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Is debtors' prison making a comeback in Illinois?

By Neil Schneider

Illinois citizens worrying about paying off their debts might now have to also worry about being thrown in jail if they do not pay. Despite it being illegal in Illinois to put someone in jail because of their debt, collection agencies may have found a way to do just that.

The problem is twofold. First, there currently isn't a way to determine if the individual ever receives their summons or notice to appear in court, which is leading to an increasing number of people being put in jail for their debt. Also, collection agencies have resorted to questionable tactics, by using the courts, to collect debts.

In a Jan. 11 press release detailing the top 10 consumer complaints of 2011, Attorney General Lisa Madigan's office said that for the fourth consecutive year consumer debts ranked No.1. The release said that of the 5,878 debt-related complaints, more than 1,100 were filed against debt collectors for illegally threatening or harassing consumers.

"As this difficult economy persists, honest, hard-working families are increasingly targets for debt collectors that operate outside the law," Madigan said. "Though consumers may be struggling under the weight of debt, they have rights to protect them from harassment and fraud. My office is here to help ensure debt collectors uphold their rights."

Here's how the process works:

First, a company that is owed money by an individual will sell off the individual's debt to a collection agency, which then becomes the creditor. The creditor will then file a civil lawsuit against the debtor, which will require a court appearance. A notice or summons to appear in court is then to be given or sent to the debtor. If the debtor does not show up for their court date, a judge has the ability to issue a warrant for the debtor's arrest.

Bill Bartmann, CEO and founder of debt collection agency CFS II of Tulsa, Okla., says that one of the major problems with this process is that "proof of service" currently does not have any methods that verify that the summons was ever delivered or

received by the debtor. Proof of service is the evidence that a legal or official document has been delivered to the intended address or party.

“Generally speaking, if I’m a process server (someone who could serve the summons or notice to appear in court) and I have this piece of paper that I have to serve to an individual notifying them of their court appearance, I am the one who also gets to go back to the courthouse and tell them that I served the notice, even if that is not the case,” Bartmann said.

It is possible that the debtor does not receive this notice to appear in court and doesn’t even know that a lawsuit has been filed against him or her. Additionally, if a citizen is later stopped by police they can be arrested and placed in jail for failure to appear in court, not because of their debt.

Susan Hofer, spokesperson for the Illinois Department of Financial and Professional Regulations, said that her office has heard of cases where after the debtor has been arrested and taken to jail, the bond is set at the same amount as the debt that the individual owed the creditor.

“Instead of the bond being something like \$100 or \$300 and when they (the debtor) appear in court next week they get their money back, the judge would instead give the bond money to the lenders, not to the person who gave the money as bond,” Hofer said.

Bartmann, who recently spoke at a public meeting in Marion, Ill., conducted by the Illinois Department of Financial and Professional Regulation about debtors’ prisons, cited an example in New York where process servers were actually throwing the debtors’ paperwork in the sewer (Bartmann called them “sewer servers”) and going back to the courts and alleging that they had signed the paperwork.

“Former New York Attorney General Andrew Cuomo, now Governor Cuomo, threw out 100,000 lawsuits because they found them flawed,” Bartmann said.

Bartmann believes that it is illegal to put consumers in jail if they’re unaware of their debt or if they simply cannot afford to pay it.

Hofer said that after hearing the concerns by citizens at the meeting in Marion, as well as the meeting in Alton, the next step for their department is to start drafting a legislative solution that will establish a more “level playing field.”

“If someone is ordered to court and the letter goes to the wrong address, is it the person who didn’t show up’s, fault? Or is it the fact that the person never knew that they had to show up?” said Hofer.

“We want to make sure that if an order to appear is issued in court, that it is physically handed to the person that is expected to come to court, as opposed to sending it to an address that the person no longer lives at or never lived at.”

<http://www.illinoistimes.com/Springfield/article-9567-is-debtorsrs-prison-making-a-comeback-in-illinois.html>