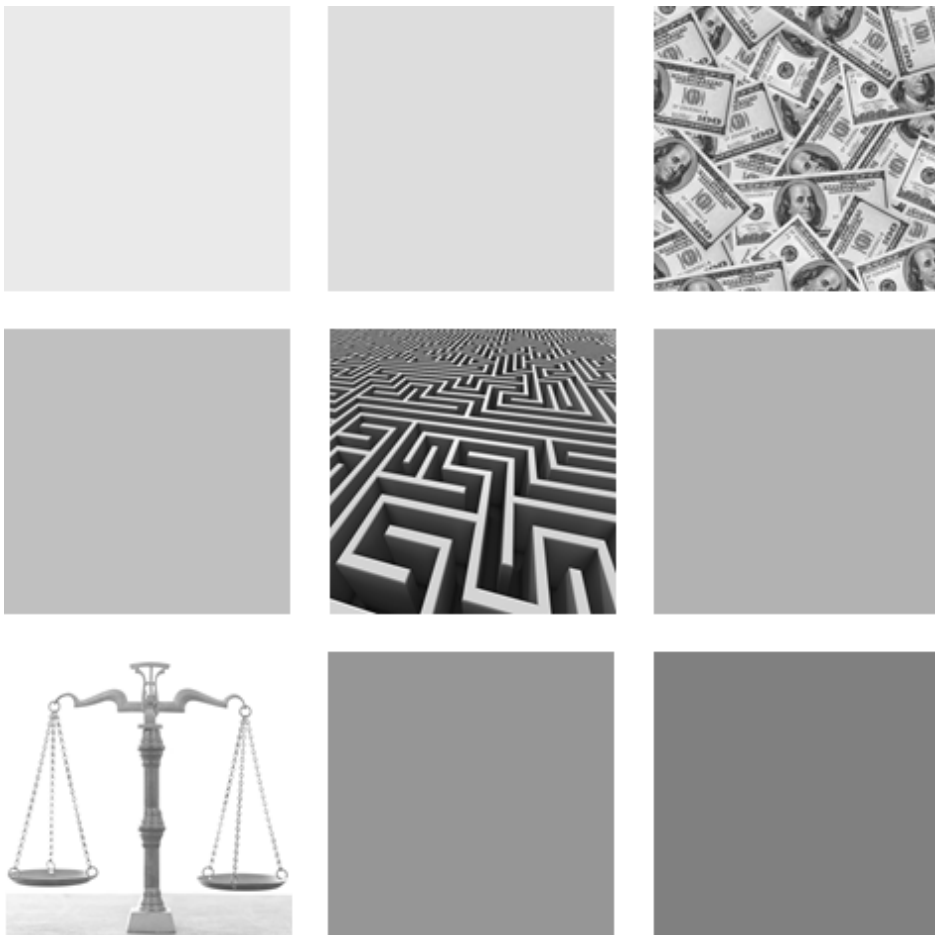


# States of Confusion

*A CD-ROM Guide to State  
Collection Laws*



Christopher Coelho

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# About the Author

Christopher Coelho is an author, a career collection management professional, and the president of VISTA Consulting. He's been a top manager in the collection world for more than thirteen years. With his outstanding leadership, training, and characteristic insistence on excellence, Chris has managed to transform every organization with which he's been involved. His articles have appeared in numerous collection industry trade journals, including *Collector Magazine*, *Collections and Credit Risk*, *Collection Advisor*, *InsideARM*, *Business Credit Magazine*, *Collector's Ink*, and *Southwest Collector Connector*. He's also the author of *The Complete Collection Manager: The Ultimate Sourcebook for Running Your Collection Floor* and *The Complete Collection Forms and Letters: Blazing A Path Through Your Paper Jungle*.

VISTA Consulting is an independent consulting firm providing concrete solutions for collection professionals. With creditors re-emphasizing in-house collection efforts, increased competition among collection agencies, and the rising costs and decreasing margins of the debt-buying business, collectors of every stripe are having to do more with less. Chris created VISTA Consulting in 2006 in order to meet that need. VISTA allows collection agencies and departments to add critical expertise when they need it, instead of putting it on their payroll. VISTA Consulting is a member of ACA International, the Association of Credit and Collection Professionals.

This book, *States of Confusion: A CD-ROM Guide to State Collection Laws*, is intended as a resource for knowing and understanding the many state laws, codes, rules, and regulations that govern the activity of debt collection, both among creditors and their collection agents. It's intended to provide collection professionals with the training and the tools they need to remain in compliance with the letter and the spirit of all the statutes while achieving the money mission. It, along with VISTA's acclaimed products and services, are designed to help collection agency owners and collection managers turn challenges into triumphs.

You can contact Chris by e-mail at [chris@vistaknows.com](mailto:chris@vistaknows.com), or visit [www.vistaknows.com](http://www.vistaknows.com) for more information.



# Dedication

*For Dad,*

*Who assured me that there is no talk of debt between father and son.*



# Foreword

The laws, regulations, codes, and rules that govern every aspect of life in the United States are absolutely byzantine in their complexity. The federal government, in its never-ending quest for uniformity (and as broad a power base as possible) has enacted laws on every imaginable human behavior and transaction. Meanwhile the states have done the same, attempting to assert their sovereignty (now forgotten by all but history professors) over the federal authority that eclipses them. And meanwhile, innumerable commissions, boards, bodies, and other appointed authorities great and small create rules, regulations, and reports that are all but impossible to keep track of.

America is a land rife with little kings.

The problem is especially burdensome for creditors and collectors, who must cope with this legislation at every moment of every day. The tidal wave of consumer-protectionism that has washed over our voters and politicians in the last several decades has resulted in loosely-worded laws, liberal interpretations, and jackpot juries galore. A legal misstep can mean a major inconvenience for well-capitalized creditors and collectors; it can be an “extinction-level event” for smaller entrepreneurs.

And where there are little kings, there are opportunistic counselors: in this case, predatory “consumer protection” attorneys who are just waiting for a violation, however unintentional or insignificant, to leverage a creditor or collector into capitulation over a debt—and into paying the legal fees associated with the counselor’s “work” in protecting the consumer.

This book and the CD-ROM packaged with it provide information to help those large and small entrepreneurs stay on the straight and narrow; to “color in between the lines”, as I call it. State laws are summarized here in both text and chart form. The charts are reproduced on the CD-ROM with the understanding that some will be reproduced by the purchaser of *States of Confusion: A CD-ROM Guide to State Collection Law* for the benefit of the collectors working on his collection floor.

These charts are divided into several categories, making it easy to find the answer to a question quickly. Can I garnish in Louisiana? How much? Are there special requirements for a letter to North Carolina? Am I, indeed, a debt collector in Arizona, even though I’m also the creditor? You might be surprised. This book will help you answer such questions quickly.

All the laws given in this book are cited so that you can review them with a minimum of research. However, bear in mind that the author of this book is not an attorney. The material in this book is for informational purposes only, and is not to be construed as legal advice. For that, you need a qualified attorney.

Don’t hesitate to consult one when that’s what you need. The rules are complicated and the stakes are high.



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## Concepts in Law and Doctrine

*"It is the spirit and not the form of the law that keeps justice alive."*

EARL WARREN

*The author of this book is not an attorney. Nothing in this chapter, or in any other, is to be construed as legal advice.*

**M**any of us mistakenly believe that the United States is one country. In fact, the U.S. is *fifty* countries (actually, more than 50 if you include its territories and possessions and the District of Columbia). Like any self-respecting sovereignty, each state has its own government, taxes, courts, and police – and its own laws.

The federal law governing consumer debt collection, the Fair Debt Collection Practices Act, is really only the first word in the regulation of consumer debt collection practices. Individual states have laws governing every manner of collector and collection activity which, if they are more stringent than federal law, supersede the FDCPA. And unlike the FDCPA, some of these laws even cover first parties. That's right – there are collection laws that restrict the collection practices of the creditor. Therefore, every consumer debt collector, regardless of where or what he works, must be acquainted with at least some state statutes. This can be a significant task, even for those collection managers who collect from debtors in only a few states. But for national agencies, it may seem next to impossible.

This book summarizes the most important provisions found in the laws of the fifty states and Washington, D.C. There are nine critical areas of consumer debt collection regulated by the states, and the collection professional should know what they are and how they apply to his organization. These critical competencies include:

1. Knowing the statutes of limitations
2. Understanding legal remedies
3. Understanding debtor's rights, debtors' access to the organization's records, and legal limitations on the agency's representations
4. Knowing Mini-Miranda requirements
5. Knowing the restrictions on oral communications (including the use of neighbors, or "nearbys")
6. The legal use of aliases, or "desk names"
7. Understanding fees and charges
8. Knowing state acts, administrative codes, and regulations
9. Knowing which collection laws affect creditors

This book and the several charts contained within it address all nine critical areas. Relevant statutes are cited so that the collection manager can

readily access the laws and read them for himself. Pick one a day and look through it. Also, be sure you're keeping current with changes in the state laws; the best way to do this is to enroll in a professional organization, (such as the ACA International, The Association of Credit and Collection Professionals) and to read the articles published on collection industry websites and in the trade magazines. Once you get your hands around the various types of state requirements, it's just a simple matter of applying yourself to stay informed.

The information in this book is arranged topically and geographically, so that the collection manager may look up the answer to any question quickly. If you can't find the relevant information in the topical charts at the end of the chapter, peruse the summaries by state in the section of Chapter 2 entitled "Decoding the Codes". You may never be able to memorize every statute from every state (especially as they change periodically), but you *can* have the information at your fingertips. When you do so, you protect yourself and your organization against unnecessary litigation. And you prove that you're an authority, which is one of the critical elements of leadership.

***Key Concept: State Regulation of Debt Collectors***

*Each of the 50 States and Washington, D.C. has enacted laws that place additional requirements on debt collectors, above and beyond the FDCPA. Some states require first-party creditors to adhere to these laws in their debt collection efforts. Therefore, no professional engaged in consumer debt collection activity can afford to ignore these statutes.*

**Take it to the Limit**

Most collectors are well aware that under the FCRA, most debts will appear on a consumer's credit report for only seven years. Many are even aware that the debt can be collected beyond that time (at least in most states), provided no false or misleading representations are made regarding subsequent credit reporting or legal action. But what a disappointingly small number of collectors realize is that each state imposes additional statutes of limitations on debts, not for credit-reporting, but for litigation and the execution of judgments. Beyond a certain number of years (usually somewhat less than the seven allowed for credit reporting), the account simply cannot be sued or a judgment enforced. Therefore, any reference to legal action on these "time-barred" claims is a violation of §807(5) of the FDCPA. These statutes of limitation are generally found in the title of state law that deals with court and civil procedure, and they vary from state to state.

Furthermore, the statutory periods are different for different kinds of debts—written contracts, oral contracts, promissory notes, judgments, medical debts, "open accounts", child support, and real estate, to name only a few. This chapter covers the only the most common instruments—namely contracts and judgments.