

Credit Card Debt and the Statute of Limitations [\(Back to Money and Debt Toolkit\)](#)

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[Summary](#) [\(Top of page\)](#)

When a consumer fails to make the minimum monthly credit card payment, the credit card agreement gives the credit card company the right to sue for the entire outstanding credit card balance. But, rather than sue on the debt, the credit card company may sell the debt to another company, a debt buyer, who is in the business of collecting debt.

Not only do debt buyers purchase credit card debt six months or more after the consumer stops paying, but the consumer's debt may then be sold from one debt buyer to another to yet another. Years may go by from the missed payment to when the last debt buyer in the chain of ownership purchases the account, and then that debt buyer may take additional time after purchasing the debt to actually file suit.

Because of this lapse of time and the growth of the debt buying industry, the statute of limitations has become the most important defense in credit card collection lawsuits.

[What is the Statute of Limitations?](#) [\(Top of page\)](#)

A statute of limitations is a time period after which one can no longer be sued. The time period varies significantly from one type of lawsuit, or cause of action, to another. Statutes of limitation can be one year or fifteen years or anywhere in between. Statutes of limitation are

also state specific, so Ohio’s statute of limitation for credit card debt may or may not be the same as another state’s statute of limitation for credit card debt. This article discusses only Ohio’s statute of limitation for credit card debt.

Did the Creditor Wait Too Long to Sue? (Top of page)

Computing when the statute of limitations on a credit card collection lawsuit has expired is a surprisingly complicated matter, offering consumer defendants a number of opportunities to challenge the collector’s calculation of the time period. This article examines recent case law considering:

- 1) Which of Ohio’s statute of limitations applies—one for written contracts or one for non-written contracts;
- 2) Which state’s statute of limitations applies—Ohio, the state listed in the contractual choice of law, or the card issuer’s home state;
- 3) When does the limitations period begin—from when the consumer stopped making payments or when the card issuer later claims it has demanded full payment; and
- 4) Under what circumstances has the running of the limitations period tolled (i.e., stopped counting for a time) or revived (i.e., started counting all over again).

When Did the Statute of Limitations Begin to Run? (Top of page)

A cause of action for breach of a credit-card agreement based on nonpayment accrues when the obligation to pay under the agreement becomes due and owing and the cardholder does not make an agreed-to monthly payment. [Taylor v. First Resolution Invest. Corp.](#), 2016-Ohio-3444, ¶ 50, 148 Ohio St. 3d 627, 641, 72 N.E.3d 573, 588 (2016). Therefore, the due date of the first missed monthly minimum payment is the date on which the cause of action accrues. [Id.](#), at ¶ 110.

This means that the credit-card company can legally sue you when you fail to make your minimum monthly credit-card payment on its due date. That is also the date the statute of limitations begins to run.

In other words, the credit-card company has a certain number of years to sue you. That number of years is called the “statute of limitations”. That time period begins to run the date you first failed to make your minimum monthly credit-card payment. Starting at that date when you missed your payment, let’s say it was January 25th, 2016, if the statute of limitations

is three years, then the credit-card company has until January 25th, 2019 to sue you on your credit-card debt.

How Do I Assert My Statute of Limitations Defense? (Top of page)

Note that the debt collector can still file suit against you after three years. If you fail to raise the statute of limitations as an affirmative defense to the lawsuit, then the debt collector will win, even though it filed suit beyond the statute of limitations. To stop the lawsuit, you must specifically raise and plead the statute of limitations defense. The court can only rule on the statute of limitations defense after you bring it to the court's attention by pleading it in your answer to the complaint.

By filing a lawsuit beyond the statute of limitations, the debt collection company may have violated the Fair Debt Collection Practices Act (FDCPA), a federal law that prohibits abusive and unfair tactics employed by debt collectors, [15 U.S. Code § 1692f](#), as well as the Ohio Consumer Sales Practices Act (OCSPA), an Ohio law that prohibits suppliers from committing an unfair or deceptive act or practice in connection with a consumer transaction. [RC § 1345.02\(A\)](#). In fact, [Taylor](#), at ¶ 107, specifically held that that debt buyers collecting on credit-card debt and their attorneys are subject to the OCSPA.

Also by demanding a 24% interest rate in the complaint, instead of the statutory interest rate, but failing to prove that the parties agreed to that higher rate, by not entering the written, signed credit-card agreement into evidence, may also violate the above consumer protection statutes. [Taylor](#), at ¶ 86. Note that the FDCPA does not apply to first-party creditors, i.e., the original credit card company, engaged in debt collection.

In Ohio, [R.C. 1343.03\(A\)](#) provides that a creditor is entitled to interest on an account in either the statutory rate as determined pursuant to [R.C. 5703.47](#) or the interest rate set forth in a written contract entered between the parties. "R.C. 1343.03(A) requires a written contract, not simply an additional term added to an invoice and met without resistance by another party, to establish an interest rate greater than that set forth in R.C. 5703.47." [Minster Farmers Coop. Exchange Co., Inc. v. Meyer](#), 117 Ohio St.3d 459, 2008-Ohio-1259, 884 N.E.2d 1056, ¶ 25. This court, Ohio's courts of appeals and the Sixth Circuit all hold that an invoice or billing statement is not sufficient to establish a written agreement for purposes of R.C. 1343.03(A). See, [Taylor](#), at ¶ 77.

If your case involves similar facts, you may be able to file a counter-claim or your own lawsuit against the debt collector for statutory damages, alleging the debt collector violated these statutes designed to protect consumers. If you have been sued on a credit-card debt beyond the statute of limitations or for a very high interest rate, you may want to hire an attorney.

Which State’s Statute of Limitations Applies? (Top of page)

If a lawsuit is filed in Ohio, then Ohio law determines the statute of limitations. But Ohio has a borrowing statute, an exception to the general rule that a state always applies its own statute of limitations law. [R.C. 2305.03\(B\)](#).

Ohio’s borrowing statute states that Ohio applies the statute of limitations of the state where the cause of action accrued in instances when that state’s statute of limitations is shorter. [Taylor v. First Resolution Invest. Corp.](#), 2016-Ohio-3444, ¶ 37.

In Which State Did the Cause of Action Accrue? (Top of page)

When a cause of action “accrues”, it comes into existence as a legally enforceable claim.

The Ohio Supreme Court has determined that the cause of action against a consumer for her failure to pay a debt, accrues in the jurisdiction (state) where the debt was to be paid. It is where the debt was to be paid that the credit card company suffered its economic loss when the payment failed to arrive. [Taylor v. First Resolution Invest. Corp.](#), 2016-Ohio-3444, ¶ 48. That economic loss is what gives rise to the cause of action against the consumer.

In the [Taylor](#) case, the consumer, Taylor, mailed her credit card payments to an address in the state of Delaware. Taylor did not make the scheduled minimum payment on the credit card account that was due on January 1, 2005, and made no scheduled minimum monthly payments thereafter. Chase Bank declared Taylor’s account delinquent in February 2005.

Therefore, Ohio law states that Chase Bank’s cause of action against Taylor accrued in Delaware because Delaware was the state where the debt was to be paid.

Which State’s Statute of Limitations Is Shorter? (Top of page)

Ohio’s borrowing statute states that between Ohio and state where the cause of action accrued, the shortest statute of limitations applies.

Ohio law provides that the statute of limitations for suit on a written contract is 8 years. [R.C. 2305.06](#), while the statute of limitations for suit on a contract not reduced to writing is 6 years. [R.C. 2305.07](#). In the [Taylor](#) case, the parties failed to enter the written credit-card agreement into evidence, resulting in an Ohio statute of limitations of 6 years. [Taylor](#), at ¶ 40.

Because the consumer in the [Taylor](#) case mailed all her payments to Delaware, it is the state where the cause of action accrued. Delaware law affords only a three-year statute of limitations for actions to collect on debts, [Del.Code Ann., Title 10, 8106\(a\)](#).

Ohio's borrowing statute would apply Delaware's 3 year statute of limitations to the [Taylor](#) debt collection lawsuit filed in Ohio because Delaware's 3 year statute of limitations is shorter than Ohio's 6 year statute of limitations.

What Is the Effect of the Missing Written, Signed Credit Card Agreement?

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Credit card issuance starts with a credit-card application that the issuing bank approves before mailing a credit card to the consumer. "Credit card agreements are contracts whereby the issuance and use of a credit card creates a legally binding agreement." [Taylor](#), at ¶ 50.

In the [Taylor](#) case, Taylor was a resident of Summit County, Ohio. In 2001, Taylor was solicited with a credit-card application in Ohio, completed that application in Ohio, and mailed it from Ohio to the issuing bank in Delaware, where it was approved. [Taylor](#), at ¶ 16.

After Taylor failed to make the minimum monthly credit card payment, Taylor's credit card debt was purchased and resold and eventually became owned by First Resolution Investment Corporation ("FRIC"). FRIC had incomplete documentation of the terms of the credit-card agreement. "Despite the centrality of the credit-card agreement to the parties' positions in this litigation, no party has been able to produce it, and it is not in the record before us." [Taylor](#), at ¶ 13.

FRIC did attach to its complaint copies of the bills of sale of the rights to the account from Chase to Unifund and from Unifund to FRIC, as well as a copy of one of the monthly billing statements that Chase had mailed to Taylor in 2006. [Taylor](#), at ¶ 22. But FRIC did not attach to the complaint a copy of the credit-card agreement between Taylor and Chase that Taylor had signed, [Taylor](#), at ¶ 77, and no party in the case produced the original agreement during discovery, [Taylor](#), dissenting opinion at ¶ 177.

While it is true that Taylor's attorneys provided the trial court with a Chase "cardmember agreement" as an exhibit to a filing in that court, [Taylor](#), dissenting opinion at ¶ 152, there was no proof the generic "cardmember agreement" actually was agreed to by the parties because the parties failed to enter the written, signed credit-card agreement into evidence. [Taylor](#), at ¶ 40.

The missing credit card agreement signed by the parties was one of the most important facts in the [Taylor](#) case. If the signed credit card agreement had been produced, it could have

- proven an agreed-to interest rate of 24%, see, [R.C. 1343.03\(A\)](#),
- changed the statute of limitations to that of a written contract, see [R.C. 2305.06](#) (eight years for a contract in writing) and
- changed the law governing the contract to that set forth in the bank’s cardmember agreement. See [Taylor](#), dissenting opinion at ¶ 152.

Can Partial Payments Extend the Statute of Limitations Period? [\(Top of page\)](#)

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In many jurisdictions, a voluntary unconditional acknowledgement of a debt, which may include a partial payment on an account, can

- revive the entire balance of a time-barred debt and begin a new statute of limitations period; or
- if the statute of limitations has not expired, renew the running of the statute of limitations to collect the debt.

The FTC reports that under the law of most states that “a partial payment on a time-barred debt revives the entire balance of the debt for a new statute of limitations period.” Federal Trade Commission, [The Structure and Practices of the Debt Buying Industry](#) (Jan. 2013) at 47. See also, [Midland Funding, L.L.C. v. Hottenroth](#), 2014-Ohio-5680, 26 N.E.3d 269, ¶ 24 (8th Dist.) (reversed in part and remanded) (“Typically, the making of a partial payment on an open account before the statute of limitations expires extends the implied promise to pay the balance owed amount, acting to renew the statute of limitations period”).

But the FTC report goes on to say that to prevent deception by creating a misleading impression that the consumer could be sued, violating Section 5 of the FTC Act and Section 807 of the FDCPA, “if a collector knows or should know that it is collecting a time-barred debt, then it generally must inform the consumer that “(1) the collector cannot sue to collect the debt and (2) providing a partial payment would revive the collector’s ability to sue to collect the balance.” Federal Trade Commission, [The Structure and Practices of the Debt Buying Industry](#) (Jan. 2013) at 47.

What is Ohio’s Position on Partial Payments Extending the Statute of Limitations? [\(Top of page\)](#)

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Under the law of most states that a partial payment on a time-barred debt revives the entire balance of the debt for a new statute of limitations period. However, the Ohio Supreme Court in the [Taylor](#) case, decided that partial payments on the credit card account did not alter the

running of the statute of limitations, which began to run when the credit card company's cause of action accrued, which occurred on the due date of the first missed monthly minimum payment by the consumer.

- May 5, 2004 - The consumer in the [Taylor](#) case last used the card for a purchase. [Taylor](#) at ¶ 17.
- January 1, 2005 - Taylor did not make the scheduled minimum payment due on the account, and made no scheduled minimum monthly payments thereafter. ¶ 18. The bank's cause of action accrues and the statute of limitations begins to run.
- April, 2005 - Chase suspended Taylor's charging privileges, after which Taylor makes a total of \$1,150 in less-than-minimum monthly payments. [Taylor](#) at ¶ 18 & ¶ 115.
- June 28, 2006 - Taylor made her last payment to Chase on the account, for \$50. Chase accepted it, with the understanding that Chase would apply the payment to adjust the balance due on the account. [Taylor](#) at ¶ 120.

Note that after January 1, 2005, Taylor never paid all the arrearages to bring the account current, which presumably would have reinstated Taylor's charging privileges. If that had happened, Taylor would have cured her breach of contract and Chase would have waived any action regarding the breach.

Part payment of a debt is not of itself conclusive so as to take the case out of the statute of limitations. ([R.C. 2305.08](#).) In order to have that effect, it must appear not only that the payment was made on account of a debt but also that it was made on account of the debt for which the action is brought and that the payment was made as a part of a larger indebtedness and under such circumstances as to warrant a jury in finding an implied promise to pay the balance. [66 Ohio Jur. 3d](#) Limitations and Laches § 150

In summary, the Ohio Supreme Court in [Taylor v. First Resolution Invest. Corp.](#), 2016-Ohio-3444, 148 Ohio St. 3d 627, 641, 72 N.E.3d 573, 588 (2016), by not changing the date the statute of limitations began to run due to partial payments by Taylor, implicitly decided that making partial payments on an open account before the statute of limitations expired did not extend an implied promise to pay the balance owed and therefore did not act to renew the statute of limitations period.

Note there may be other circumstances that toll the statute of limitations, such as allegations of fraudulent concealment, that are not dealt with in this article. See, [66 Ohio Jur. 3d](#) Limitations and Laches § 93.

Can Credit Card Debt Be Revived After the Statute of Limitations Has Run?

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The answer is “Yes”. In Ohio, the acknowledgment of debt or a promise to pay after the debt has been barred by the statute of limitations revives the original cause of action and the applicable statute of limitations begins to run again on the date of acknowledgment or promise. [Bluestone Trading Co. v. Storey](#) (In re Storey), No. 10–20926, 2011 WL 4005832, at *2 (Bankr.N.D. Ohio Sept. 7, 2011) and [In re Butler's Estate](#), 137 Ohio St. 96, 113, 28 N.E.2d 186 (1940), cited by [DRFP L.L.C. v. República Bolivariana de Venezuela](#), 151 F. Supp. 3d 809, 825 (S.D. Ohio 2015).

The original debt is generally considered a sufficient legal consideration for a subsequent new promise to pay it, made either before or after the bar of the statute is complete. *Am. Jur. 2d, Limitation of Actions* § 290.

A new promise may revive a debt, but only where the new promise is clear, certain, and unconditional. While, [R.C. 2305.08](#) makes it clear that before an acknowledgment of or a promise to pay an existing debt will remove the bar of the statute of limitations, the acknowledgment or promise must be in writing, must be an express promise to pay and must be signed by the party to be charged.

However, no particular form of acknowledgment is required. Any written acknowledgment of an existing liability or any promise to pay signed by the party who is sought to be held is sufficient. A memorandum may acknowledge an oral contract so as to establish its existence and thus extend the period of limitation for six years from the date of the memorandum. *66 Ohio Jur. 3d* Limitations and Laches § 141 (Necessity of writing for acknowledgment and new promise).

Therefore, when mailing the debt collector a letter, signed by the consumer, it is extremely important that the consumer not acknowledge or promise to pay the existing debt. In fact, the best practice is to affirmatively dispute the debt to remove any doubt regarding its acknowledgment by the consumer.

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