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# MACUMA Virtual Lending Mini Conference

## Consumer Collections and COVID-19 – How to Get Paid What's Yours in a Pandemic

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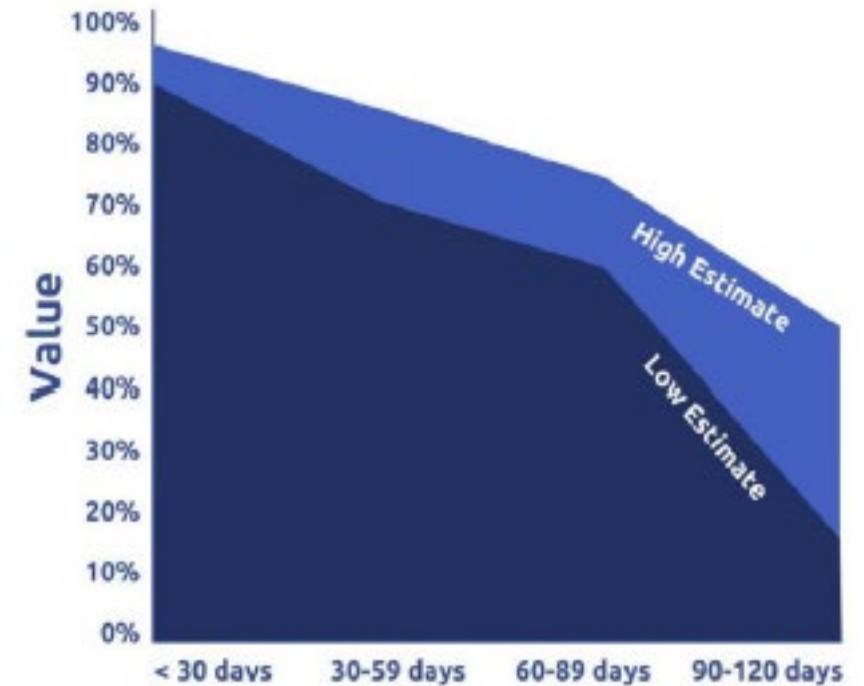
## **Bad Debt Collection – Foreclosure**



# Bad Debt Collection – GENERAL - Referral Timeline

Time is your enemy! Set a timeline for when accounts should be referred for recovery. It's statistically proven that as accounts age the likelihood of collection decreases dramatically.

Decrease in Collectability



Age  
Delinquent Accounts



# Criteria for Referring Accounts

## Highlights

- Establish a criteria for referring accounts
  - Type of Account
    - Credit Card
    - Automobile Loan
    - HELOC
  - Dollar Amount
    - Over \$5,000
    - Under \$5,000

## Practical Tips

- When referring accounts, the same criteria must be used so that accounts are referred on a uniformed basis thus avoiding any potential CFPB or litigation issues
- Other criteria such as “days delinquent” for referral are helpful as well.



## “Suit Ready”

In order to proceed with legal collections, it is important that all relevant information is forwarded as it assists in:

- Supporting the Balance Due
- Determining Interest Rates
- Determining the Right to Attorney’s Fees
- The Accuracy of the Demand Letter
- Identifying Potential Statute of Limitation Issues
- Timely Filing of Lawsuits
- Avoiding Potential FDCPA Violations



# “Suit Ready” Member’s Information

- Member’s Name
- Member’s Home and Work Addresses
- Member’s Home, Work and Cell Phone Numbers
- Social Security or Tax ID Number
- Date of Birth
- Employment Information
- Credit Report / Asset Information (bank accounts, real estate, etc.)
- Co-signer Information (if applicable)
- Photo Copy of Member Driver’s License or Other Picture ID (if available)



# “Suit Ready” Documentation

## Type of Loan

### **Automobile** (not repossessed) – Replevin or Collection

- Copy of Loan Agreement
- Transaction History
- Copy of Security Interest Filing

### **Automobile Deficiency** (after repossession and sale)

- Copy of Loan Agreement
- Transaction History
- Copy of Security Interest Filing
- Copy of Notice of Intent to Repossess
- Copy of Notice of Repossession and Right of Redemption
- Copy of Notice of Sale
- Copy of Notice of Deficiency



# “Suit Ready” Documentation

## Credit Card

- Copy of Application
- Copy of Terms and Conditions Applicable
- Copy of Transaction History
- Copy of Statement Showing Last Payment

## Signature Loan

- Copy of Signed Agreement
  - If not available:
    - Copy of Application
    - Copy of Check Cashed
- Copy of Transaction History

## Overdrawn Checking

- Copy of Membership Agreement
- Copy of Statement Showing Overdrawn Amounts
- Copy of NSF Check(s) (if applicable/available)





## Avoiding Estoppel Issues

- Review the Terms and Conditions - one default = all default
- If a member has multiple accounts, and only one account is delinquent, refer all accounts
- Before a lawsuit is filed, make sure the attorney has all the accounts to ensure that there are no collateral estoppel issues



## Communication is KEY

- Constantly communicate with and update your attorney with information that will assist with collections both pre and post judgment
- Run Periodic Credit Reports for Updated:
  - Address Information
  - Employment Information
  - Asset and Possible Banking Information
- Notify your attorney when members make payments directly to the credit union and provide updated transaction histories/statements
- Make sure your attorney keeps you informed regarding the status of your accounts either on a monthly or real-time basis



# Potential COVID-19 Collection Restrictions - Health and Economic Recovery Omnibus Emergency Solutions (“HEROES”) Act

MAY 15<sup>TH</sup> HOUSE PASSES Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act

- House lawmakers approved a Democratic proposal to provide \$3 trillion in coronavirus relief that would include a new wave of funding for state and local governments, workers and families highlighted as follows:
  - extending emergency family and medical leave until the end of 2021.
  - adding another round of direct cash payments to Americans (including an expansion of the IRS payment program where Americans will receive up to \$6,000.00 in stimulus payments)
  - extending federal unemployment benefits to the end of January (\$600.00 per week in addition to State unemployment benefits)
  - adding hazard pay for front-line workers and also expanding virus-testing efforts, contact tracing and treatment
  - directing nearly \$1 trillion to state, local and tribal governments, including \$500 billion in direct, flexible aid for state governments and an additional \$357 billion for local governments and counties

SENATE MAJORITY AND WHITE HOUSE REACTION: Senate Majority Leader Mitch McConnell (R-Ky.) caked the bill a "seasonal catalog of left-wing oddities" and an "unserious effort.", and the President has signaled that the House legislation, in its current form, would be vetoed

- ***THE LEGISLATION ENACTS SWEEPING CHANGES TO THE FDCPA: CREDITORS ARE DEEMED DEBT COLLECTORS; NO DEBT COLLECTION PERMITTED UNTIL 120 DAYS POST “NATIONAL EMERGENCY”; FDCPA STATUTORY VIOLATIONS INCREASED 10X (\$1,000. TO \$10,000.)***



# COVID-19 –Rethinking Your Overall Approach to Collections

COVID-19 should lead Credit Union's to "Re-Think" their approach to lending and collections:

- Beyond what's been in place to date, Credit Unions need to create new policies to deal with members and their hardships
- Provide new guidance concerning settlement and extending payment plans (***facts to consider: most Americans are using stimulus checks to pay down debt, only 15% of funds being used for necessities, mid-Atlantic unemployment is well below the national average at 7½%***)
- ***Balance the optics referring accounts, filing lawsuits, attending court hearings and taking judgments during the pandemic against allowing accounts to sit and potentially accruing large losses***
- Need to start thinking about POST PANDEMIC collections and customer care to deal with member unemployment and the potential exponential rise in bankruptcy filings
- Prepare for the coming wave - POST PANDEMIC bad debt portfolio - new policies, more flexibility, additional staffing (collections vs. customer service reps)

# § Bad Debt Collection - REPLEVIN

Replevins are utilized when non-judicial repossession methods are unavailable

- Jurisdiction
- Process
  - Filing of Replevin Action (vehicle title required)
  - Show Cause Hearing
  - Issuance of the Writ of Replevin
  - Replevin Bond Set
  - Payment of Replevin Bond
  - Sheriff Replevies Collateral
  - Merit Trial
  - Valuation of Collateral
  - Final Determination of Ownership



## Bad Debt Collection – DEATH OF A MEMBER

- If a deceased member owes the credit union money, the credit union may seize funds in the deceased member's account(s) as the right to offset and the security interest created in the membership agreement survives death (a word of caution – in joint accounts with the right of survivorship if the surviving member does not owe the credit union money then no offset rights exist.)
- In the event of a vehicle loan, as a secured lien holder the credit union may repossess the vehicle and sell it. However, without an estate opened, there is no way to properly send out redemption notices to the estate, so a claim against the estate later for the deficiency may be denied. Also, the title cannot transfer without an estate being opened for a relative or other person to take over the loan should they wish to do so.
- In the event a deceased member has a loan secured by a home, foreclosure cannot occur without an estate being opened as there is no individual to accept notice or service. The deceased member's relatives may not be interested in opening an estate if the member had more debts than assets or if those assets are only personal property. If this is the case, a petition must be filed for a third party to administer the estate so as to permit the credit union to foreclose on the property securing the debt.

# Bad Debt Collection – BANKRUPTCY

Collection efforts must be altered when a member files for bankruptcy protection, so when a member files for bankruptcy protection, the following must be considered:

- Reaffirmation – Chapter 7
- Proof of Claim – Chapter 11 and 13 and Asset Based Chapter 7
- Motion for Relief – Secured Debt
- Bankruptcy Plan Review
- Discharge of Debtor



# Bad Debt Collection – FORECLOSURE

- If you are in 2nd position (HELOC) – check to see if 1st lien is in foreclosure
- Demand Letter/Acceleration Letter
- Consider Loss Mitigation – modification/forbearance
- Refer Foreclosure to Attorney
  - Member’s Information (see “Suit Ready” Member’s Information)
  - Copy of Note (in some jurisdictions – original note is required)
  - Copy of Recorded Deed of Trust
  - Copy of any Loan Modification or Forbearance Agreement
  - Copy of any Assignments
  - Copy of Transaction History
  - Last Payment Date
  - Payoff Figures
  - Reinstatement Figures
- Pursue Deficiency Balance or issue 1099





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