

Prop 209: An Update and Considerations for Post-Judgment Collection

*Eric Logvin, Esq. & Tina M. Ziegler, ACP
Law Office of James R. Vaughan, P.C.*

AGENDA

- I. Voter Initiatives
 - A. Amendments, Statutes, and Referendums
 - B. Sub-Categories
 - C. The Arizona Constitution
 - D. Mechanics of a Voter Initiative
 - E. Arizona History
 - F. Voter Protection Act
 - G. Arizona Ballot Initiatives
 - 1. HealthcareRisingAZ
 - 2. Proposition 209
 - a) What does it really say?
 - b) What Does it Do to Creditor's Rights?
- II. Challenges
 - A. State Court Action – 8/2/2022
 - B. Expedited Appeal to Supreme Court – 8/24/2022
 - C. General Election Messaging
 - D. Appeared on Ballot – 11/8/2022
 - E. Approved by Voters
- III. Actual Changes to Law
 - A. Went into effect on December 5, 2022
 - 1. Unclear - Raised questions on when it applies
 - a) Signing of contract?
 - b) Entry of Judgment?
 - c) Filing of Writ of Garnishment?
 - d) Service of garnishment?
 - e) Entry of continuing lien?
 - f) What if it is just a judgment?

IV. The Constitutional Challenge

- A. Lawsuit brought by Arizona Creditors Bar Association – 12/5/2022
 - 1. Three Challenges
 - 2. Verdict issued on 12/20/2022
 - a) Allowed to take effect
 - 3. Decision immediately appealed – 1/2023

V. When Does Prop 209 Apply to a Garnishment?

- A. It depends on where your case is filed
- B. Self Help Center/Forms are no help

VI. Current Realities for Creditors

- A. Advising clients
- B. Lending models
- C. Access to credit
- D. Post-Judgment work
- E. Attorneys leaving industry/state

VII. Prop 2029 Appeal: Current Status

- A. Oral Argument conducted on October 25, 2023 (Under advisement)
- B. Anticipated Opinion

VIII. Using the Courts to Collect

- A. Writs of Garnishments – Earnings & Non-Earnings
 - 1. Form-based and automation-heavy
 - 2. Can be systematized
 - 3. Require fixed third-party costs
 - 4. Allow for attorney's fees
 - 5. Predictable results
- B. Alternative Methods of Collection
 - 1. Discovery
 - 2. Writs of Special/General Execution
 - 3. Replevin
 - 4. Non-Earnings Writs – Safe Deposit Box Drill-Outs
 - 5. Other Provisional Remedies
- C. Considerations with Alternative Methods of Collection
 - 1. Manual work
 - 2. More difficult to systematize
 - 3. Require unpredictable third-party costs
 - 4. Don't always allow for attorney's fees
 - 5. Other factors that can impact success
 - a) Timing
 - b) Interactions between parties
 - c) Presence/quality of assets

IX. Limitations to a Debt Collector's Behavior

- A. Fair Debt Collection Practices Act (FDCPA)
- B. Other concerns
 - 1. Lawyers ethical obligations
 - 2. Client's willingness to allow certain activities
 - 3. Client's willingness to pay for certain activities
 - 4. Billing considerations – Contingency vs. Hourly
 - 5. Remember – Law Firms are businesses