COMMON DEFENSES IN DISTRICT COURT

PRESENTER: CHELSEA ORTEGA, SANTONI, VOCCI & ORTEGA, LLC

WHAT IS AFFIDAVIT JUDGMENT?

- "In an action for money damages a plaintiff may file a demand for judgment on affidavit at the time of filing the complaint commencing the action. The complaint shall be support by an affidavit showing that the plaintiff is entitled to judgment as a matter of law in the amount claimed." Md. Rule 3-306
- Affidavit judgment hearing is scheduled when summons is generated
- If a defendant does nothing, court will review documents and enter judgment if documents are adequate
- If documents are not complete, court will deny affidavit judgment
  - For example: Military Service Affidavit incomplete or missing

DISTRICT COURT OF MARYLAND FOR _____

LOCATED AT (COURT ADDRESS)

CASE NO.

CV

PARTIES

Plaintiff

VS.

Defendant(s):

1. **Serve by:** ☐ Certified Mail ☐ Private Process ☐ Constable ☐ Sheriff
2. **Serve by:** ☐ Certified Mail ☐ Private Process ☐ Constable ☐ Sheriff
3. **Serve by:** ☐ Certified Mail ☐ Private Process ☐ Constable ☐ Sheriff
4. **Serve by:** ☐ Certified Mail ☐ Private Process ☐ Constable ☐ Sheriff

ATTORNEYS

For Plaintiff - Name, Address, Telephone Number & Code

COMPLAINT/APPLICATION AND AFFIDAVIT IN SUPPORT OF JUDGMENT

☐ **$5,000 or under** ☐ **over $5,000** ☐ **over $10,000**

Clerk: Please docket this case in an action of ☐ **contract** ☐ **tort** ☐ **replevin** ☐ **detinue** ☐ **bad faith insurance claim**

The particulars of this case are:

(See Continuation Sheet)

The Plaintiff claims $_____, plus interest of $_____, Interest at the ☐ legal rate ☐ contractual rate calculated at _____ %, from _____ to _____ (_____ days x $_____ per day) and attorney's fees of $_____ plus court costs.

☐ Return of the property and damages of $_____ for its detention in an action of replevin.

☐ Return of the property, or its value, plus damages of $_____ for its detention in action of detinue.

☐ Other: _____

and demands judgment for relief.

Signature of Plaintiff/Attorney/Attorney Code

Printed Name: _____

Address: _____

Telephone Number: _____

Fax: _____

E-mail: _____

MILITARY SERVICE AFFIDAVIT

☐ Defendant(s) _____ is/are in the military service.
Name

☐ No Defendant is in the military service. The facts supporting this statement are: _____

Specific facts must be given for the Court to conclude that each Defendant who is a natural person is not in the military.

☐ I am unable to determine whether or not any Defendant is in military service.

I hereby declare or affirm under the penalties of perjury that the facts and matters set forth in the aforegoing Affidavit are true and correct to the best of my knowledge, information, and belief.

Date _____ Signature of Affiant _____

APPLICATION AND AFFIDAVIT IN SUPPORT OF JUDGMENT (See Plaintiff Notice on Back Page)

Attached hereto are the indicated documents which contain sufficient detail as to liability and damage to apprise the Defendant clearly of the claim against the Defendant, including the amount of any interest claimed.

☐ Properly authenticated copy of any note, security agreement upon which claim is based ☐ Itemized statement of account ☐ Interest worksheet ☐ Vouchers ☐ Check ☐ Other written document ☐ _____ ☐ Verified itemized repair bill or estimate

I HEREBY CERTIFY: That I am the ☐ Plaintiff ☐ _____ of the Plaintiff herein and am competent to testify to the matters stated in this complaint, which are made on my personal knowledge; that there is justly due and owing by the Defendant to the Plaintiff the sum set forth in the Complaint.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the above Complaint are true and I am competent to testify to these matters.

Date _____ Signature of Affiant _____

DC-CV-001 (Front) (Rev. 01/2016)

Reset

NOTICE OF INTENTION TO DEFEND

- If NOID is filed, the defendant does not need to appear at affidavit judgment hearing
- Case is set in for a merits trial
- Rules require filing within 15 days of service (Md. Rule 3-307(b))
- Court will accept NOID at affidavit judgment hearing if court is satisfied that the defendant may have a defense (Md. Rule 3-307(e))
- Process differs based on jurisdiction

Located at 501 East Fayette St., Baltimore, Maryland 21202

WRIT OF SUMMONS

Defendant : [redacted]
Serve On :
Address :

Date Filed : Nov 2, 2017
Issue Date : Nov 6, 2017
Case Number : 010100[redacted]
Complaint No. : 001

Trial Date : Feb 6, 2018
Trial Time : 08:30 am
Trial Room :

You are summoned to appear for trial at the date, time and location shown above. If you intend to be present at the trial, you must file the attached Notice of Intention to Defend within fifteen days of receiving this complaint. Failure to file the Notice of Intention to Defend may result in a judgment by default or the granting of the relief sought.

MUST BE SERVED BY Dec 6, 2017 **Mary J Abrams, Administrative Clerk / PAV**

To Private Process Server :
You are hereby commanded to serve this writ of summons and to make your return promptly if served. If you are unable to serve, you are to make your return below and return the original process to the court no later than ten days following the termination of the validity of the process.

I certify that:

☒ I served a summons by delivery of the complaint and all supporting papers to [redacted]
on date 12 / 6 / 20 17 at location [redacted]
The person I left the papers with acknowledged being: (1) A resident of above listed address; (2) 18 years of age or older; (3) of suitable discretion in that relationship to the defendant is [redacted]
and that; (4) the above listed address is the defendant's residence or usual place of abode. The facts upon which I concluded that individual served is of suitable age discretion are: _____
The cost of service is $ _____

Description of the Defendant / Person Served : Race B Sex F Height 5' 4 Weight 180 Age 62

☐ I was unable to serve because _____

Attempt: 12/6/17 Attempt: _____ Attempt: _____ Attempt: _____

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information and belief and do further affirm I am a competent person over 18 years of age and not party to the case.

Print Name of Process Server Complete Address of Process Server

Date : 12 / 6 / 20 17 Signature [redacted] Phone No [redacted]

CUT HERE ----- ----- CUT HERE

NOTICE OF INTENTION TO DEFEND

Defendant : [redacted]
Trial Date : Feb 6, 2018

Case # 010100[redacted]
Complaint # 001

Notice : If you **contest the claim** or any part thereof, you must complete this Notice of Intention to Defend and file with the court listed at the top of this summons no later than 15 days after you receive this Summons and be present in court on the trial date. If you do not appear judgment by default or the relief sought may be granted.

A corporation may enter an appearance only by an attorney except that an officer of the corporation may appear on its behalf if the action is based on a claim that does not exceed $5,000.00.

Any reasonable accommodation for persons with disabilities should be requested by contacting the court prior to trial.

Possession and use of cell phones and other electronic devices may be limited or prohibited in designated areas of the court facility.

SEE ATTACHED NOTICE FOR IMPORTANT INFORMATION

I intend to be present at the trial of this claim and demand proof of the Plaintiff's claim.

Explanation of defense : _____

___ / ___ / 20 ___ _____ (___) _____ (___) _____
Date Signature Work Phone Home Phone

Address/City/State/Zip code

Fax number e-Mail Address

WHAT TO EXPECT AT THE AFFIDAVIT JUDGMENT HEARING

- Usually, only Defendant appears
- Opportunity to enter a Notice of Intention to Defend (Md. Rule 3-307)
- Affidavit judgment entered if Defendant fails to appear

ASSIGNED CONSUMER DEBT

- More requirements than other types of debt when pursuing affidavit judgment
- NOID should state if there are any areas missing

☐ Private Process
☐ Constable
☐ Sheriff

2. **Serve by:** ☐ Certified Mail ☐ Private Process ☐ Constable ☐ Sheriff

3. **Serve by:** ☐ Certified Mail ☐ Private Process ☐ Constable ☐ Sheriff

ATTORNEYS

For Plaintiff - Name, Address, Telephone Number & Code

Total Principal + Interest: $_____.

Plus attorney's fees of $_____ plus court costs.

_____
Signature of Plaintiff/Attorney/Attorney Code

Printed Name: _____

Address: _____

Telephone Number: _____

Fax: _____

E-mail: _____

MILITARY SERVICE AFFIDAVIT

☐ Defendant(s), _____, is/are in the military service.

☐ No Defendant is in the military service. The facts supporting this statement are: _____

Specific facts must be given for the Court to conclude that each Defendant who is a natural person is not in the military.

☐ I am unable to determine whether or not any Defendant is in military service.

I hereby declare or affirm under the penalties of perjury that the facts and matters set forth in the aforegoing Affidavit are true and correct to the best of my knowledge, information, and belief.

Date: _____

Signature of Affiant: _____

Type or Print Name

APPLICATION AND AFFIDAVIT IN SUPPORT OF JUDGMENT AND ASSIGNED CONSUMER CHECKLIST

(See Plaintiff Notice on Back Page)

I HEREBY CERTIFY that (1) I am the ☐ Plaintiff or _____ of the Plaintiff herein and that I am competent to testify to the matters stated in the Complaint and in this Affidavit and Checklist, which are made on my personal knowledge, (2) that the Plaintiff is the owner of the debt(s) which is/are the subject of this case, (3) that there is justly due and owing by the Defendant to the Plaintiff the amount(s) set forth in the complaint, and (4) the claim is filed within the statute of limitations.

The following information is provided as required by Rule 3-306(d):

☐ **1. PROOF OF THE EXISTENCE OF THE DEBT OR ACCOUNT - Rule 3-306 (d)(1) (Exhibit #_____)**

Certified or properly authenticated:

☐ Document signed by the Defendant evidencing the debt or opening of account; or

☐ Bill or other record reflecting purchases, payments, or other use of credit card or account by the Defendant; or

☐ Electronic printout or documentation from the original creditor establishing the account and showing activity by the Defendant.

Case No. _____

_____ Plaintiff VS. _____ Defendant(s)

☐ **2. PROOF OF TERMS AND CONDITIONS - Rule 3-306 (d)(2) (Exhibit #_____)**

☐ Certified or properly authenticated photocopy or original document showing the terms and conditions of the consumer debt.

☐ **Does not apply** because the consumer debt is an unpaid balance due on a credit card, the original creditor is or was a financial institution subject to regulation by the Federal Financial Institutions Examination Council or a constituent federal agency of that Council, and the claim does not include a demand or request for attorneys' fees or interest on the charge-off balance in excess of the Maryland Constitutional rate of six percent per annum.

☐ **3. PROOF OF THE PLAINTIFF'S OWNERSHIP - Rule 3-306 (d)(3) (Exhibit #_____)**

Chronological list of names of all prior owners of the debt and date of each transfer (begin with original):

Name and Date	Name and Date

☐ Certified or properly authenticated copy of the bill of sale or other document transferring ownership to each successive owner.

☐ **4. IDENTIFICATION AND NATURE OF DEBT OR ACCOUNT - Rule 3-306 (d)(4)**

Name of Original Creditor	Full Name of Defendant On Original Account	Last 4 Digits of SSN	Last 4 digits of Orig. Acct. #	Type of Transaction (utility, credit card, consumer loan, etc.)

☐ **5. FUTURE SERVICE CONTRACT INFORMATION - Rule 3-306 (d)(5)**

Include facts showing the Plaintiff is currently entitled to an award of damage under the contract: _____

☐ **6. CHARGED OFF ACCOUNTS: ACCOUNT CHARGE-OFF INFORMATION-Rule 3-306 (d)(6) (Exhibit #_____**

☐ Date of the Charge-off: _____ ☐ Charge-off Balance: _____

☐ Additional fees or charges: _____

☐ Post charge-off payments and credits: _____

☐ Date of the last payment on debt or last transaction giving rise to the debt: _____

☐ **7. DEBTS AND ACCOUNTS NOT CHARGED-OFF - Rule 3-306 (d)(7) (Exhibit #_____)**

☐ Itemized list of all money claimed including principal, interest, finance charges, service charges, late fees, and other fees or charges added to principal by Plaintiff: _____

☐ Amount and date of the consumer transaction causing the debt, or for multiple transactions, the amount and date of the last transaction: _____

☐ Statement of the amount and date of the last payment on the debt: _____

☐ **8. LICENSING INFORMATION - Rule 3-306 (d)(8)** List all Maryland Collection Agency Licenses the Plaintiff currently holds:

Name of Collection Agency	License Number	Name on License	Date of Issue

☐ (See Continuation Sheet)

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of this Affidavit and Checklist are true and corre

_____ Date _____ Signature of Affiant

_____ Address _____ Printed Name

_____ Telephone Number _____ Title / Capacity

WHEN MEETING WITH THE DEFENDANT

- Introduce yourself
- Any questions about the paperwork they signed
- Explain process of affidavit judgment
- Explain consequences of judgment – garnishment, attach property, length of judgment

LACK OF SERVICE

- Was defendant actually served?
- Check affidavit of service
- Proof of non-service- lease at another address, etc.
- Waived if not raised preliminarily
- Fundamental, due process right
  - *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)

PLAINTIFF'S RIGHT TO BRING ACTION

- Is Plaintiff in good standing with the State Department of Assessments & Taxation?
  - When an LLC faces forfeiture, "the right to do business in Maryland and the right to the use of the name for each limited liability company is forfeited as of the date of the proclamation, without proceedings of any kind either at law or in equity." Md. Code Ann., Corps. & Ass'ns § 4A-911.
  - Forfeited LLC may only defend an action in court, not prosecute one. *Price v. Upper Chesapeake Health Ventures*,. 192 Md. App. 695, 709 (2010).
- Correct plaintiff – name on contract matches the name of the plaintiff
  - Move to dismiss – Md. Rule 3-201

PLAINTIFF'S REPRESENTATION

- Large claim – if company, must be represented by an attorney
  - Check attorney's status on mdcourts.gov
- Even if small claim, company must be represented by attorney or:

"an officer of a corporation, an employee designated by an officer of a corporation, a partner in a business operated as a partnership or an employee designated by a partner, a member of a limited liability company or an employee designated by a member of a limited liability company, or an employee designated by the owner of a business operated as a sole proprietorship while the officer, partner, member, or employee is appearing on behalf of the corporation, partnership, limited liability company, or business" (Md. Code Ann., Bus. Occ. & Prof. § 10-206)

  - If individual qualifies as such, must have power of attorney

10-206 POWER OF ATTORNEY

- Must be certified by employer of the agent
- Certifies that the employee is an authorized agent and may bind the organization on matters pending before the court
- Check to see if Complaint indicates that the agent works for a different employer (e-mail address, affidavit, etc.)

STATUTE OF LIMITATIONS

- Most causes of actions – 3 years
- Exceptions:
  - Repo cases – 4 years
  - Contracts signed under seal
    - Prohibited in residential landlord/tenant leases (*Simmons v. Maryland Mgmt. Co.*, 253 Md. App. 655, (2022))
- Last time consumer made a payment or purchase
- Are charges more than 3 years old?
- Date lawsuit was filed, not date of service

VENUE

- Does consumer live or work in venue where being sued?
- Was contract signed in venue where being sued?
- Motion to dismiss or transfer for improper venue (Md. Rule 3-326)
- Violation of federal and state debt collection laws
  - 15 U.S. Code § 1692i
  - Md. Code Ann., Com. Law § 14-202(11)

CREDIT CARD CASES

- Identity theft
  - FTC affidavit
  - Police report
  - Proof of address/charges

LANDLORD/TENANT CASES

- Is property required to be licensed, and if so, was it?
- Lead registration
- Habitability issues
- Rental assistance
- Charges appear reasonable
- Documentation to support damages
- Lease allow for fees/charges
- Pre-judgment interest should start from date list of charges is sent

BAIL BOND CASES

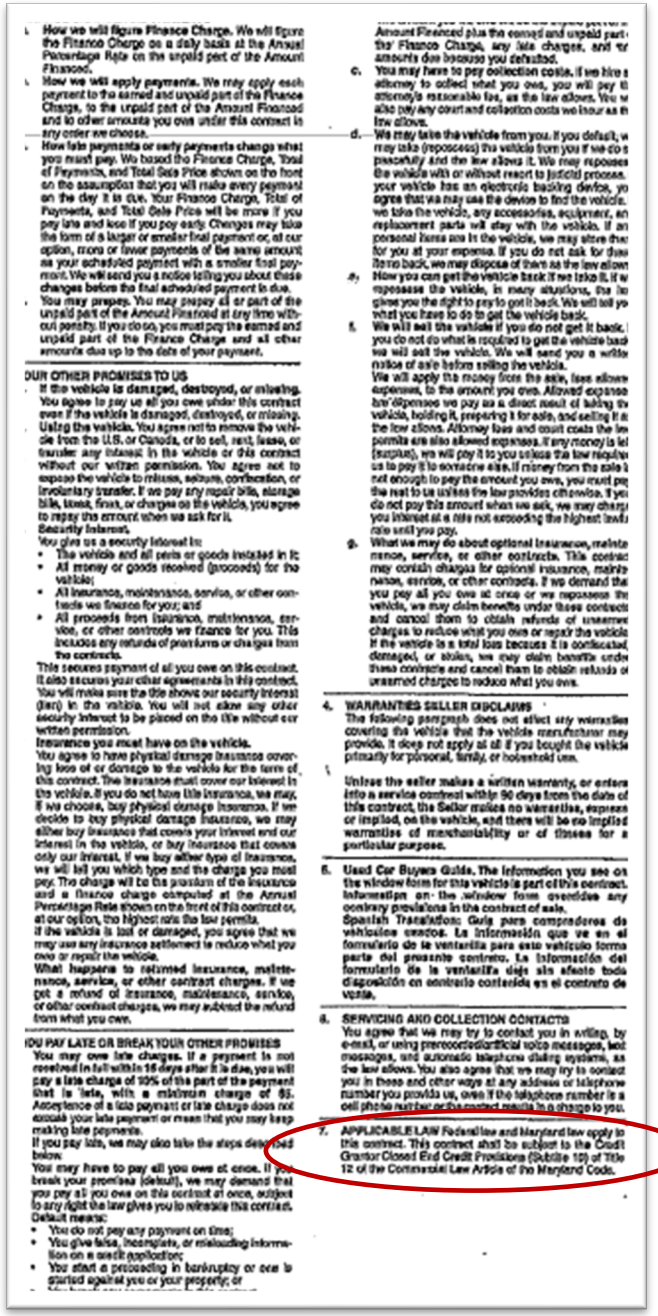
- Bail bond company required to be licensed by Maryland Insurance Administration
  - Complete a search here: https://www.apps.insurance.maryland.gov/CompanyProducerInfo/ProducerFirmAgencySearch.aspx?NAV=HOME
- Cannot seek pre-judgment interest
  - Bail bond premiums are limited to 10% of the total bail amount

BAIL BOND INSTALLMENT AGREEMENTS

- Total amount of premium owed
- Amount of any down payment
- Balance amount owed
- Amount and due bate of each installment payment
- Total number of installment payments
- Prohibited: confessed judgment clause (added to law in 2017)

AUTOMOBILE REPOSSESSION CASES

- Did defendant receive any notices before and after repossession?
- What law applies?
  - If contract was signed in Maryland, probably CLEC (Credit Grantor Closed End Credit Provisions, Md. Code Ann., Com. Law § 12-1001, et seq.)
  - If Retail Installments Sales Contract, but it does not elect CLEC, then RISA (Retail Installment Sales, Md. Code. Ann., Com. Law § 12-601, et seq.)
  - If contract not signed in Maryland, probably UCC (Uniform Commercial Code, Md. Code Ann., Com. Law § 9-101, et seq.)



How we will figure Finance Charge. We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.

How we will apply payments. We may apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of the Amount Financed and to other amounts you owe under this contract in any order we choose.

How late payments or early payments change what you must pay. We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.

You may prepay. You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.

OUR OTHER PROMISES TO US

If the vehicle is damaged, destroyed, or missing. You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.

Using the vehicle. You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay this amount when we ask for it.

Security Interest.

You give us a security interest in:

- The vehicle and all parts or goods installed in it;
- All money or goods received (proceeds) for the vehicle;
- All insurance, maintenance, service, or other contracts we finance for you; and
- All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.

This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.

Insurance you must have on the vehicle.

You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium of the insurance and a finance charge computed at the Annual Percentage Rate shown on the front of this contract or, at our option, the highest rate the law permits.

If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.

What happens to returned insurance, maintenance, service, or other contract charges. If we get a refund of insurance, maintenance, service, or other contract charges, we may subtract the refund from what you owe.

IOU PAY LATE OR BREAK YOUR OTHER PROMISES

You may owe late charges. If a payment is not received in full within 15 days after it is due, you will pay a late charge of 10% of the part of the payment that is late, with a minimum charge of $5. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.

If you pay late, we may also take the steps described below.

You may have to pay all you owe at once. If you break your promises (default), we may demand that you pay all you owe on this contract at once, subject to any right the law gives you to reinstate this contract.

Default means:

- You do not pay any payment on time;
- You give false, incomplete, or misleading information on a credit application;
- You start a proceeding in bankruptcy or one is started against you or your property; or

Amount Financed plus the earned and unpaid part of this Finance Charge, any late charges, and other amounts due because you defaulted.

c. You may have to pay collection costs. If we hire an attorney to collect what you owe, you will pay the attorney's reasonable fee, as the law allows. You will also pay any court and collection costs we incur as the law allows.

d. We may take the vehicle from you. If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. We may repossess the vehicle with or without resort to judicial process. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.

e. How you can get the vehicle back if we take it. If we repossess the vehicle, in many situations, the law gives you the right to pay to get it back. We will tell you what you have to do to get the vehicle back.

f. We will sell the vehicle if you do not get it back. If you do not do what is required to get the vehicle back we will sell the vehicle. We will send you a written notice of sale before selling the vehicle.

We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it as the law allows. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us unless the law provides otherwise. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.

g. What we may do about optional insurance, maintenance, service, or other contracts. This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

4. **WARRANTIES; SELLER DISCLAIMS**

The following paragraph does not affect any warranties covering the vehicle that the vehicle manufacturer may provide. It does not apply at all if you bought the vehicle primarily for personal, family, or household use.

Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose.

5. **Used Car Buyers Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

6. **SERVICING AND COLLECTION CONTACTS**

You agree that we may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.

7. **APPLICABLE LAW** Federal law and Maryland law apply to this contract. This contract shall be subject to the Credit Grantor Closed End Credit Provisions (Subtitle 10) of Title 12 of the Commercial Law Article of the Maryland Code.

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7. **APPLICABLE LAW** Federal law and Maryland law apply to this contract. This contract shall be subject to the Credit Grantor Closed End Credit Provisions (Subtitle 10) of Title 12 of the Commercial Law Article of the Maryland Code.

IF CLEC APPLIES – POST-REPO NOTICES

- Within 5 days after repossession, notice must be sent by registered or certified mail which states:
  1. Right to redeem and amount required
  2. Rights of borrower to resale and liability for deficiency; and
  3. Exact location where property is stored and address where any payment is to be made
- Vehicle must be sold at private sale or public auction
- At least 10 days before the sale, must be notified of time and place of sale

IF CLEC APPLIES – POST-SALE NOTICES

- If private sale:

  (i) The unpaid balance at the time the goods were repossessed;

  (ii) The refund credit of unearned finance charges and insurance premiums, if any;

  (iii) The remaining net balance;

  (iv) The proceeds of the sale of the goods;

  (v) The remaining deficiency balance, if any, or the amount due the buyer;

  (vi) All expenses incurred as a result of the sale;

  (vii) The purchaser's name, address, and business address;

  (viii) The number of bids sought and received; and

  (ix) Any statement as to the condition of the goods at the time of repossession which would cause their value to be increased or decreased above or below the market value for goods of like kind and quality.

Md. Code Ann., Com. Law § 12-1021(j)(2)

IF CLEC APPLIES – POST-SALE NOTICES

- If public sale and loan was in excess of $2,000 at time loan was made
- Notice must show distribution of proceeds:
  1. Actual and reasonable cost of sale;
  2. Actual and reasonable cost of retaking and storing the property; and
  3. Unpaid balance owing under the agreement at the time the property was repossessed
- Deficiency judgment – when creditor is not entitled (Md. Code Ann., Com. Law § 12-1021(k)(4))

IF RISA APPLIES – POST-REPO NOTICES

- Within 5 days after repossession, notice must be given personally or sent by registered or certified mail which states:
  1. Right to redeem and amount required
  2. Rights of borrower to resale and liability for deficiency; and
  3. Exact location where property is stored and address where any payment is to be made
- Vehicle must be stored for 15 days in county where goods were sold or were repossessed

IF RISA APPLIES – SALE PROCESS

- Public sale if:
  1. At least 50% of cash price of goods has been paid; and
  2. Within 15 days after notice of repo is sent, buyer requests sale of the goods in writing by registered or certified mail
- Notice must be sent 10 days before sale of time and place of sale
- Notice must show distribution of proceeds:
  1. Actual and reasonable cost of sale;
  2. Actual and reasonable cost of retaking and storing the goods; and
  3. Unpaid balance owing under the agreement at the time the goods were repossessed
- Deficiency judgment – when creditor is entitled
  1. Agreement provides for liability for a deficiency; and
  2. Creditor complied with all requirements of this subtitle, including the notice requirement of § 12-624(d) of this subtitle.

     (Md. Code Ann., Com. Law § 12-626(e)(4))

IF UCC APPLIES – POST REPO NOTICES

- Notices must include the following:
  a. Description of debtor and secured party (e.g., consumer and finance company)
  b. Description of collateral (vehicle make and model, VIN)
  c. Method of intended disposition (public or private sale)
  d. Notice that debtor is entitled to an accounting of any unpaid indebtedness and charge, if any, for accounting
  e. Time and place of a public sale
  f. Description of liability for a deficiency
  g. Telephone number to find out amount to redeem collateral
  h. Telephone number or mailing address for additional information

  (Md. Code Ann., Com. Law §§ 9-613, 9-614)

TIPS FOR CONSUMERS NEGOTIATING A SETTLEMENT

- Contact plaintiff's attorney
- Ask for dismissal if defendant receives public benefits
- Negotiate lower total principal
- Do not give employment information
- 3-506(b) dismissal

QUESTIONS?

Chelsea Ortega

cortega@svolaw.com

Santoni, Vocci & Ortega, LLC

201 W. Padonia Road, Suite 101

Lutherville-Timonium, MD 21093

Phone: 443-921-8161

Fax: 410-525-5704

www.svolaw.com