



“Limitation Act and Collections.”



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When collecting a debt, the creditor must be careful that the 2-year limitation period does not occur. If more than 2 years have gone by, you can still collect the account, there is no prohibition against doing this; however, if you sue and the debtor raises the Limitation Act as a defence and it is more than 2 years, you lose.

The 2 years starts from the date of the debt arising. If a partial payment or written acknowledgement of the debt is made anytime within the 2 year period, the 2 year period starts again, it is refreshed; however, if a payment or written acknowledgement is made after 2 years this does not revive the debt. It does not cure the defect.

The 2 years does not start with respect to a demand promissory note until demand is made.

In the case of a mortgage or promissory note where there is a maturity date, an action must be commenced within 2 years, otherwise the debt is unenforceable.

In preparing a debt instrument or contract, the Limitation Act does permit the parties to waive the 2 year Limitation period and insert a different time period; however, be sure that the party who you are going to want to enforce the contract against has had independent legal advice as I have found that the Courts are reluctant to accept an extended Limitation period.

Lastly, if you have obtained a judgment, be aware that it is only good for 10 years unless you renew the judgment before it expires. Once the judgment expires it is no longer enforceable. If renewed it is good for a further 10 years. It can only be renewed once

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