The Connection

Prepared Exclusively for FCN's Clientele

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Adding Fees

Evaluate State and Federal Laws Before Adding Fees to Recoup Collection Costs

Creditors often look for ways to obtain collection costs from consumers. One way they can recoup costs is by adding interest, service fees, collection costs or transaction fees, to delinquent accounts. "Adding legally permissible fees can be a way of increasing your revenue in a time in our industry where contingency rates are shrinking every day," said Porter Heath Morgan IV, in-house counsel at BC Services in Longmont, Colorado.

Adding fees when collecting a debt is tempting, but creditors should evaluate state and federal laws beforehand because, if done improperly, added fees can bring unwanted legal attention.

Collection Costs

The Fair Debt Collection Practices Act (FDCPA) and state laws may place restrictions on adding fees and what can be included in a contract permitting such charges. "Making sure you are legally authorized to collect the fee is very important," Morgan said.

The FDCPA prohibits the collection of any amount incidental to the principal debt unless the amount is expressly authorized in the agreement creating the debt or permitted by law. This applies to interest, service charges, collection charges and late fees.

While the FDCPA may not apply to all creditors, state law may restrict the amount of interest or fees that can be applied to the principal or specify how fee provisions must be presented in the contract.

Additionally, if a creditor is placing an account with a third-party collector, the third-party collector will likely be subject to the Act. Thus, it is important for creditors to comply with the FDCPA and state law to ensure they and their third-party agents are not violating federal or state laws.

The FDCPA permits adding fees to a consumer's debt if the fees are authorized by the contract creating the debt. Creditors attempting to add collection fees to a debt should draft language permitting the addition of the fee in the contract creating the debt.

"Express contractual consent gives the most protection, as only a few states restrict such language," Morgan said.

Specific language in the contract may provide for the addition of collection costs, attorney fees and/or legal costs. The language may also state at what percentage or rate these fees or costs can be added. Collection costs should be itemized in the original consumer agreement and bear a relationship to the actual costs or collection.

"When adding fees, it is important to evaluate the language in the contract," Morgan said.

Small variances in contractual language can affect a creditor's ability to add a fee. For example, Morgan noted the language "costs of collection" likely does not include attorneys' fees.

One Minnesota court held percentage-based collection costs may not be added to a debt when the language of the contract states the fees are related to "costs incident to collection." (See Kojetin v. C U Recovery Inc., 212 F.3d 1318 (8th Cir. 2000).) Therefore, contractual language must be precise, and it may be necessary to discuss this language with a qualified attorney.

(cont'd on Page 2)

ADDING FEES (CONT'D)

It's also important to evaluate state law when drafting contractual language, as certain states may require fees to be set forth in a particular way. For example, Arizona state law provides the specific percentage of additional charge being added to the principal must be indicated in the contract creating the debt. Stating the patient is responsible for "all collection fees" is not permissible in the state.

Even though the contract creating the debt may permit adding fees, state law may restrict the addition of such fees. Because of the legality of adding fees to an original debt is dependent not only on the contract creating the debt, but also on whether the collection of that amount is permitted by law, creditors should examine state laws when determining if a fee can be added.

The type of debt a creditor is collecting may also determine whether or not fees can be added.

Municipal Debt

Generally, state or local law determines whether or not a fee can be added to municipal or government debt. Municipal debt includes, but is not limited to, tax debt, parking fees or fines, child support debt and other government fees or fines. According to Morgan, the addition of fees on municipal debt is generally permitted. However, creditors should evaluate relevant laws before adding a fee to municipal debt.

"When collecting any type of government debt, it is important to speak with any attorney who is familiar with fees and what is permissible to charge in that state," Morgan said.

Transaction Fees

A transaction fee, also known as a convenience fee, is a fee for processing a particular method of payment, such as a credit card, debit card, demand draft or check-by-phone.

"When assessing the permissibility of adding convenience fees, look to the contract creating the debt and state law for guidance," Morgan said.

Some states have interpreted their law as prohibiting the charging of a transaction fee, while other states may impose restrictions on the application of a transaction fee.

"Many states prohibit an aspect of adding transaction fees," Morgan said.

For example, one state may not permit a transaction fee on a particular type of draft, such as a demand draft, while another state may not permit a transaction fee unless it is expressly authorized in the original contract or permitted by law.

Creditors should also look at the contract when determining if a transaction fee can be added, as contractual language may place additional restrictions on whether a fee can be added or how much can be charged. Morgan noted that credit card companies often dictate which transaction fees can be added when paying by credit card.

"When adding convenience fees, make sure it is a fee for convenience and provide other avenues of payment where a fee is not charged," Morgan said.

The consumer can then choose to pay by the method where an additional fee is incurred, or pay by the method with which a fee is not associated. Creditors should document the payment methods offered to the consumer. If the consumer chooses a payment method with a fee option, the creditor should also document the consumer's authorization.

Additionally, the amount of the transaction fee should be directly related to the actual cost associated with processing the transaction on behalf of the consumer, and not be an addition to the debt made to benefit the creditor or collector.

Careful Evaluation

While the temptation to impose additional fees on delinquent receivables is great, a prudent creditor should carefully evaluate relevant state law when drafting agreements and attempting to add fees to a debt. Proactively researching state and federal law could prove beneficial in protecting a company when servicing the account. Adding fees can be an excellent way to recoup some collection costs if the proper precautions are taken.

ECONOMIC IMPACT OF THIRD PARTY DEBT COLLECTION FIRMS

Recently many California collection agencies participated in an ACA (American Collectors Association International) survey to measure the economic impact of third party debt collection firms on the national and state economies. The results are in...below are a few impressive statistics about California:

- Third-party **collection agencies** based in California **recovered $4.4 billion**.
- California collection agencies directly **employed 9,984 people** with a payroll of $373 million. Indirectly, they influenced a total of 21,772 jobs in California with a payroll of $813 million.
- California collection agencies and their **employees paid $40.5 million in state and local taxes and $37.8 million in federal taxes**.
- California collection agencies **contributed $11 million and 61,200 volunteer hours to charitable causes.**

Source: Ernst & Young, 2011 - http://www.acainternational.org/impact

Out of Statute

How many times in a day, week or month do you hear a consumer say to you, "You can't collect the balance owed because it is too old". Collecting "out-of-statue debt" has always been a hot topic within the collection industry. Creditors choosing to continue collection efforts of an unpaid balance by referring the debt to a collection agency should fully understand the restrictions involved.

According to U.S. Census Bureau over 80 percent of households had internet access in 2010, allowing curious consumers to access websites regarding "out-of-statue debt". Although there are many reputable sites that give accurate information, there are as many that give inaccurate or only partial information. Some sites are written in legalese and can confuse consumers. With so much information available, many consumers believe that debt cannot be collected after a number of years. This belief leads the consumer to apathy, feeling no obligation to pay their debt. Our clients should be armed with the correct information in order to dispel any myths their consumers may have "learned" in cyberspace. Here are some commonly asked questions.

Q: I've heard that you can't collect debt after four years. Is this true? Isn't there a "Statute of Limitations"?

The "Statute of Limitation" is the time legally allowed to file legal action on an unpaid debt. Each state has their own statute of limitation to file suit against a consumer. In California, statute of limitation is generally four years from date of service or last payment activity. In special circumstances a contract between creditor and consumer may override the four-year statute in the State of California. A partial payment or a new written promise to pay will renew the four-year statute of limitation.

Q. How about credit reporting – is there a Statute of Limitations on reporting my account to the credit bureaus?

Accounts can be reported to credit bureaus and remain on a consumer's credit report for seven years from the date of delinquency. After seven years, credit bureaus will delete these accounts from a consumer's history. The balance remains owing and collection agency may choose to continue collection efforts such as calls or letters to demand payment.

Q. Is there a Statute of Limitations for collection efforts?

No. The creditor or their assigned agency can continue to pursue the debt until it's resolved. However, without the ability to credit report or pursue legal avenues, the debt becomes much more difficult to collect.

Q. Are there any resources I can provide to our customers to offset the misinformation?

ACA International, the collection industry's association, has a great website that we encourage our clients to utilize, not only for their consumers, but for their information. The site is AskDoctorDebt.com. Check it out!

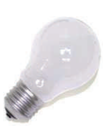
As always, if you have further questions, please contact our Customer Care Department.

Reference: http://www.census.gov/compendia/statab/2012/tables/12s1155.pdf

Going Green... Seeing the Light!

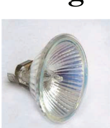
Have you been wondering which type of bulb is the right choice for you? Here is information describing the some of the different types of light bulbs available:

Incandescent



Usage cost:* $4.80 per bulb per year
Pros: Dimmable, cheap and instantly reaches full brightness
Con: Only last about 1,000 hours; not energy efficient

Halogen

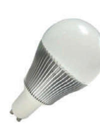


Usage cost:* $3.50 per bulb per year
Pros: Instantly reach full brightness, dimmable, uses 25%-30% less energy and cooler, brighter light
Cons: Doesn't last much longer than incandescent and cost more to buy

CFL

Usage cost:* $1.20 per bulb per year
Pros: Use about 75% less energy and last 7-10 times longer than incandescent so saves money, contains up to 75% less mercury than CFL's tested in 2008
Cons: Takes time to fully brighten especially in frigid temps, most can't be dimmed, turning on and off often can affect performance and shorten life, must be recycled** and because of mercury content cannot be thrown away

LED

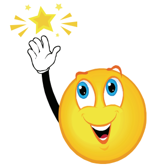


Usage cost:* $1 per bulb per year
Pros: Use slightly less energy than CFL's, manufacturers claim will last 20,000-50,000 hours or 18-46 years so you can save $65-$400 over the lifetime of the bulb, brighten instantly and some dim as low as incandescent bulbs, not affected by frigid temps, most can be used with timers; life of bulb not affected by turning off and on frequently
Cons: Currently $20-$60 a bulb; some are not that good at putting light where you need it. Not recommended for directional lighting.

**Department of Energy estimates*
***Home Depot, Ikea, Lowe's & some Ace Hardware stores accept used bulbs from all brands*

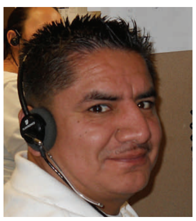
Inside FCN

You Are a Star!



We'd like you to get to know some of our Star employees! Our team members can recognize each other through our "You Are A Star" program. If a fellow co-worker has done something extraordinary, team members can give them a "Star". We have a special "You are a Star" board in our reception area. The winner is chosen by random draw each month. Here are our stars for this past quarter.

Meet the Stars…



Roger Rojas—Collector
February, 2012 Star

Traci Andradi—Collector
January, 2012 Star

Tiffany Philpot—Payroll/Benefits Coordinator
December, 2011 Star

FCN Strikes Again!

We participated in the 25th Annual Bowl for Kids Sake benefiting the Big Brothers Big Sisters organization. This is our 4th year participating in this event. We had 3 teams representing FCN who raised $2,155 for Big Brothers Big Sisters. Fun was had by all!

Employee Wellness Campaign

"Walking to Santa Barbara"

We have 14 employees participating in our latest challenge. The goal is to ***walk 225 miles from our Visalia office to our Santa Barbara office*** in a 6 week timeframe. They are not walking a "route", however they are using a pedometer to keep track of their mileage each week to reach the 225 mile journey. The winner will receive a weekend in Santa Barbara. They will also get the chance to visit our Santa Barbara office.

We had a much bigger shoe drive than previously reported in our last issue! We successfully collected **OVER 5,000 PAIRS OF GENTLY USED SHOES in 2011** in Santa Barbara and Visalia. This is a great organization and if you would like any information please ask an FCN team member or go to www.giveshoes.org . We will be collecting shoes until December 2012!. We continue to have bins in the lobby of both our Santa Barbara and Visalia offices!

1.5 billion people worldwide do not have shoes.
How many shoes do you have in your closet?

Donate Today!