

One Minute Memo®



New Limitations on Confessions of Judgment in New York

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A procedural device known as a “confession of judgment” has long been an important tool in New York state. Section 3218 of New York’s Civil Practice Law and Rules (known as the CPLR) allows a party to sign an affidavit confessing that he or she owes the other party an amount certain, and authorizing the beneficiary party to file the affidavit with a New York state county clerk in order to obtain a judgment against the authorizing party in that amount.

Confessions of judgment are often used in conjunction with settlement agreements or as part of transactional documents in New York. For example, one party might sign a confession of judgment to be held in escrow pending that party’s fulfillment of its obligations under the settlement agreement or transactional documents. If the party fails to fulfill its obligations – e.g., by failing to pay the amount owed to the other party – then the confession of judgment is released from escrow and can be filed with the court. The beneficiary party can thereafter obtain a judgment in the “confessed” amount from the court and enforce that judgment, without having to file and prosecute an action for breach of the settlement agreement. Essentially, these confessions serve to streamline recovery of what are undisputed amounts.

Confessions of judgment have always had some limitations. In particular, confessions of judgment are only valid for three years after they are signed.¹ Given how quickly a confession of judgment can be turned into an actual judgment, and the potential for abuse, the New York legislature has recently amended CPLR § 3218 further to restrict the use of confessions of judgment.

Effective as of August 30, 2019, confessions of judgment executed after that date by parties that reside outside of New York are no longer enforceable. Amended CPLR § 3218 provides that the confession must state the New York county in which “the defendant resided when it was executed,” and that the confession may only be filed in that county or, if the defendant moved to a different county within New York after signing the confession, “where the defendant resided at the time of filing.”² Although the amended rule makes clear that only confessions signed by parties that are New York residents at the time of signing are enforceable, it appears to allow confessions of judgment to be enforced against parties that resided in New York when they signed the confession, but thereafter moved outside of the state. As under the prior version, the confession must be filed within three years of execution.³

¹ CPLR § 3218(b).

² 2019 N.Y. SB 6395.

³ *Id.*

Importantly, a “non-natural person” – e.g., corporation, limited liability company, and so forth – is deemed to “reside[] in any county where it has a place of business,” rather than only in the county where it maintains its headquarters.⁴ Moreover, government agencies are exempted from the requirements of the amended rule, and are permitted to file a confession of judgment against an individual or an entity in any county within New York even if that individual or entity is not a New York resident.⁵

The New York Legislature expressly stated that it amended CPLR § 3218 in order “to remedy abuses in the use of confessions of judgment by creditors against out-of-state debtors.”⁶ According to the amendment’s supporters, “creditors, often from out-of-state, have entered confessions of judgment in various New York counties against debtors who themselves are out-of-state small business owners with no connection to New York.”⁷ The Legislature hopes that these amendments will “correct such abuse without frustrating legitimate use of confessions of judgment within the State” by “limiting the venue for filing a confession of judgment to in-state debtors.”⁸

Parties engaged in litigation in New York state court, or in transactions with some New York nexus, that involve parties outside of New York should accordingly take heed of these amendments to CPLR § 3218. The amendments may affect the parties’ ability to utilize a confession of judgment in connection with any agreement entered into by the parties.

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⁴ *Id.*

⁵ *Id.* The New York Legislature exempted government agencies from the prohibition against filing confessions of judgment signed by out of state parties because “[g]overnment agencies often use confessions of judgment to ensure that they can recover assets to pay, for example, restitution to victims.” Sponsor Memo, June 10, 2019, 2019 Legis. Bill. Hist. NY S.B. 6395.

⁶ Sponsor Memo, June 10, 2019, 2019 Legis. Bill. Hist. NY S.B. 6395.

⁷ *Id.*

⁸ *Id.*

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