

The Collector Chronicle

NORTH AMERICAN RECOVERY

JULY/AUGUST 2011

UTAH'S COLLECTION AUTHORITY

LAST MONTH'S LUCKY WINNER

The lucky winner of our client prize for June is Evergreene Management in Salt Lake City. We work with Azure Howe and they have been using our agency since 2003. Congratulations!! We will be sending Azure four tickets to a Salt Lake Bees baseball game. Enjoy!



THIS MONTH'S PRIZE

This month we're giving away a \$100 gift certificate to The Gateway! Each client that assigned accounts in July, or assigns accounts in August, will be entered into a drawing. At the end of the month we'll draw a name, and if it's yours, you'll win the gift certificate!

*Don't miss out on your chance to win; send new accounts in August!
Good luck!!*



RESTRICTIVE ENDORSEMENTS

BY DAVID J. SAXTON

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Disclaimer: This article is provided for informational purposes only. The author is not an attorney and is not giving legal advice or interpreting the law. You should consult your attorney if you have questions about a legal matter.

I've talked about restrictive endorsements before, but the last time was over three years ago so I thought I would cover the subject again this month.

Sooner or later it's bound to happen: a consumer will send a check that doesn't pay their account in full *and* it has a restrictive endorsement. (If it hasn't happened yet, it will.) The consumer will write something like "Payment in Full" on the memo line, or on the back where you endorse the check. You are now faced with a very important decision: do you cash the check or not?

Before you decide what to do, let me share with you what the law says about such a situation. When I refer to "the law" what I mean is Utah statute as contained in Section **70-3-311. Accord and satisfaction by use of instrument.** This section deals specifically with accepting a check with a restrictive endorsement and it isn't very long so I've included the entire section for your convenience:

70-3-311. Accord and satisfaction by use of instrument.

(1) If a person against whom a claim is asserted proves that the person in good faith tendered an instrument to the claimant as full satisfaction of the claim, the amount of the claim was unliquidated or subject to a bona fide dispute, and the claimant obtained payment of the instrument, the following subsections apply.

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(2) Unless Subsection (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(3) Subject to Subsection (4), a claim is not discharged under Subsection (2) if either of the following applies:

(a) The claimant, if an organization, proves that: (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted, which states that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office or place: and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(b) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subsection does not apply if the claimant is an organization that sent a statement complying with Subsection (a)(i).

(4) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the

instrument was tendered in full satisfaction of the claim.

Okay, so there you have it. That's what "the law" says on the subject. As you can see, it's not a simple matter. There are certain situations when acceptance of a check with a restrictive endorsement would constitute discharge of the debt.

So what should you do? Well, while I can't give legal advice, I can tell you what we do. We take the approach that every check with a restrictive endorsement has an underlying dispute so we send it back. But before we return it, we write REJECTED on the check, and scan a copy into our document imaging system. We then return it to the debtor along with a letter telling them the check was not accepted as satisfaction of the debt, and they must pay the full amount. Then if the debtor doesn't pay, we send the account to our attorney for legal action.

Debtors continually try to get out of paying their obligations, so we want to avoid anything they could use as a defense in court. Even if the debtor didn't comply with the statute, we've found they will still raise the issue as a defense, and it will complicate the collection process. So we avoid the problem entirely and return the check.

While receiving a check with a restrictive endorsement is rare, it can be very problematic. The action you take could severely affect the future collectability of the account. So, if you choose to return a check to a debtor in this situation, just assign the account to us and we will take over from there.



The *Collector Chronicle* is published monthly by NORTH AMERICAN RECOVERY for prospective and current clients. Please direct questions or comments to Dave Saxton at the address or number listed below. *Edited by Bryce Packham.*

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