

TITLE 13 DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 13-01 GENERAL PROVISIONS

13-01-01. Definitions of creditor and debtor. In this chapter, unless the context or subject matter otherwise requires:

1. "Creditor" means one in whose favor an obligation exists by reason of which the person is or may become entitled to the payment of money.
2. "Debtor" means one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

13-01-02. Debtor's contract valid in absence of fraud. In the absence of fraud, every contract of a debtor is valid against all of the debtor's creditors, existing or subsequent, who have not acquired a lien on the property affected by the contract.

13-01-03. Creditors may be preferred. Except as otherwise provided in section 13-02.1-05, a debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of that creditor's demand in preference to another.

13-01-04. Marshalling funds - Rights of creditors. When a creditor is entitled to resort to each of several funds for the satisfaction of the creditor's claim and another person has an interest in, or is entitled as a creditor to resort to, some but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim so far as it can be done without impairing the right of the former to complete satisfaction and without doing injustice to third persons. This section does not apply to execution sales of real estate mortgage foreclosures.

13-01-05. Transfers with intent to defraud or delay creditors are void. Repealed by S.L. 1985, ch. 186, § 12.

13-01-06. Transfer of personalty without changing of possession or filing of instrument presumed fraudulent. Repealed by S.L. 1985, ch. 186, § 12.

13-01-07. Instruments affecting realty void when made with intent to defraud - Good-faith purchaser protected. Repealed by S.L. 1985, ch. 186, § 12.

13-01-08. When act of debtor void for fraud. Repealed by S.L. 1985, ch. 186, § 12.

13-01-09. Preference by special partnership or by member thereof - When void. Repealed by S.L. 1985, ch. 186, § 12.

13-01-10. Fraudulent intent a question of fact. In all cases arising under the provisions of this chapter, the question of fraudulent intent is one of fact and not of law. No transfer or charge may be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

13-01-11. Fraudulent conveyance - Penalty. Any person who is a party to any conveyance or assignment of any interest in real or personal property entered into with intent to defraud prior or subsequent purchasers, creditors, or other persons except those with security interest in the property involved, who knowingly participates in such a conveyance or assignment, is guilty of a class A misdemeanor.

13-01-12. Removing or disposing of property to defraud creditors - Penalty. Every person who removes any of the person's property from a county with intent to prevent a levy thereon under execution or attachment, or who secretes, assigns, conveys, or otherwise disposes of any of the person's property with intent to defraud any creditor or to prevent the property from being made liable for the payment of the person's debts, and every person who receives any property with such intent, is guilty of a class A misdemeanor.

13-01-13. Unlawfully preferring creditors - Penalty. Every person who, knowing that the person's property is insufficient for the payment of all of the person's lawful debts, shall assign, transfer, or deliver any property for the benefit of any creditor or creditors upon any trust or condition that any creditor shall receive a preference or priority over any other creditor, or with intent to create such a preference or priority, is guilty of a class A misdemeanor. This section does not apply to the giving or creating of preferences expressly allowed by law.

13-01-14. Late payment charge on accounts receivable - Exceptions.

1. A creditor may charge, receive, and collect a late payment charge on all money due on account from thirty days after the obligation of the debtor to pay has been incurred. A creditor may assign an account receivable that is subject to this section. An assignee of an account receivable has the same right to charge a late payment charge as does an original creditor for the assigned account receivable.
2. The late payment charge allowed under this section may not exceed one and three-fourths percent per month.
3. The late payment charge allowed under this section may not be charged unless, when the obligation was incurred, the creditor did not intend to extend any credit beyond thirty days and any late payment of the obligation was unanticipated.
4. This section does not apply to:
 - a. Money due on retail installment contracts, as defined in chapter 51-13.
 - b. Money due on revolving charge accounts, as defined in chapter 51-14.
 - c. Money due a medical services provider on accounts receivable for medical bills.

13-01-14.1. Late payment charge on accounts receivable for medical services - Limitations on extensions of credit by medical providers.

1. This section applies to a creditor that is a medical services provider for debts incurred in providing medical services.
2. A creditor that is a medical services provider may not charge, receive, or collect a late payment charge on money due on an account receivable for medical services except as provided under this section. For purposes of late charges on accounts receivable under this section:
 - a. An account for medical services, except an account for medical services of a licensed nursing facility or basic care facility, does not become delinquent until ninety days have passed following receipt of the billed medical services; and
 - b. An account for medical services of a licensed nursing facility or basic care facility does not become delinquent until forty-five days have passed following billing of the medical services.

3. The account receivable late payment charge allowed under this section may not be charged unless, when the obligation was incurred, the creditor did not intend to extend any credit and late payment of the obligation was unanticipated.
4. A creditor that is not a hospital may charge, receive, and collect an account receivable late payment charge under this section at a rate that does not exceed one percent per month. A creditor that is a hospital may charge, receive, and collect an account receivable late payment charge under this section at a rate that does not exceed one percent per month, not to exceed twenty-five dollars per month.
5. Notwithstanding a higher rate or amount that may be allowed under any other law or agreed to in any written or verbal agreement, the finance charge, credit service charge, or rate of interest for an extension of credit for medical services which is charged by:
 - a. A medical services provider that is not a hospital may not exceed one percent per month.
 - b. A hospital may not exceed one percent per month, not to exceed twenty-five dollars per month.

13-01-15. Late payment on accounts receivable - Periodic statement to be furnished to debtor.

1. A creditor may not charge the account receivable late payment charge provided for under section 13-01-14 or 13-01-14.1 unless the creditor promptly supplies the debtor with a statement as of the end of each monthly period, or other regular period agreed upon by the creditor and the debtor, in which there is any unpaid balance.
2. Such statement must state, in any order, the following:
 - a. The percentage amount of the late payment charge which will be charged beginning thirty days after the obligation is incurred for purposes of section 13-01-14, or beginning after the billed medical services become delinquent for purposes of section 13-01-14.1.
 - b. The unpaid balance at the end of the period.
 - c. An identification of any amount debited to the debtor's account during the period.
 - d. The payments made by or for the debtor to the creditor during the period.
 - e. The amount of the late payment charge.
3. Additional items may be included in the statement to explain the computations made in determining the amount to be paid by the debtor.