

FAQs – New Rules for Default Judgment Applications in Consumer Credit Matters

What is the purpose of the new rules for default judgments in consumer credit actions?

The new rules and affidavit requirements are intended to ensure a fair legal process and address documented abuses involving default judgments in consumer credit matters. Many default judgments have been entered despite insufficient or incorrect factual proof, expiration of the applicable statute of limitations, and failed service of process.

What is covered by the new rules?

The rules apply to default judgment applications arising from consumer credit transactions when such applications are made to the clerk for a sum certain under CPLR 3215(a).

What is required under the new rules?

The new rules require plaintiffs seeking default judgments in consumer credit matters to submit specific affidavits and documentation in support of their application. Plaintiffs also must submit to the court an additional notice of a consumer credit action which is to be mailed by the clerk of the court to the defendant at the address where process was served.

When did the rules go into effect, and in what courts?

The rules went into effect on October 1, 2014, and they apply in Supreme Court, New York City Civil Court, City Courts outside New York City, and District Courts.

What if the action was commenced before October 1, 2014?

The rules apply to default judgment applications filed on or after October 1, 2014, even if the underlying action was commenced prior to that date.

What types of consumer credit transactions are covered?

The rules define “consumer credit transaction” more narrowly than CPLR § 105(f) or the Truth in Lending Act (15 U.S.C. 1600, et seq.) and corresponding regulations. The rules are intended to apply to credit card debt only. Debt incurred in connection with medical services, student loans, auto loans, retail installment contracts, personal lines of credit, home equity lines of credit and reverse mortgages are not intended to be covered by the rules

Which requirements apply to original creditor plaintiffs?

An original creditor who makes a default judgment application on or after October 1, 2014 shall submit:

- The Affidavit of Facts by Original Creditor.
- The Affirmation of Non-Expiration of Statute of Limitations.
- The additional mailing of notice of a consumer credit action.

Which requirements apply to debt buyer plaintiffs?

Different requirements apply (until July 1, 2015) in debt buyer actions depending on whether the debt at issue was purchased from the original creditor before October 1, 2014 or after September 30, 2014.

A. A debt buyer plaintiff who files a default judgment application based on debt that was purchased from the original creditor **before** October 1, 2014, shall submit:

- The Affirmation of Non-Expiration of Statute of Limitations.
- An affidavit of facts affirming that the debt was purchased from an original creditor before October 1, 2014 and attaching proof of that fact. (This affidavit of facts does not have to take a particular form.)
- The additional mailing of notice of a consumer credit action.

B. A debt buyer plaintiff who files a default judgment application based on debt that was purchased from the original creditor **on or after** October 1, 2014, shall additionally submit the following form affidavits:

- Affidavit of Facts and Purchase of Account By Debt Buyer Plaintiff;
- Affidavit of Facts and Sale of Account By Original Creditor; and, if applicable,
- Affidavit of Purchase and Sale of Account By Debt Seller for each debt seller who owned the debt prior to the plaintiff.

What is the importance of July 1, 2015 for debt buyer plaintiffs?

Effective July 1, 2015, the following affidavits shall be required in all debt buyer default judgment applications notwithstanding that the debt at issue was purchased from the original creditor before October 1, 2014:

- Affidavit of Facts and Purchase of Account By Debt Buyer Plaintiff;
- Affidavit of Facts and Sale of Account By Original Creditor, and, if applicable; and, if applicable,
- Affidavit of Purchase and Sale of Account By Debt Seller for each debt seller who owned the debt prior to the plaintiff.

What is the Additional Notice of Consumer Credit Action?

Under the new rules, plaintiffs are required to submit to the clerk of the court (or the County Clerk in Supreme Court) a stamped, unsealed envelope containing an additional written notice, in English and Spanish, advising the defendant that a lawsuit has been filed against him or her, encouraging the defendant to file an answer, and describing the possible consequences of failing to answer the lawsuit.

The face of the envelope shall be addressed to the defendant at the address where process was served. The face of the envelope shall also contain, in the form of a return address, the appropriate address of the clerk of the court. It is the

responsibility of the clerk of the court to mail the envelope containing the additional notice to the defendant. (In Supreme Court, the additional notice is submitted to the County Clerk but the mailing is handled by the Supreme Court Clerk's office).

When should the plaintiff submit the Additional Notice?

The rule states that the additional notice may be submitted at the time of filing with the clerk the proof of service of the summons and complaint, or at any time thereafter. It must be submitted no later than the filing of the application for a default judgment.

What happens if the Additional Notice is not submitted?

No default judgment based on the defendant's failure to appear shall be entered unless there has been compliance with this requirement and at least 20 days have elapsed from the date of the mailing by the clerk.

What happens if the Additional Notice is returned to the clerk as undeliverable?

No default judgment based on defendant's failure to answer shall be entered if the additional notice is returned as undeliverable. However, the rule recognizes that a default judgment may still be entered where the additional notice is returned as undeliverable, if the address at which process was served matches the address of the defendant on a Certified Abstract of Driving Record issued by the New York State Department of Motor Vehicles ("DMV"). It is the plaintiff's responsibility to obtain the Abstract and submit it to the clerk's office if the plaintiff wishes to take advantage of this exception. It is the responsibility of the clerk of the court to ensure that the address on the DMV Abstract matches the address where process was served.

