

Chapter 105 : Credit Cards  
(Cite as: 9 V.S.A. § 4041)

§ 4041. Definitions

As used in this chapter:

- (1) As used herein, the term "person" shall include a natural person, a firm, an association, and a corporation, and any officer, employee or agent thereof.
- (2) "Cardholder" means any person to whom a credit card is issued and any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.
- (3) "Card issuer" means any person who issues a credit card.
- (4) "Credit card" means any instrument, whether known as credit card, credit plate, charge plate, or any other name, which purports to evidence an undertaking to pay for property, labor, services, or delinquent taxes paid, delivered, or rendered to or upon the order of persons designated or otherwise authorized as bearers of such card, and includes bank credit cards as defined in 8 V.S.A. § 1301(b).

Chapter 063 : Consumer Protection  
(Cite as: 9 V.S.A. § 2457)

§ 2457. Evidence of fraud

The failure to sell any goods or services in the manner and of the nature advertised or offered, or the refusal or inability to sell any goods or services at the price advertised or offered or in accordance with other terms or conditions of the advertisement or offer, creates a rebuttable presumption of an intent to violate the provisions of this chapter. No actual damage to any person need be alleged or proven for an action to lie under this chapter.

Fair Debt Collection Practices Act  
15 USC §1692h

**§ 809. Validation of debts**

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period **may not overshadow** or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

## **Fair Debt Collection Practices Act**

### **15 U.S.C. §1692(d). Communication in connection with debt collection**

...

#### **(c) Ceasing communication**

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except

--

- (1) to advise the consumer that the debt collector's further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.



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Attorney General T.J. Donovan

## Sample "Cease Contact" Letter

Sam Consumer  
Main Street  
Anytown, VT 00000

By Certified Mail

Date

ABC Collection Agency  
Main Street  
Anytown, USA 00000

Dear Sir/Madam:

Please cease all communication with me concerning account number with (Company).

The federal Fair Debt Collection Practices Act requires that you stop contacting me immediately upon receipt of this letter.

Very truly yours,

Sam Consumer

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STATE OF VERMONT  
**ORIGINAL**  
WRIT OF EXECUTION

Court <b>Vermont Small Claims</b>	<b>RETURN TO COURT CLERK</b> County Windsor	Docket No. <span style="background-color: black; color: black;">[REDACTED]</span> Wrsc
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To any sheriff or constable within the state:

Plaintiff (Address and Telephone No.)  
[REDACTED]  
 c/o Bauer, Gravel, Farnham, Nuovo, Parker & Lang  
 P.O. Box 607  
 Burlington, Vermont 05402

V.

Defendant (Address and Telephone No.)  
[REDACTED]  
[REDACTED]

I. On Date  
May 6, 2009, the plaintiff recovered judgment in the county and court named above against defendant in this action in the amount of:

\$ Damages		\$ Interest		\$ Costs		\$ Attorney Fees		\$		
\$541.65	(+)	\$264.98	(+)	\$179.40	(+)	\$.00	(=)	\$986.03	(=)	Judgment

II. This paragraph is applicable only if there has been post judgment activity, either a partial payment or the accumulation of post-judgment sheriff's costs.

(a) Since judgment, costs and interest have accrued as follows .....

	(+)	\$ 180.19		
		130.86		Costs & Int.

(b) On Date, the defendant partially satisfied this judgment by paying .....

	(-)	\$ .00		
				Partial Payment

(c) Therefore, the balance due plaintiff as of the date this writ was issued .....

	(-)	\$ 1297.08		
				Balance still due plaintiff

III. Execution remains to be done. Therefore, by the authority of the State of Vermont you are hereby commanded that of the goods, chattels, or lands of said defendant, within your precinct, you cause to be paid and satisfied unto the said plaintiff at the value

thereof in money the balance of the judgment together with \$ .24 Interest per day from the date of judgment or date of partial payment to and including the date of satisfaction, and therefore also satisfy yourself of your own fees, and make return of this writ with your doings thereon within 60 days of the date hereof.

Date <span style="font-size: 1.2em;">11/18/10</span>	Clerk Deputy <span style="font-family: cursive; font-size: 1.2em;">Alicia R. Water</span>
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Indorsement of Attorneys of Record by Clerk (12 V.S.A. §2682)	Attorney for Plaintiff <b>Bauer, Gravel, Farnham</b>	Attorney for Defendant	Date Returned to Ct.
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**RETURN OF SERVICE**

At <span style="border: 1px solid black; padding: 2px;">Street</span>	<span style="border: 1px solid black; padding: 2px;">Town/City</span>	<span style="border: 1px solid black; padding: 2px;">County</span>	<span style="border: 1px solid black; padding: 2px;">Date</span>
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I visited the above named defendant and demanded payment of the judgment:

Miles	\$ Amount		\$ Service		\$ Postage		Assisting Officer		Other			\$ Bill of Fees
		(+)		(+)		(+)		(+)		(=)		
												Interest from III
Comments												Balance from I or II <b>\$1,244.97</b>
												Total Due
The above named defendant (failed to satisfy) (satisfied) said execution in (full)(part) by paying .....												Payment
I returned the original Writ of Execution to the above named (plaintiff)(Court of issue):												Outstanding Balance

\$ Amount	Check No.	Date
Deputy Sheriff		

STATE OF VERMONT  
WRIT OF EXECUTION

Court <b>Small Claims</b>	County <b>Chittenden</b>	Debt No. <b>[REDACTED] CnSc</b>
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To any sheriff or constable within the state:

Plaintiff (Address and Telephone No.) <b>[REDACTED]</b>	Defendant (Address and Telephone No.) <b>[REDACTED]</b>
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I. On Date  
10/2/15, the plaintiff recovered judgement in the county and court named above against defendant in this action in the amount of:

\$ Damages <b>1,581.00</b>	(+)	\$ Interest <b>129.46</b>	(+)	\$ Costs <b>173.62</b>	(+)	\$ Attorney Fees <b>0</b>	(=)	\$ <b>1,884.08</b>	Judgement
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II. This paragraph is applicable only if there has been post-judgement activity, either a partial payment or the accumulation of post-judgement sheriff's costs.

(a) Since judgement, costs and interest have accrued as follows: .....

\$ <b>65.00</b>	(+)	<b>costs</b>
\$ <b>46.73</b>		<b>Costs &amp; Int. interest</b>

(b) On Date, the defendant partially satisfied this judgement by paying

**VERMONT SUPERIOR COURT**  
DEC 22 2015  
**CHITTENDEN UNIT**

\$ <b>-0-</b>	(-)	Partial Payment
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(c) Therefore, the balance due plaintiff as of the date this writ was issued .....

\$ <b>1,995.81</b>	(=)	Balance still due Plaintiff
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III. Execution remains to be done. Therefore, by the authority of the State of Vermont you are hereby commanded that of the goods, chattels, or lands of said defendant, within your precinct, you cause to be paid and satisfied unto the said plaintiff at the value

thereof in money the balance of the judgment together with \$ .58 interest per day from the date of judgement or date of partial payment to and including the date of satisfaction, and therefore also satisfy yourself of your own fees, and make return of this writ with your doings thereon within 60 days from the date hereof.

Date <b>12/22/15</b>	Clerk <i>[Signature]</i> , Ct Operations Mgr.
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Indorsement of Attorneys of Record by Clerk (12 V.S.A. §2682)	Attorney for Plaintiff <b>Pro Se</b>	Attorney for Defendant <b>N.A.</b>	Date Returned to Ct.
---	---	---------------------------------------	----------------------

RETURN OF SERVICE

At <span style="border: 1px solid black; padding: 2px;">Street</span>	<span style="border: 1px solid black; padding: 2px;">Town/City</span>	<span style="border: 1px solid black; padding: 2px;">County</span>	<span style="border: 1px solid black; padding: 2px;">Date</span>
---	---	--	--

I visited the above named defendant and demanded payment of the judgement;

Miles	(+)	\$ Amount	(+)	\$ Service	(+)	\$ Postage	(+)	Assisting Officer	(+)	Other	(=)	\$ Bill of Fees
-------	-----	-----------	-----	------------	-----	------------	-----	-------------------	-----	-------	-----	-----------------

Comments

Interest from III
Balance from I or II
Total Due
Payment
Outstanding Balance

The above named defendant (failed to satisfy) (satisfied) said execution in (full) (part) by paying .....

I returned the original Writ of Execution to the above named (plaintiff) (Court of issue):

\$ Amount	Check No.	Date
Deputy Sheriff		

# Alan Bjerke

February 10, 2016

Gary Viens  
House Judiciary Committee  
115 State Street  
Montpelier, VT 05633-5301

Re: Vermont General Interest Statute

Dear Gary,

I understand that earlier this year all members of your committee received an e-mail from Patricia Sabalis concerning the rate of interest that accrues on Vermont Court Judgments. I have reviewed it and would appreciate a moment of your time to address the arguments she raised.

To give you some background on my perspective: I have been an attorney in Vermont for over 20 years, and served in the Vermont House for 3 terms in the 90's. The bulk of my legal practice has been in the civil arena, where I have represented consumer credit debtors and creditors, landlords, tenants, banks, insurance companies and the like. I am also a landlord and own a small business which purchases distressed debts, which I will address in more detail below.

With respect to Ms. Sabalis' e-mail, I would first point out that her math is wrong, and her example misleading. The root of her math problem is that her illustration of post-judgment interest accrual in Vermont is calculated using the *compound method*, when in fact it is calculated using the *actuarial* also known as the *simple method*. There is a significant difference between the two methods, which I hope the following example will help illustrate.

If someone owes you \$1,000 for unpaid rent, lost wages or refusing to pay back money you lent them, you have up to 6 years to sue them in small claims court. If after 3½ years they still refuse to pay you, you must file a complaint with the court, pay a court filing fee and probably by the end of the fourth year you might get a judgment for \$1,480, which includes the original \$1,000 debt and pre-judgment interest at the rate of \$120/yr. Vermont law does not provide for interest at the rate of 12% on the \$1,480 Judgment amount as Ms Sabalis suggests, but only an additional \$120 each year after Judgment. So for the first year after obtaining the Judgment, the actual effective rate of interest which accrues on your \$1,480 judgment is only 8%. ( $\$120/\$1,480$ )

Furthermore, in Ms. Sabalis' e-mail, she claims that 4 years of interest on a \$2,000 Judgment would be \$1,147. Even if the Judgment in her example consisted of only principal and no pre-judgment interest, the interest would only be \$960. Using my example from above, after four years, the \$1,480 Judgment would accrue additional interest of another \$480 for a total of \$1,960. The effective interest rate on the balance owed you at that time would be around 6%. ( $\$120/\$1,960$ ) So while I understand that the 12% rate may appear high at first glance, it is not nearly that high in actual practice with all aspects of the law being considered.

The second issue relates to Ms. Sabalis' claim that the rate of interest on Judgments in Vermont is unfairly high because "it is very rare to receive a 12% return on investment these days . . ." I disagree.

The time value of money arises from several factors: One is the **opportunity cost**, or how much money could I save on an interest bearing obligation or make on an income yielding investment if I could apply the money owed me to it. Another is how much **risk** is being taken in connection with an investment, such as it secured like a mortgage or unsecured like a credit card. Finally there is the issue of **liquidity**: can I sell the investment and get cash out at anytime, or am I locked into the investment for a long (and possibly infinite) time.

An unpaid Judgment such as described by Ms Sabalis is best characterized as an involuntary loan from the creditor to the debtor. It is unsecured, meaning that it is the first debt discharged in a bankruptcy. And as the holder of a Judgment Order, you have little if any control over when it will be repaid. I can't imagine any sane creditor wouldn't rather have the money (or even just a portion of it) instead of the unsatisfied Judgment accruing interest.

As a landlord, I can tell you that all of my real estate rental investments generate more than 12% and I wouldn't consider an investment that is only projected to generate less than that, because there are ample opportunities to invest in properties that do. In addition, my real estate investments are 100% secured by real estate and can be liquidated at any time.

As a purchaser of distressed debts, my company invests in delinquent tax liens sold by municipalities dealing with unpaid property tax bills. The purchaser at a tax sale receives 12% per year on the money they pay to the town and the lien is secured by the underlying real estate. If the taxpayer doesn't redeem within a year, the town gives me a deed to the property. Is it an investment that is so rare and profitable that people line up to make it? Not hardly. Of the last three tax sales I attended: At two, I was the only bidder and at the other, two of us showed up for two properties that were for sale and each took one.

I believe that the current post-judgment interest statute is fair, reasonable, simple to administer and provides an appropriate incentive for debtors to satisfy Judgments against them, without assessing an unduly burdensome penalty for non-compliance.

Thank you for taking the time to review this letter. If I could be of any assistance to you or provide testimony to help you in understanding this issue, please do not hesitate to contact me.

Sincerely Yours,

Alan Bjerke, Esq.  
*Alanb72@aol.com*

## **Fair Debt Collection Practices Act**

### **15 U.S.C. §1692(d). Communication in connection with debt collection**

...

#### **(c) Ceasing communication**

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except

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Attorney General T.J. Donovan

## Sample "Cease Contact" Letter

Sam Consumer  
Main Street  
Anytown, VT 00000

By Certified Mail

Date

ABC Collection Agency  
Main Street  
Anytown, USA 00000

Dear Sir/Madam:

Please cease all communication with me concerning account number with (Company).  
The federal Fair Debt Collection Practices Act requires that you stop contacting me immediately upon receipt of this letter.

Very truly yours,  
Sam Consumer

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