

The Collector Chronicle

NORTH AMERICAN RECOVERY

AUGUST 2016

Utah, Colorado, Idaho, & Ohio's
Collection Authority

LAST MONTH'S LUCKY WINNER

The lucky winner of our client prize for July is Rocky Mountain Eye Care Assoc. They have been using our agency since 2014!

We will be sending Christine a gift card to Fleming's Steakhouse. Enjoy!



THIS MONTH'S PRIZE

This month we will be giving away a gift card to The Home Depot!

Each client who sends new accounts during the month of August will have their name entered into a drawing. At the end of the month, we will draw a name. If it's yours, you'll win the prize.

**Don't miss out on your chance to win.
Send new accounts in August!
Good Luck!!**



UTAH'S COLLECTION FEE LAW

By DAVID J. SAXTON

President, NORTH AMERICAN RECOVERY

Disclaimer: The opinions and ideas expressed in this article are based on the experiences of the author. He is not an attorney and is not rendering legal advice. This article is for informational purposes only. Please consult your attorney if you have questions regarding the interpretation and/or application of any law.

This month's newsletter talks about Utah's collection fee law that went into effect on May 1, 2010. Most of our Utah clients have been aware of the law and have adjusted their business practices accordingly. However, in case there are a few of you out there who would like a refresher, this month's article will review it once again.

History

While most business owners had been charging a collection fee, if a consumer defaulted on a contract in 2008 and 2009, many Judges began denying the collection fee, even though the consumer signed an agreement to pay it. The passing of this law gave business owners confidence that their contracts with consumers would not be voided by the courts.

The law has proven to be good for consumers and businesses alike. It allows a company to pass on the cost of collections associated with non-paying accounts to the individuals who aren't paying their bill. This helps keep the overall costs of all goods and services down.

However, if a client wants to add a collection fee, they must comply with all aspects of the law. I'm not an attorney, and I'm not giving legal advice, but let me share with you the text of the law and some information based on my own observations and advice from my attorneys.

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TEXT OF THE LAW

12-1-11. Collection fee

- (1) As used in this section:
- (a) "Creditor" is as defined in 15 U.S.C. Sec. 1692a.
 - (b) "Debt" means an obligation or alleged obligation to pay money arising out of a transaction for money, property, insurance, or services.
 - (c) "Debtor" means a person obligated or allegedly obligated to pay a debt.
 - (d) "Third party debt collection agency" means:
 - (i) a debt collector as defined in 15 U.S.C. Sec. 1692a; or
 - (ii) a person who would be a debt collector under 15 U.S.C. Sec. 1692a, except that the person does not use an instrumentality of interstate commerce or the mail.
- (2) A creditor may require a debtor to pay a collection fee in addition to any other amount owed to the creditor for a debt if:
- (a) imposing a collection fee on the debtor or in relation to the debt is not prohibited or otherwise restricted by another federal or state law;
 - (b) the creditor contracts with a third party debt collection agency or licensed attorney to collect the debt;
 - (c) the third party debt collection agency with which the creditor contracts is registered under this title;
 - (d) there is a written agreement between the creditor and the debtor that:
 - (i) creates the debt; and
 - (ii) provides for the imposition of the collection fee in accordance with this section; and
 - (e) the obligation to pay the collection fee is imposed at the time of assignment of the

debt to a third party debt collection agency or licensed attorney in accordance with an agreement described in Subsection (2)(d).

- (3) The creditor shall establish the amount of the collection fee imposed under this section, except that the amount may not exceed the lesser of:
 - (a) the actual amount a creditor is required to pay a third party debt collection agency or licensed attorney, regardless of whether that amount is a specific dollar amount or a percentage of the principal amount owed to the creditor for a debt; or
 - (b) 40% of the principal amount owed to the creditor for a debt.
- (4) An obligation to pay a collection fee imposed under this section is in addition to any obligation to pay attorney fees that may otherwise exist.

Whew!! Okay. So that's the law. ... How does it apply to your business in the real world? Let's take a look.

Key Points

Let's review four very important items. It's critical that you understand these in order to make the law work for you.

First, in order to add a collection fee to an account, there must have been a collection fee provision in the contract the consumer signed. If the consumer did not expressly agree to pay a collection fee, you can't add one.

In the past we recommended specifying the collection fee percentage in your contracts, but that is no longer necessary. My attorneys are recommending language along the lines of this sample: "I agree to pay interest at the rate of 18% annually on all past due balances from the original due date, plus court costs and reasonable attorneys' fees, with or without suit, incurred in collecting any

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past due balance, and a collection fee if my account is assigned to a collection agency.”

Second, if you choose to draft your own language, our attorneys strongly recommend that you always use the exact term contained in the statute, “collection fee,” to describe the fee the consumer agrees to pay. No other variation—such as “collection costs,” “collection commission,” “agency fee,” “collection agency commission,” etc.—is likely to work. It needs to say “Collection Fee.” By the way, I am told that under no circumstances should you use the word “costs” when describing the collection fee, as that is a term of art which is construed by the courts to refer to “court costs.”

Third, the collection fee is limited to the lesser of 40% of the principal balance owed, or the actual amount you would pay us if we collected the account the day you assigned it. The way the law is worded makes it complicated to come up with an exact calculation for each account from each client. Fortunately, for 99% of our clients who add collection fees, the 40% collection fee is what you should charge (if the wording in your agreement has been verified as being appropriate according to the law). We’ve taken the liberty of determining which clients are okay to add the 40% amount, and since you’re reading this it means that you are one of those clients. We will be contacting each client individually if they must add an amount that is less than the 40% collection fee. We will work with you to calculate the correct amount you should add to keep you in compliance with the law.

Fourth, the collection fee must be added to the account prior to your assigning it to our office. This is self-explanatory, but the balance assigned to us must already include the collection fee. I suggest

making a last charge to the account called “collection fee.” That way, when you print the itemized statement, the collection fee will be included in the total amount owed.

Best Practice Suggestions

Contract wording: In order to add a collection fee, your financial agreement must contain specific wording. While we can’t give legal advice, if you have questions on whether or not the wording in your agreement would allow you to add a fee, give us a call. Our Client Service Representatives can tell you what has worked for other clients. But remember, you should also consult your attorney for specific legal advice.

Calculating the collection fee: This is actually the easiest part. You simply calculate what 40% of the principal balance would be and add that amount. For example, if a consumer owed \$1000 before you assigned the account, you add \$400 (40% of \$1,000). You then send us the account with a total owed of \$1,400.

Training: Make sure your staff understands the requirements and processes before adding a collection fee and assigning an account.

That’s it. Not too complicated at all. However, if you have questions give us a call. We can discuss your unique situation and answer any questions you might have.

Thanks for reading. Have a great month!



The Collector Chronicle is published by NORTH AMERICAN RECOVERY for prospective and current clients. The owner, David Saxton, welcomes questions or comments.

DaveSaxton@North-American-Recovery.com

NORTH AMERICAN RECOVERY
PO Box 271014, Salt Lake City, UT 84127
801-364-0777 • Fax: 801-364-0784
WWW.NORTH-AMERICAN-RECOVERY.COM