



February 2022



HAPPY
VALENTINE'S DAY!

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Edward S. Whitlock, III, Esquire
Lafayette, Ayers & Whitlock, PLC
CrossRidge Professional Park
10160 Staples Mill Road, Suite 105
Glen Allen, Virginia 23060
804-545-6250
Direct: 804-545-6251
Fax: 804-545-6259
ewhitlock@lawplc.com
<http://www.lawplc.com>



Lafayette, Ayers, & Whitlock, PLC is a full-service creditor's rights firm. While many attorneys do "collections", few attorneys have the trained expertise and staff to represent creditors in all four areas of Creditor's Rights—Collections, Bankruptcy, Real Estate and Foreclosure. We do, and, we represent credit unions, banks, loan companies, homeowner associations, doctor's offices, landlords, small businesses and individuals. In *Creditor News* we will explore all four areas of Creditor's Rights.



COLLECTIONS

Debt Collections: You Need a Plan, From the Beginning

Any business or lending institution that extends credit to its customers or members will inevitably be faced with bad debts. To insure maximum collection results, creditors should establish credit and collection policies before a problem occurs.

Before you extend credit, there are several things that you can do to reduce your risk.

1. Obtain full names, addresses, telephone numbers, places of work, social security numbers and dates of birth.
2. Obtain the name of the customer's bank, branch, and account number.
3. Review a credit report.
4. Ensure that all credit terms are clear.
5. Have personal guarantees for small businesses.
6. Perfect security interest in events of large credit.

When accepting personal checks, take the following precautions:

1. Insist on two pieces of identification, at least one of which has the customer's photo. A driver's license and a credit card are ideal.
2. Require checks to be made out in your presence.
3. Compare the signature on the check with that on the ID.
4. Limit checks to the exact amount of the sale.
5. Accept only checks drawn on local banks.
6. Verify the customer's address and phone number on the check. Also note

(Continued on page 2)

CREDITOR'S RIGHTS – IT IS MY FOCUS !

Creditors hear too much about debtors' rights - creditors need to fight back! Bankruptcy laws are primarily drawn to protect debtors. The Fair Debt Collection Practices Act also protects debtors, and limits creditors' activity. Both laws prescribe punishments for violations.

I believe that creditors deserve due process and consideration. I work hard to protect our clients' rights through collection activities, civil litigation, and bankruptcy practice. To be competitive, I offer retainer plans and several fee options. To be accessible, I promise prompt and consistent communication.

I would greatly appreciate the opportunity to meet with any prospective client to review your needs and services. Please schedule your appointment by calling me at (804) 545-6251.





TED'S TIPS

Court records can be used to find addresses if there are recent judgments against the debtor.

Debt Collections: You Need a Plan, From the Beginning, CONTINUED FROM PAGE 1

the customer's social security number and/or driver's license number.

7. Be cautious when accepting checks with low numbers (indicating that the account was recently opened).

8. Consider subscribing to a check verifying service. For a modest fee, such a service allows you to call a toll-free number and learn immediately if you can safely accept the check. If a check bounces after being verified using this procedure, the service will cover your loss.

When the debt is in default, act promptly! The longer you wait, the harder collection will probably be. The firm of Lafayette, Ayers & Whitlock, PLC usually recommends immediate telephone calls, followed by a series of two or three letters. In the final letter, give a definite and short deadline with the promise of attorney action.

The decision as to when a creditor should deliver its accounts to counsel for collection is not always an easy one. Some creditors deliver collections accounts to counsel after the initial demand has failed to produce results. Some creditors desire to have their credit/collection manager take their judgment and attempt collection by payment plan, garnishment, or even sometimes, sheriff's levy.

The problem frequently encountered by creditors who pursue their own judgments, however, is that in most cases the ability to collect without the assistance of counsel ends prior to the receipt of payment in full. When this occurs, counsel must normally assume collection activities after the trail is cold. Further, since the creditor was not represented by counsel at the time of judgment, the judgment order does not include attorney's fees; nevertheless, attorney fees will now be charged to the creditor. In addition, if the creditor's credit/collection manager failed to properly docket the judgment, collection could be forever impaired.

The firm recommends that creditors immediately deliver accounts to counsel upon the failure of the demand for payment. Creditors should ensure that provisions for attorney fees and interest are included in all loan, contract and/or account documents so that counsel can assess these costs upon delivery. The firm further recommends that all accounts be delivered while the "trail" is still warm--no more than sixty days from default.

The firm has aggressive collection counsel and staff who represent numerous Credit Unions, Homeowner Associations, property management companies, loan companies, businesses, doctor's offices, and private citizens. The firm is willing to pursue accounts from start to finish, or even finish accounts already in progress.

BANKRUPTCY

Protecting your security in "Workouts"/ Lien Avoidance: Non-Purchase Money Security Interest

Creditors sometimes assist debtors who are struggling to meet their obligations by refinancing their debt. This could be a good collection strategy, and it could also be a good plan to keep the debtor out of bankruptcy. In doing "workouts", however, be careful not to jeopardize your lien.

(Continued on page 3)



LAW REVIEW OF THE MONTH: BUSINESS LAW

The firm has extensive experience in the representation of small business, whether corporations, limited liability companies, partnerships or sole proprietorships. The firm has participated in the buying, selling, and financing of numerous businesses, working closely with clients, attorneys and accountants to obtain the desired result. This experience, coupled with a broad background, gives our firm the ability to provide the multi-faceted representation which is so vital to today's smart business person.

EMPLOYEE OF THE MONTH: LAURIE LATHAM



Laurie Latham has worked with Eddie since March, 2003. She currently focuses on receiving and opening accounts, sending demands, accounting and client month end disbursements. Laurie enjoys working on the Creditor's Rights team at Lafayette, Ayers & Whitlock, PLC because the clients are great, and no two days are the same. Outside the office Laurie enjoys spending time with her husband and two children.

Protecting your security in "Workouts"/ Lien Avoidance, CONTINUED FROM PAGE 2

As we have previously discussed, debtors may avoid non-purchase money security interests under Bankruptcy Code §522(f). Remember, this Code Section provides that debtors may avoid a creditor's interest in personal property subject to homestead exemption if such interest is not a purchase money security interest.

Example #1: A debtor borrows \$5,000.00 to purchase a car from a seller. Debtor executes the lender's promissory note which designates the debtor's car as security for the loan. A valid lien is then perfected on the vehicle title.

Question: Can the debtor avoid the lender's security interest?

Answer: No. The lender's interest is a purchase money security interest.

Example #2: A debtor borrows \$5,000.00 to pay off old loans. The debtor executes the lender's promissory note which designates the debtor's existing car as security for the loan. A valid lien is then perfected on the vehicle title.

Question: Can the debtor avoid the lender's security interest?

Answer: Yes. Since the security interest was not for the current purchase of goods and/or services, the interest is not a purchase money security interest.

When a lien is "reworked", the purchase money security interest is extinguished according to some courts, thus transferring it into an ordinary security interest whose priority is determined according to the time of filing or perfection. Thus, if the debtor files bankruptcy within 90 days of the refinance, the creditor may lose his lien. Keep this in mind when doing "workouts". Sometimes you can feel comfortable that the debtor will not file bankruptcy due to your efforts - most times you cannot be sure.

REAL ESTATE

Homeowners' Association Wins Damages on Owner Violations

There has been much litigation over HOA violations in the last few years. Circuit Courts have been scrutinizing HOA violation claims very carefully. Enforcement and damages for violations can be won. The December 2011 Loudon County Circuit Court case of Lee's Crossing Homeowners' Association v. Zinone is a good example of such enforcement. In Lee's Crossing, the court found that in building her home, the homeowner committed multiple violations of the plan approved by the Architectural Review Board. Ultimately, the court assessed damages in favor of the homeowners' association on the basis of "one overriding violation," the failure to comply with the ARB-approved application.

QUESTIONS AND ANSWERS:

Please feel free to let me know if there are topics that you would like to address.

If you have not already done so, and if you would like to continue receiving *Creditor News*, free of charge, please call me at 545-6251 email me at ewhitlock@lawplc.com, or complete the form adjacent and mail it to me at Lafayette, Ayers & Whitlock, PLC, CrossRidge Professional Park, 10160 Staples Mill Road, Suite 105, Glen Allen, Virginia 23060. Please let me know whether you would prefer to have a mailed copy or an emailed copy.

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**Uniform Enforcement of Foreign Judgments Act
Debt Declared Nondischargeable due to Debtors Knowledge of Error
The Virginia Property Owners' Association Act – An Introduction
Foreclosure Sale Deficiency Actions**



"MILES"

THE LEGAL BEAGLE

FORECLOSURE**Deposits**

Virginia Code §55-59.4(A)(2) permits the trustee to require of any bidder at any sale a deposit of as much as ten percent of the sales price, unless the deed of trust specifies a higher or lower amount. However, because the statute is not mandatory, the trustee is given the right to waive the deposit if he deems it appropriate, unless the deed of trust requires a specific deposit. The trustee should also consider using a fixed amount as the deposit rather than a percentage of the sales price. Using a percentage of the sales price as the method of determining the required deposit often results in confusion, and the successful bidder has either too much or too little money to deposit. A fixed deposit avoids the confusion and allows all potential buyers to know exactly how much money to bring to the sale to deposit. The fixed deposit should not be excessive, but should be of a sufficient amount to ensure that the successful bidder completes the closing of the sale.

LAW

LAFAYETTE, AYERS & WHITLOCK, PLC's practice areas include (in addition to **CREDITOR REPRESENTATION** in Collection, Bankruptcy, Real Estate and Foreclosure matters) Alcoholic Beverage Control and Administrative Law; Real Estate, Commercial and Residential Settlements and Title Insurance; Wills, Trusts, Family and Estate Planning, and Probate Administration; Business, Corporate, LLC and Partnerships; Personal Injury; Civil Litigation; Traffic and Criminal cases; Military Law; Zoning and Land Use Planning; Condominium, Homeowner and Property Owners Associations; Mediation and Arbitration.

EDWARD S. WHITLOCK, III, ESQUIRE ("Eddie"), the editor of *Creditor News*, is a Richmond native with a concentrated law practice in creditor representation. His practice focuses on creditor's rights (Collection, Bankruptcy, Real Estate, and Foreclosure), but also includes the general practice of law (Business and Will & Estate Planning). Eddie holds a B.A. (1984) in Political Science, and a Juris Doctor (1987) from the University of Richmond. He is the former Chief of Admin/Military Law for the 329th Support Group (Area) in the Virginia Army National Guard. Eddie is the former President of both the Henrico County Bar Association and the Virginia Creditors' Bar Association. He is the chair of the Virginia State Bar's Fee Dispute Resolution Program, and a former member of the Virginia State Bar's Disciplinary Committee. He is a board member of the Henrico Economic Development Authority. He is the Vice President of Home Loans for KOVAR Corporation. He is also a former director of Henrico CASA, and a former adjunct professor of criminal law at J. Sargeant Reynolds Community College.

JENNIFER W. FISCHER ESQUIRE, the Associate Editor of *Creditor News*, worked concentrates her practice in creditor representation (Collection, Bankruptcy, Real Estate, and Foreclosure), but also Business and Will & Estate Planning. Jennifer holds a BS (2011) in business administration from Christopher Newport University, and a Juris Doctorate (2014) from University of Richmond, T.C. Williams School of Law. She was admitted to the Virginia State Bar in October 2014. She is a board member for the Virginia Creditors' Bar association and the Henrico County Bar Association.

MICHAEL P. LAFAYETTE, ESQUIRE concentrates his practice in real estate, business and ABC law. He represents clients in both commercial and residential real estate transactions. Michael is a frequent speaker at real estate conferences, writes curriculum for real estate continuing education courses, and is legal counsel to the Richmond Association of Realtors. Michael graduated from Bradford College in 1986 with a B.A. in Administration and Management, and a law degree from the University of Richmond in 1989.

TRAVIS P. HUGHES, ESQUIRE is Michael Lafayette's Senior Associate attorney. Travis focuses his practice on business, real estate law, and estate planning. He is a Hanover County native and has worked as an Assistant Commonwealth's Attorney for the County of Tazewell and Hanover County. Travis is the current Vice President of the Hanover Bar Association. In his free time, Travis enjoys spending time with his German shorthaired pointer, Khaleesi, and training Brazilian Jiu Jitsu.

GLENN E. AYERS, ESQUIRE concentrates his practice in all aspects of real estate law including commercial and residential settlements, litigation, zoning and land use planning; life and estate planning including domestic partnerships, wills, trusts, trust services, and probate administration; business, corporate, and LLC formation and representation; Personal Injury litigation; Condominium, Homeowners, and Property Owners Associations; and Mediation and Arbitration services. The Norfolk, Virginia native is a 1977 graduate of Virginia Tech (BS, Business Administration/Public Administration) and received his Juris Doctor from George Mason University in 1980. He is a former Supreme Court of Virginia Hearing Officer.

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