryland, but there is inheritance tax on transfer to beneficiaries who are not close family members. Maryland's estate tax rates currently top out at 16%.

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There is neither estate, gift nor inheritance tax in Virginia. The estate tax was repealed for decedents who died on or after July 1, 2007. It is not uncommon for individuals to move to Virginia, as they do to other states, such as Florida, in order to avoid estate taxes.

Conclusion

Because of the very generous federal exemption amount currently in effect, and the relatively high state (and D.C.) exemptions, the estate tax burden will fall predominantly on high wealth estates. So you could say that having a taxable estate *is* a good problem to have. However, tax laws can and likely will change, and the exemption amounts can decrease. Keeping aware of changing estate tax laws, both federal and state (or D.C.), and seeking advice and planning assistance to reduce the potential tax burden, are prudent measures to take.

**Schedule Your
Complimentary
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Consultation Today!**

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