



A NEWSLETTER FOR INDIVIDUALS AND BUSINESSES CONCERNED WITH CREDITOR'S RIGHTS

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HAPPY ST. PATRICK'S DAY!

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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

Uniform Enforcement of Foreign Judgments Act

Virginia and almost all other states have adopted the Uniform Enforcement of Foreign Judgments Act (UEFJA) (Virginia Code §8.01-465.1 et seq.). In so doing, creditors may enforce out-of-state judgments by properly filing the foreign judgment in a Virginia Circuit Court. Virginia Code §8.01-465.2 states:

The Clerk must treat the foreign judgment in the same manner as a judgment of the circuit court of any city or county of this Commonwealth. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating or staying as a judgment of a circuit court of any city or county of this Commonwealth and may be enforced or satisfied in like manner.

As creditors it is important to be aware that out-of-state judgments can be enforced in Virginia, and that Virginia judgments can be enforced in foreign states, provided that the state has adopted the UEFJA.

In Virginia, Code §8.01-465.5 allows bringing an action to enforce an out-of-state judgment in lieu of proceeding under the Uniform Act, if you so desire. Virginia Code §8.01-389(B) states:

Every court of this Commonwealth shall give such records of courts not of this Commonwealth the full faith and credit

(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 employment if there are recent garnishments against the debtor.

### **Uniform Enforcement of Foreign Judgments Act**, CONTINUED FROM PAGE 2

given to them in the courts of the jurisdiction from whence they come.

Virginia Code §8.01-252 states that an action brought in Virginia to enforce a judgment rendered in another state shall not be barred by the laws of the other state. The Code bars action upon a judgment rendered more than ten years before the commencement of the suit.

In the case of Atlantic Funding Corp. v. Peterson, the Fairfax County Circuit Court granted a debtor's motion to quash debtor interrogatories because the creditor had failed to file the federal judgment pursuant to the UEFJA, and thus, the Clerk of the Circuit Court could not treat the federal judgment as a judgment of the Virginia state court.

Virginia Code §8.01-447 governs the docketing of judgments and decrees of federal district courts in Virginia state courts. That provision clearly requires the Clerk of the Circuit Court to treat it in the same manner all judgments rendered within the Commonwealth when docketing judgments. The statute speaks only to the process of docketing judgments, however. It does not necessarily provide a method of enforcing docketed judgments, and it does not authorize the clerk to treat docketed judgments from local federal courts as docketed judgments of this circuit court.

In Peterson the Fairfax Circuit Court ruled that unlike Virginia Code §8.01-447, the UEFJA clearly requires identical treatment and enforcement of properly filed federal and state court judgments. Had the judgment creditor properly filed the judgment of the District Court, the Clerk of the Circuit Court would have been compelled to enforce that judgment as a judgment of the Circuit Court. The Fairfax Circuit Court ruled that the record in Peterson, however, revealed that the creditor failed to authenticate the District Court judgment, or to pay the fee prescribed in Virginia Code §14.1-112(22). The Court ruled that since the creditor did not properly file the District Court judgment in Peterson it was not entitled to the benefits of the UEFJA.

## BANKRUPTCY

### **Debt Declared Nondischargeable due to Debtors Knowledge of Error**

The U.S. District Court in Alexandria, in the case of Nawroz v. Wells Fargo Advisors LLC, in August, 2012, affirmed a bankruptcy court decision which held that a debtor cannot discharge in bankruptcy her obligation to

*(Continued on page 3)*



### LAW REVIEW OF THE MONTH: PERSONAL INJURY

The complexities of injuries that result from accidents require experienced and aggressive representation. If you are faced with the difficulties of an injury, consult us, we are fully prepared to represent your interests.

### EMPLOYEE OF THE MONTH: TANYA HOLLOWAN



Tanya Holloman has been with the firm since October 2013. She currently prepares all General District Court suits, and, manages the firm's civil returns. Tanya enjoys working on the Creditor's Rights team at Lafayette, Ayers & Whitlock, PLC because it is challenging. Outside the office she enjoys spending time with her family and friends.

**Debt Declared Nondischargeable due to Debtors Knowledge of Error**, CONTINUED FROM PAGE 2

repay a bank for the \$28,029.99 that the bank mistakenly credited her IRA.

Wells Fargo, after mistakenly transferring the funds into the debtor’s IRA, then transferred the balance of debtor’s account, \$56,043, to a checking account at another bank, and then closed the debtor’s account with Wells Fargo.

At trial, the debtor testified that during that time period, she was severely depressed, her home was in foreclosure, she lost her business and she was not attending to her business affairs. She also testified that she did not know the funds not belonging to her had been mistakenly transferred to her new checking account. Shortly after the transfer of funds to the checking account, the debtor wrote a check for \$81,000 to Khalil Wadedi, allegedly to avert a family emergency arising from the kidnapping of a family member in Afghanistan. At the time, the checking account held less than \$84,000.

Wells Fargo won a default judgment against the debtor for \$36,962.71, covering the funds mistakenly transferred, attorney’s fees, prejudgment interest and costs.

During the debtor’s subsequent bankruptcy proceedings the bankruptcy court said the debt to Wells Fargo was nondischargeable pursuant to Bankruptcy Code Section 523 (a)(6). The debtor appealed this decision.

The District Court noted that the debtor knew that her CD account with Wells Fargo held no more than \$28,032 in April 2008, and therefore the amount transferred from Wells Fargo to the different checking account should not have exceeded this amount. The debtor subsequently used \$81,000 from the checking account after the transfer of funds from Wells Fargo. But for the mistaken credit by Wells Fargo of \$28,029, the checking account would have been no more than \$56,000 and therefore debtor’s \$81,000 check would not have cleared.

The debtor admitted that she knew the balance of the CD account; therefore, the court reasoned that the debtor must have known that the amount transferred from Wells Fargo to the checking account should not have exceeded \$28,032, regardless of what account held the funds prior to this transfer, and that the debtor was not the true owner of approximately \$28,000 of the amount in her checking account in May, 2008.

**REAL ESTATE**

**The Virginia Property Owners’ Association Act – An Introduction**

The Virginia Property Owners’ Association Act provides homeowner’s associations with additional protections when homeowners fail to pay their dues; it also defines responsibilities of the association. Accordingly, homeowner’s associations should be knowledgeable of the Act and its provisions. The Act applies to developments subject to a declaration recorded after January 1, 1959, associations incorporated or otherwise organized

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**QUESTIONS AND ANSWERS:**


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

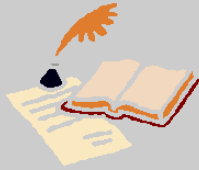


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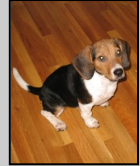
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**Garnishments Out-of-State  
Garnishing Joint Accounts  
Debtor's Chapter 13 Plan Cannot Favor Student Loans  
Suit to Enforce Mechanic's Liens  
Lost Notes**

AND



"MILES"

THE LEGAL BEAGLE

## The Virginia Property Owners' Association Act , CONTINUED FROM PAGE 3

after such date, and all subdivisions created under the former Subdivided Land Sales Act. In the next issue of *Creditor News*, I will briefly introduce this Act and some of the special duties it imposes on homeowner's associations. Subsequent issues will address memorandum of liens and foreclosures.

## FORECLOSURE

### Foreclosure Sale Deficiency Actions

Frequently there will be a deficiency balance after the sale is completed and the accounting is done. The account of sale will set forth the distribution of the sale proceeds and also establish any amounts remaining due on the indebtedness following application of the net proceeds from the foreclosure sale. This deficiency amount is usually recovered by a personal judgment against the maker of the promissory note or other obligors on the indebtedness that was secured by the deed of trust. An action to recover the deficiency balance remaining after a foreclosure sale need not be brought on the chancery side of the court, and may properly be brought as an action at law. A plaintiff's action to recover on an assumed promissory note may be maintained as an action at law even though the plaintiff is not named in the deed of trust.

**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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