

# Collecting For Services Rendered: The Service Provider's Guide to Getting Paid (Quickly) In New Jersey



First Edition  
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BENDER COMMERCIAL COLLECTION LAW

# Collecting For Services Rendered: The Service Provider's Guide to Getting Paid (Quickly) In New Jersey

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## ABOUT THE AUTHOR



Jon Bender wants to help you increase your profits. This book will help you collect your receivables and spend more time making money instead of chasing it.

*Collecting For Services Rendered* is one of four books Jon's written on business collections in New Jersey. In addition, he's written a collection

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guide for goods suppliers generally and specific guides for construction suppliers and the staffing industry.

Jon has spent 27 years handling accounts receivable litigation. His clients include suppliers and service providers in various industries, as well as commercial lenders.

In his free time, Jon is an avid boxing, Eagles and Phillies fan. He resides in Cherry Hill, New Jersey with his wife and four children.

*To learn more about accounts receivable collections, visit my website at [www.NJCollectionLawyer.com](http://www.NJCollectionLawyer.com).*

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## PREFACE

# PREFACE

Welcome. My name is Jon Bender and I'm an attorney focusing on accounts receivable collections.

This is one of four books I've dedicated to business collections in New Jersey, having also written a book for goods suppliers generally and specific guides for construction suppliers and the staffing industry.

In *Collecting For Services Rendered*, we'll discuss collection litigation in general, and how the law treats services differently from a sale of goods.

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We'll also talk about what to expect when you sue for receivables in New Jersey.

In addition, we'll talk about developing internal credit and collection policies to minimize your need to sue and maximize your recovery when you do.

I hope you'll find the content helpful, and invite you to reach out with any questions, comments or suggestions, and to connect through social media.

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## GENERAL COLLECTION ISSUES – GOODS VERSUS SERVICES



Whether a vendor sells goods or provides services, suing for unpaid receivables involves an alleged breach of contract.

Yet there are 2 important differences between goods and services that could impact your right to payment. One relates to oral contracts, the other to the Statute of Limitations.

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## WHETHER YOUR CONTRACT NEEDS TO BE IN WRITING

In general, a contract can be oral or written, unless a specific law requires it to be in writing. Such a law is called a Statute of Frauds.

The Uniform Commercial Code is a set of rules that govern commercial transactions in the United States. In New Jersey, it's codified at NJSA 12A:1-101 *et seq.*, and contains a Statute of Frauds for sales of goods.<sup>1</sup>

However, there's no Statute of Frauds in New Jersey for a contract for services. While an oral contract for services may be harder to prove, that doesn't make it unenforceable.

## THE STATUTE OF LIMITATIONS

The Statute of Limitations is a law that limits how much time you have to file a lawsuit.

For goods sold, the UCC limits you to 4 years from the date of breach. You can limit this further to 1 year by contract, but can only extend the 4 years by a subsequent agreement, not the initial contract.<sup>2</sup>

However, most contracts in New Jersey have 6 years from the breach of contract,<sup>3</sup> including non-payment for services rendered.

As a practical matter, you never want it to get that far. The older debt is, the harder it normally is to collect. Legally, you may have 6 years to commence a lawsuit for services, but the decision should come much earlier.

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<sup>1</sup> -- NJSA 12A:2-201(1)

<sup>2</sup> -- NJSA 12A:2-725

<sup>3</sup> -- NJSA 2A:14-1



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## SUING FOR RECEIVABLES: WHAT YOU NEED TO KNOW



### WHAT IS ACCOUNTS RECEIVABLE LITIGATION?

Accounts Receivable Litigation means lawsuits to recover business debt. The common thread in all such matters is an alleged breach of contract.

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Think of your lawsuit in 2 stages: the litigation stage, where you prove your case to obtain a judgment, and the post-judgment stage, where you look for assets to collect it.

## THE K.I.S.S. CONCEPT (KEEP IT SIMPLE, SELLER)

From a litigation standpoint, you want to frame the issues in simple terms. Proving your case should come down to 4 Basic Questions:

- 1) Did the Customer Order the Goods or Services?
- 2) Did It Agree to a Price?
- 3) Did It Receive and Accept the Goods or Services? and
- 4) Did It Pay for Them?

These questions should lead inevitably to one conclusion: that the customer owes you the money. From your perspective, everything else is detail.

Questions 1 and 2 speak to whether you have a contract. Questions 3 and 4 speak to performance. If you had a contract, you performed and the other side didn't, you have a claim for your damages under breach of contract.

## HOW LONG DOES IT TAKE?

### Getting to Judgment

The litigation stage leading to judgment can be relatively quick or drawn out, depending on whether the customer defaults or fights the lawsuit.

After you commence the suit, you have a process server serve it on the defendant, who then has 35 days in New Jersey to file an answer.

If your customer doesn't answer, you can enter a default in the case and apply for a judgment. Factoring in time to serve the defendant, this can take as little as 6 or 7 weeks.

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But if the customer files an answer, it can take more than a year to go to trial, depending on the discovery period assigned at the beginning of the case.

The purpose of trial is to determine what the facts of the case are, so the judge can apply the law and enter judgment accordingly.

Discovery is the process of exchanging information and records so you can prepare for trial. Examples include interrogatories (written questions under oath), depositions (interviews under oath), and demands for documents and other records. After discovery, the court will schedule the matter for trial.

Yet if discovery shows you agree on the facts, you may not need a trial. Either side can make a motion for summary judgment, which states the material facts are undisputed and asks the court to rule in its favor.

### **Enforcing The Judgment**

Unfortunately, winning a judgment doesn't guarantee payment. Collecting can be easy or hard, can take a few months or several years, if ever, depending on whether the debtor has assets and you're able to find them.

The first thing you should always do is record a judgment lien. This creates a statewide lien on all real estate interests the debtor has or later acquires. The lien is good for 20 years, and you can renew it. As a result, the debtor will have to deal with your judgment if it ever sells, buys or refinances real estate in New Jersey.

In my practice, I've collected many judgments, years after the fact, which did not appear collectible at the time we received them.

The Sheriff can seize physical assets and real estate if you find them, but selling them to satisfy your judgment involves time and expense. Therefore, the best assets to seize are liquid funds, like bank accounts, which just

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require a court order to turn them over to you. If you know where your customer banks, you might collect quickly.

To locate assets, you can formally demand information from the debtor or third parties with relevant knowledge. This is called post-judgment discovery. However, doing so warns the debtor that you're looking for assets, and may lead to it moving them.

Therefore, it's better to first find what you can under the radar. Your own records may reveal bank information, like on a credit application or copies of payments received. You can also have an investigator perform a bank account search. After you identify any accounts, you can have the Sheriff seize them without the debtor's prior knowledge.

## **Settlement**

If both sides are willing, you can settle a case at any time, whether before litigation, during litigation or post-judgment. In exchange for a discount or a payment plan, settlement reduces the risk, expense and uncertainty of having to litigate and collect.

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## CREDIT POLICIES FOR ALL INDUSTRIES

# CREDIT POLICY

Whatever the industry, every business that sells on credit should develop an internal credit policy. The goal is to minimize the number of accounts that go unpaid. Consider adopting the following practices:

- do your due diligence on the customer;
- have clear credit terms;
- paper each order properly;
- invoice quickly and clearly;
- *motivate* the customer to pay you; and
- motivate the customer to pay *early*.

### Do Your Due Diligence

A good credit policy begins with information-gathering, so you can make good credit decisions about your customers.

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Start with a detailed credit application. For each new customer, the financial information and trade references should help you decide whether to extend credit, or how much to extend.

Credit applications are limited, however, because a customer may provide false information or list only the creditors it pays. Therefore, before extending large amounts of credit, consider ordering a business credit report. Agencies like Experian or Dun & Bradstreet will give you objective financial data such as annual sales, the customer's payment history and public records like judgments, bankruptcies and UCC lien filings. This information, and the credit score based on it, can help you predict a customer's payment behavior.

## **Have Clear Credit Terms**

Terms and conditions may appear on your credit application, in a service agreement or even on your invoices. Terms that are conspicuous on your invoices may not be enforceable the first time around, but put the customer on notice for future transactions.<sup>4</sup>

Basic provisions include payment terms (such as Net 30) and a forum selection clause (for out of state customers, this lets you litigate any disputes locally). And as discussed below, you should also include interest on past-due accounts and attorney fees if you go to collections.

## **Paper Each Order Properly**

Unlike a sale of goods, your contract for services doesn't have to be written to be enforceable. However, putting it in writing helps you prove what you

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<sup>4</sup> -- see Loizeaux Builders Supply Co. v. Donald B. Ludwig Co., 144 N.J. Super. 556, 561-62 (Law Div., 1978)



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agreed upon, like the specific services ordered, the agreed-upon price, the time for performance, and any other important details.

## **Invoice Quickly and Clearly**

The sooner you bill a paying customer, the sooner you get paid; the sooner you bill a nonpaying customer, the sooner you identify a problem account. You therefore want to send your invoices out promptly, either at the time of performance or immediately thereafter.

Before sending an invoice, have quality control measures in place to check it. Make sure the invoice is clear, itemized and free of errors. Errors can cause confusion for paying customers and provide delay opportunities for nonpaying customers.

## **Motivate The Customer To Pay You**

Your terms and conditions are your ticket to getting paid, both on time and in general. Motivate the customer by charging interest on past-due accounts, typically between 1.5%-2% *per month* if the customer is incorporated,<sup>5</sup> and attorney fees if you go to collections.

For customers who view paying as a business decision, you want to make it more expensive *not to pay you*. Interest and attorney fees will make them choose between paying what they owe now, or paying more later.

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<sup>5</sup> -- see NJSA 31:1-6

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For creditors who intend to pay you, but have limited ability and competing creditors, interest and legal fees should get you higher on the priority list.

I would also include an acceleration clause in your terms and conditions, which states that if the customer is in default under one invoice, you can declare all other invoices immediately due and owing. If you ever need to sue a customer, you want the right to sue now for the full balance it owes, not just the invoices that are already past due.

Finally, try to get a personal guarantee from the customer's owner. A corporation or LLC normally shields its owner from the company's debts, but a personal guarantee obligates him to pay if the business doesn't. This gives you another party to collect from, and a higher priority in the owner's mind.

The guarantee would normally appear in your credit application. While you would typically request it when the customer first applies for credit or when it requests a higher limit, you can require it any time as a condition of future sales.

If the owner refuses, he may lack confidence in his business's ability to pay. In that event, just be practical and make your best business decision.

### **Motivate The Customer To Pay Early**

Offer the carrot, not just the stick. Incentivize early payments. If your terms are Net 30 and you're adding interest at 45 days, offer a discount if the customer pays within 15. Whatever this represents in lost revenue, consider the value of faster cash flow and not having to chase your money.

*To view a sample credit application or sales terms, you can download a free copy at my website, [www.njcollectionlawyer.com/services/collections-for-goods-services-generally](http://www.njcollectionlawyer.com/services/collections-for-goods-services-generally).*

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## COLLECTION POLICIES FOR ALL INDUSTRIES

# Collection Policy

In addition to a credit policy, every business should develop an internal collection policy. Having clear processes can help you identify problem accounts, find amicable solutions, determine which accounts require litigation, and increase your chances of winning and collecting a judgment.

### **IDENTIFY ISSUES QUICKLY**

The longer an account remains unpaid, the harder it usually is to collect, so identifying problems early is crucial. By watching the age of your receivables closely, you can identify accounts you need to pursue.

#### **Develop an Accounts Receivable Aging Report**

An accounts receivable aging report is a list of unpaid invoices which you can make on most accounting softwares. It lets you monitor the age of open receivables and identify problems early.

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## **REACH OUT TO THE CUSTOMER**

Once you've identified a problem account, don't wait. The older a debt is, the less likely you are to collect. You therefore want to move quickly.

During the first 30 days of delinquency, be proactive by reaching out to the customer in a direct but nonthreatening manner. Phone calls are better than demand letters because you want to speak to the customer.

If the customer refuses your calls and fails to return them, that's a sign it's avoiding you. Although settlement is usually better than litigation, you may need to sue in such cases.

Yet if the customer takes your call, start with a polite reminder that the account's past due, and ask if there's any reason it hasn't paid you. Whether the issue is financial or otherwise, identifying the problem is half-way to solving it. And whatever the customer tells you, send an email memorializing the conversation. If you find yourself in a lawsuit, you'll need contemporaneous business records as evidence.

## **FIND OUT THE REASONS FOR NONPAYMENT**

In almost every collection situation, there are 3 basic reasons a customer doesn't pay you: either it can't, it doesn't want to, or it genuinely disputes the charges.

The most important step is to find out the reasons for nonpayment. Once you understand them, you can gauge how to approach settlement or litigation.

## **KNOW WHEN TO SETTLE**

Settlement can occur at any time, before or after you file a lawsuit.

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Given the cost of litigation and the uncertainty of collection, settlement can be a good option where there's a genuine dispute or the customer is having trouble paying.

## Customer Disputes Charges

People tend to fight harder when they believe they're right. The customer that knows it owes the money, but just doesn't want to pay, may think twice about paying to defend a suit it can't win. But when the customer thinks it's right, drawn-out litigation may result.

If you feel the customer's acting in good faith, even if you disagree, consider a compromise before the conflict escalates. Settlement will eliminate the expense and uncertainty of litigation, and if both sides are reasonable, it may preserve your relationship and pay for itself many times in future sales.

## Customer Can't Pay

If your customer wants to pay but has financial problems, consider making a deal. But first find out what the problem is, and how serious it is, so you'll know what the customer can really afford.

Every settlement comes down to an amount and terms. If you're giving a big discount, you want to get paid quickly. If you're giving a long payout, you might charge the full amount and possibly interest. The balance between discount and the time to pay is a matter of negotiation, but they're usually inversely related.

Keep in mind that the longer the payment terms, the more risk of nonpayment. If the customer goes out of business, you probably won't collect.

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Therefore, a lump sum (or a few short payments) makes sense where you think the customer's on the verge of closing. But you may also prefer it if you need cash now, or just don't want to police a payment plan.

On the other hand, if the customer's just having a cash flow problem and is likely to rebound, you might offer longer terms and demand full payment.

In sum, the terms you offer may depend on the customer's ability to pay, your own cash flow or financial needs, or your willingness to police a long payout.

Whatever the settlement terms, you should always have a written agreement. If you've already filed suit, you'll want to file a stipulation stating that if the customer breaches the settlement, you're entitled to judgment. If you haven't filed suit yet, you could hold off for a lump sum that's due shortly. But if you need to police a payment plan, I would file a complaint and an immediate stipulation of settlement. The purpose of the stipulation is to motivate the customer to make the payments, and streamline your path to a judgment if it doesn't.

### **INCREASE YOUR CHANCE OF WINNING A JUDGMENT**

For each customer, you want to keep certain records you would need if you ever had to prove a collection case. This includes contracts, invoices, payment histories, and correspondence.

For uncontested matters, your contract will show what your terms were, and the invoices and payment history will show the amount due.

For contested cases, your correspondence also becomes important. By sending emails or letters after each important conversation, you might show, for example, that the customer previously admitted owing the money. Or that it's distorting a conversation you had, or making one up that never occurred.

Maintaining proper records is therefore key to winning a judgment.



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In addition, your terms and conditions, which are normally part of your credit policy, can also play a role in your collection policy. For example, if your terms let you apply payments to the oldest open charges, rather than the specific invoices the customer intended, you can use that to defeat a Statute of Limitations defense.

## **INCREASE YOUR CHANCE OF COLLECTING A JUDGMENT**

Winning a judgment does not guarantee payment, but allows you to seize assets you can. Once again, keeping proper records will help you achieve this.

The best assets to seize are generally bank accounts, and you'll want to know where to find them. Keeping copies of every check or wire payment received will tell you where the customer banks.

Also, your credit application should require bank references and the customer's tax number. Even if the bank information becomes outdated, an investigator can use the tax number to search for current bank accounts.

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## ATTORNEY FEES: THE COST OF LITIGATION



### BILLING MODELS FOR ATTORNEY FEES

Attorneys have different billing models, which commonly include hourly, contingency, and flat billing.

Hourly means you pay for the amount of time the lawyer works on your case, based on an hourly rate. Contingency means you pay a percentage of any recovery. And flat billing means you pay a fixed amount, which doesn't depend on time or results.

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In collections, lawyers commonly accept cases on a contingency basis, though you need a clear agreement which states what services this includes. The advantage to you is that you only pay a fee if there's a recovery.

But not all clients want a contingency fee. For example, for a particularly large balance, you may not want to pay a percentage of the recovery. Therefore, under New Jersey's ethics rules, an attorney who offers you contingency billing must also offer hourly.

In addition, your lawyer may offer a blended (hybrid) model, which combines a lower hourly rate with a lower percentage of the recovery.

### CHARGING ATTORNEY FEES TO THE CUSTOMER

New Jersey courts generally follow the "American Rule," which provides that each side pays its own attorney fees.<sup>6</sup> However, a prevailing party can recover reasonable fees if provided for by contract, statute or court rule.<sup>7</sup>

When determining a reasonable fee award, the Court determines a reasonable amount of time spent on the matter and multiplies it by a reasonable hourly rate.<sup>8</sup> Yet when a contingency fee is involved, it may award a higher amount to reflect the risk of nonpayment.<sup>9</sup>

To shift fees by contract, you would state in your sales agreement, in your terms and conditions or on your credit application, etc., that in the event of nonpayment, the customer is obligated to pay reasonable attorney fees. You might even provide that fees equal to one-third (33.3%) of the unpaid balance will be deemed reasonable.

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<sup>6</sup> -- see Gannett Satellite Info. Network, LLC v. Twp. of Neptune, 254 N.J. 242, 258 (2023)

<sup>7</sup> -- see Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 385 (2009) and *RPC 1.5(a)*

<sup>8</sup> -- Litton, 200 N.J. at 385

<sup>9</sup> -- see Walker v. Giuffre, 209 N.J. 124, 127–28 (2012) and Rendine v. Pantzer, 141 N.J. 292, 316–17 (1995).

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Statutory fees apply in particular kinds of cases where the legislature deems them appropriate, such as the Civil Rights Act,<sup>10</sup> the Consumer Fraud Act<sup>11</sup> and the Law Against Discrimination.<sup>12</sup>

Finally, the Court may award fees when permitted by court rule. Rule 1:4-8(b), for example, provides that a party may move for sanctions for frivolous litigation, and the Court may award the prevailing party reasonable attorney fees incurred in presenting or opposing the motion.<sup>13</sup>

Of these exceptions to the American Rule, the one you can prepare for is contractual fees. You can't control at the outset if there will be a relevant statute or court rule to shift legal fees, but you can create a contractual right to fees if the customer fails to pay you.

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<sup>10</sup> -- N.J.S.A. 10:6-1 *et seq.*

<sup>11</sup> -- N.J.S.A. 56:8-1 *et seq.*

<sup>12</sup> -- N.J.S.A. 10:5-27.1

<sup>13</sup> -- N.J. Ct. R. 1:4-8(b)

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## WHETHER TO SUE: PRACTICAL CONSIDERATIONS



The decision to litigate isn't always obvious. Even if litigation is the only way you'll get paid, a practical approach balances 3 questions: How hard will it be to get a judgment? What will litigation cost? And what's the likely return on investment?

### How Hard Will It Be To Get A Judgment?

This factors in the likelihood of winning, how long it'll take and how hard you would fight if the lawsuit were contested.

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Do you expect the customer to default or defend? If the customer defaults, winning is more certain, it shouldn't take long and you won't need to fight hard.

But if the customer defends, it takes longer and is more difficult. What reasons did the customer give for not paying? Is there a legitimate dispute? How about counterclaims? Are there other possible defenses, like the Statute of Limitations?

If the facts and law are on your side, you should still prevail in the end, but a determined adversary can make it harder.

## What Will Litigation Cost?

What will it cost if you're paying your lawyer on an hourly basis? If you expect the customer to default, it should cost much less than if the customer defends. If you've retained your lawyer on a contingency basis, does the contingency fee include contested litigation?

## What's The Likely Return On Investment?

Will there be assets to satisfy a judgment?

Is the company still operating? Even if the customer is struggling, if the lights are still on and the phone is ringing, assume it's paying someone. Suing should make you a higher priority.

On the other hand, if the customer's out of business, collecting is harder. The longer it's been closed, the less likely you'll find active bank accounts or other assets to seize.

What about other judgments? The more judgment creditors, and the more aggregate judgment debt, the more competition you face for the limited assets available. If other creditors have already executed, there may not be assets left for you to seize. But if they're not actively executing, you have an opportunity to take a judgment and levy aggressively.



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Finally, can you go after the owners? Absent fraud or a guarantee, personal liability will depend on the customer's corporate status. If the customer was incorporated at the time of the sale, the owners should be shielded from liability. If it wasn't incorporated, or if the corporation was suspended, you could go after them personally.

Corporate status reports and certain filings are available to the public. For a modest fee, you can obtain them on the State's website.<sup>14</sup>

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<sup>14</sup> -- <https://www.njportal.com/DOR/businessrecords/>

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## CONCLUSION



# CONCLUSION

The purpose of this book was to provide service providers with the knowledge they need to collect their receivables quickly and efficiently.

We addressed important differences between selling goods and services, as relates to written contract requirements and the Statute of Limitations.

We also spoke about collection litigation generally, and developing credit and collection policies to minimize delinquent accounts and maximize recovery.

Finally, we discussed attorney fees, including fee shifting, and practical considerations regarding the decision to litigate.

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Whether or not you have current collection needs, I recommend working with an experienced collection lawyer to review your credit and collection policies, or if you have none in place, to help you develop them.

If you do have current collection needs, an experienced collection lawyer should be adept at spotting relevant issues and finding available assets.

If you have any questions, comments or ideas about the subject matter, or about business collections in general, I'd be happy to hear from you. Feel free to contact me as follows:

- [jbender@NJCollectionLawyer.com](mailto:jbender@NJCollectionLawyer.com); or
- (856) 667-1669.

Finally, if you found this book helpful, please share it and feel free to copy and use it with source attribution.

*To learn more about accounts receivable collections, visit my website at [www.NJCollectionLawyer.com](http://www.NJCollectionLawyer.com).*

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## APPENDIX



### RELEVANT STATUTES OF LIMITATIONS (HIGHLIGHTED)

#### **NJSA 2A:14-1.6 6 Years**

- a. Every action at law for trespass to real property, for any tortious injury to real or personal property, for taking, detaining, or converting personal property, for replevin of goods or chattels, for any tortious injury to the rights of another not stated in NJS 2A:14-2 and NJS 2A:14-3, or for

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recovery upon a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within six years next after the cause of any such action shall have accrued.

- b. This section shall not apply to any action for breach of any contract for sale governed by NJS 12A:2-725.
- c. The period of time for the filing of a claim by a condominium association, cooperative corporation, or other planned real estate development association against a developer or any person acting through, on behalf of or at the behest of the developer under subsection a. of this section, shall be tolled until an election is held and the owners comprise a majority of the board pursuant to paragraph (3) of subsection a. of section 5 of P.L.1993, c. 30 (C.45:22A-47), or subsection d. of section 2 of P.L.1979, c. 157 (C.46:8B-12.1).

Any cause of action involving a condominium, cooperative, or other planned real estate development under the provisions of subsection a. of this section that has not been subject to a final judgment dismissing the claim as of the effective date of P.L.2021, c. 379 shall be subject to the terms of this subsection.

### **NJSA 12A:2-725 Statute of Limitations In Contracts For Sale**

- (1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.
- (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

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A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

- (3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.
- (4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Act becomes effective.

## **NJSA 2A:14-5 20 Years; Judgments**

A judgment in any court of record in this state may be revived by proper proceedings or an action at law may be commenced thereon within 20 years next after the date thereof, but not thereafter.

An action may be commenced on a judgment obtained in any other state or country within 20 years next after the date thereof or within the period in which a like action might be brought thereon in that state or country, whichever period is shorter, but not thereafter.