

COLLECTIONS

THINGS TO CONSIDER BEFORE YOU MAKE THE CALL

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MDIDC
Credit Union Association

Engage • Influence • Impact

Member • Educator • Advocate

DISCLAIMER

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TODAY'S AGENDA

- Best Practices
- Policies and Procedures
- Collection Tips and Tools
- Causes of Delinquency
- Repossession & Collateral Liquidation
- Bankruptcy
- Relationships with 3rd Party Collectors
- Flexibility in the Collection Process

WHAT IS COLLECTIONS



Something no one else wants to do

- Leading cause of:
 1. Excessive hair loss
 2. High blood pressure
 3. Stomach ulcers
 4. Enrollment in A.A.
 5. High STRESS level

The confusion created when one's mind over-rides the body's basic desire to choke the @%\$!#* out of someone who desperately deserves it!

COLLECTORS ARE SPECIAL



"Do you have a résumé? You'd be great in our collections department."

Which makes better sense?

- Loan officers should be collectors first
- Collectors should be loan officers first, or
- Collectors do not make good loan officers
- Can loan officers make good collectors?

BEST PRACTICES

- Be sure collections is what you want to do
- Receive adequate training
- Develop strong listening skills
- Financial counseling skills are helpful
- Leave your feelings at home – Do not take it personal
- Remember, not every account is collectable

BEST PRACTICES

- Have defined polices, procedures, and processes in place
- Be consistent in the collection process:
 1. Payment reminders/Late notices/Collection letters
 2. Member contact/Follow-up
 3. Updating member information
 4. Maintaining accurate notes with each contact
- Timely use of third parties (*skip tools, collection & repo agencies*)
- Be aware of regulations and laws (*Federal and Local*)

POLICIES

- Policies are principles, rules, and guidelines adopted by an organization to reach its long-term goals
- Policies are used to set direction in an organization
- Policies help reinforce and clarify expected standards
- Policies allow for continuity in the collection work
- Should aid in minimizing your risk exposure to law-suits!

- Policies should address:
 1. Collection staff responsibilities
 2. Collection process
 3. Various loan types/programs
 4. Regulations/Laws

REGULATIONS/LAWS

- Fair Debt Collection Practices Act
- Reg. F Debt Collection Practices Act – Implements FDCPA
- Fair & Accurate Credit Transactions Act (*amendment to the FCRA*)
- Fair Credit Billing Act
- Reg. Z
- Servicemembers Civil Relief Act
- Privacy Laws
- UCC
- Other consumer protection laws



FAIR DEBT COLLECTION PRACTICES ACT

6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. **The term does not include --**

- **(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;**

- Credit unions recognize the FDCPA as the standard for acceptable collection practices,
- In your collection work, failure to recognize these principles during your recovery process can incur fines and penalties!

- §804 – Acquisition of location information
- §805 – Communication in connection with debt collection
- §806 – Harassment or abuse
- §807 – False or misleading representations
- §808 – Unfair practices

REGULATION F

- CFPB Reg. F became effective November 30, 2021
- Amendment to 12 CFR part 1006 to eliminate abusive debt collection practices & promote full disclosure
- Outlines and clarifies several communication rules
- Prevents excessive contact
- Not exclusive to third party debt collectors
- Does not apply when collecting debts originally owned?

PROCEDURES

- A collector's guide on "How To Do"
- Address basic & specific collection work
- A standardized manner to resolve payment issues
- Should provide flexibility in the collection process
- Address various loan types, products, and services
- Use as a training tool (*address the importance of timing*)
- Periodically review for modifications & updates

LOAN TYPES, PRODUCTS & SERVICES

Lines of credit

Credit cards - VISA

New Vehicle loans

Used Vehicle loans

Mortgage loans

Stock secured loans

Recreational vehicles

In-Direct Loans

Risk-priced loans

Airplane loans

Motorcycle loans

Negative balances

Overdraft Privilege

Payroll corrections

E-Oscar processing

Delinquent transfers

UNDERWRITING

- Key to successful collection efforts
- A well-made loan is 50% collected at the time of the loan
- Definitive underwriting guidelines and process
- Guidelines vary depending on loan type
- Automated approval systems (*verification of information*)
- Scoring parameters
- Competition forces higher levels of risk-taking
- Global Positioning System (GPS) for high-risk loans

PROCEDURES

A Collection Timetable

1. Action taken @ various delinquency stages
2. Various loan types (*secured/unsecured/credit lines*)
3. Various loan products (*risk priced*)
4. Various work-out options
5. Charge-Off guidelines

TIMETABLE

- A few things to consider:
 1. Volume of accounts
 2. Staff – Number of employees & experience
 3. Loan product and type (*level of risk*)
 4. Prioritize the accounts
 5. Automate as much as possible (*notices, letters, tickler, auto-dial, electronic payments, etc.*)

SAMPLE LATE NOTICE TIMETABLE

- @ 7 days delinquent – 1st Late Notice
- @ 14 days delinquent – 2nd Late Notice
- @ 21 days delinquent – 3rd Late Notice

Check for processing errors at the time the loan was made

Loan quality review

Attempt telephone contact @ 14 days delinquent or less

SAMPLE CONTACT TIMETABLE

@ 30 Days Delinquent

- If no contact or payment arrangement, send a friendly but firm collection letter
- Continue to attempt telephone contact
- Are there any previous collection notes?
- Review loan files for additional information

SAMPLE CONTACT TIMETABLE

@ 45 Days Delinquent

- If still no contact, send demanding collection letter, or intent to repossess for vehicle loans
- Continue to attempt telephone contact
- Commence with skip tracing efforts
- Review a current credit report
- Enforce statutory lien

SAMPLE CONTACT TIMETABLE

@ 60 Days Delinquent

- If still no contact, assign vehicle loans for repossession
- Continue to attempt telephone contact
- Continue with skip tracing efforts (*additional resources & tools*)
- Review loan file and system for loan officer notes
- Consider assigning the account to another collector (*new eyes, different approach*)

SAMPLE CONTACT TIMETABLE

@ 90 Days Delinquent

- Send final demand letter
- Continue to attempt telephone contact
- Continue with skip-tracing efforts (*check PACER, possible B/R*)
- Determine collectability of the loan
- Review account for possible charge-off or assignment to a 3rd party agency (*refer to charge-off policy*)

BEFORE GOING ANY FURTHER

Let's spend a little time discussing,
“Why Members Go Delinquent on Their Loans!”

REASONS FOR DELINQUENCY

- Four major causes for delinquency:
 1. Intellectual
 2. Emotional
 3. Intent to Defraud
 4. Circumstantial
- Each one requires a different approach

INTELLECTUAL

- Believes $1+1=3$
- Inability to budget
- Lives from paycheck to paycheck
- Just does not understand

EMOTIONAL

- Does not care!
- Unconcerned with credit profile
- Attempts to use emotions to interfere with the collection process

INTENT TO DEFRAUD

- Gives collector erroneous information
- Lies on loan applications
- Uses multiple names and social security numbers
- Relocates without providing a new address

CIRCUMSTANTIAL

- Layoffs/unemployment and loss of income
- Major illness or loss of a spouse
- Unexpected bills (*emergency repairs*)
- Additional family expense (*increased costs for care*)
- Divorce
- Accident and acts of nature (*Pandemic – COVID-19*)

PANDEMIC: COVID-19

- CARES Act § 4022 - Federal Foreclosure and Eviction Suspensions
 1. Federal moratorium ended July 31, 2021
 2. Various jurisdictions may still have certain provisions in place
 3. Refer to State or Local Executive orders
 4. Consult with legal counsel

Let's Go To Work

MAKING THE CALL

- Are you prepared to make the call?
- Is the member really in default? (*processing errors*)
- Are you armed with all the information and tools needed to collect the debt?
- How much do you know about the member you are calling, and the loan you are attempting to collect?

MAKING THE CALL

Know the loan agreement –

- Understand the underwriting guidelines, scoring and approval process
- Be familiar with all loan and membership documents
- What are your rights after default?
- Are there notification requirements before taking various forms of action?
- What self-help collection remedies does the agreement specify? (offset rights)

MAKING THE CALL

Review the loan information to determine –

- The type of loan (secured/unsecured)
- Original loan date
- Current due date and past due amount (*identify partial payments*)
- Date and amount of last payment
- Late charges
- Payment frequency (*monthly, bi-weekly*)
- Insurance (*disability, life, CPI if any*)

MAKING THE CALL

Review the account history –

- Is this a first-payment default?
- Is there a history of delinquency?
- Are there prior collection notes? (*valuable information*)
- What was the reason for prior default?
- Was the initial delinquency cured?

MAKING THE CALL

- The most critical stage (*7 to 10 days delinquent*)
- Early efforts can determine future collectability
- Review loan doc's to eliminate in-house errors immediately
- Identify noticeable clues to assist in collection strategy:
 1. First payment default
 2. Payroll stopped
 3. Risk score (*A, B, C, D, or E paper*)
 4. Age of the loan (*has paid 48 months into a 60-month loan*)

COLLECTION TOOLS

- Subsequent Action Forms
- Extensions & workout options (*record as a TDR*)
- Refinancing & settlements
- Denial of services
- Collection Letters
- Cross-Collateral clause
- Debt Management Agency
- Right of offset (*special language required*)

SKIP-TRACING TOOLS

- www.ussearch.com
- www.truthfinder.com
- www.Accurint.com
- www.zabasearch.com
- www.skipease.com
- www.intelius.com
- www.instantcheckmate.com - Good for Government Records
- www.publicrecordcenter.com
- www.spokeo.com
- Social Media (*Facebook, Twitter, Instagram, WhatsApp, etc.*)

CREDIT REPORTS

- Last good address may be listed
- Inquiries – know where the member is shopping
- Public records – judgments, liens, other collection activity, and bankruptcy
- Can provide a good idea as to the likelihood of a successful collection effort (*many other delinquent loans and charge-offs*)

COLLECTION LETTERS

- Should be businesslike
- Brief and to the point
- Easy to read and understand
- Tells how much to pay and/or what to do
- Gives deadlines and timeframes
- States the consequences for non-payment
- Delinquent consumers treat collection letters like you treat junk mail

GARNISHMENTS/LIENS

- Garnishments – Placed on wages or other deposit accounts
- Liens – Statutory, Contractual/Consensual
 1. *Statutory - The Federal Credit Union Act grants a lien on shares 12USC§1757(11) (does not include credit cards)*
 2. *Contractual - When loans involve security (i.e. shares, vehicles, real property, etc.), a property right arises that MAY allow self help in facilitating collection activity*

THIRD PARTY SERVICE PROVIDERS

- Software service provider (*support*)
- CPI Insurance (*coverage options*)
- Collection agency (*have more than 1*)
- Collection & Bankruptcy attorney (*cost*)
- Counseling Service (*non-profit*)
- Skip-Tracing Service (*know how they work and what you pay for*)
- Repossession Agent (*automation, cost & insurance*)
- Auto Auction (*automation, location & facilities*)

REPOSSESSION

A sure way to
get back on
your feet,

Miss two car
payments!



LIEN RECORDING

- Dealer sale – (*Restrictive Endorsement*)
- Liens not recorded within 20 days can be avoidable in bankruptcy – sec. 547(b) of the bankruptcy code
- Non-dealer sales – Due Diligence
- Refinance – No leverage with Restrictive Endorsement
- In-house refinance – lose purchase money security interest
- Record correct information
- Electronic Lien and Title – (*not available in all states*)
- Maryland effective date – January 1, 2021

RESTRICTIVE ENDORSEMENT

The endorsement of this check by the payee constitutes an obligation to *(credit union)* that the payee will within 20 days of the vehicle delivery, record a first lien with the Department of Motor Vehicles in favor of *(credit union and address)*

Model: _____

VIN#: _____

Title in the name of: _____

KNOW THE LOAN

- Know the various elements of each vehicle loan program (*rates, vehicle cut off age, warranties, GAP, etc.*)
- 100% financing can become 115% or more after adding warranties and GAP
- Understand the underwriting guidelines, scoring and approval process
- Be familiar with all vehicle loan documents (*security agreement*)
- Be familiar with the lien recording process. Improper titling can negate repossession efforts

OPTIONS TO AVOID REPOSSESSION

- Loan workout (*Modified Loan – TDR*)
- Loan extension (*only if the problem is temporary*)
- Short sale the vehicle (*rewrite the remaining balance*)

Options should provide flexibility

MAKING THE DECISION TO REPOSSESS

- Does the security agreement provide for repossession?
- Is the credit union's lien perfected?
- Are the correct names recorded on the title?
- What is the current value of the vehicle?
- Is the member a skip?
- Timing is critical (*may vary depending on circumstances and loan type*)
- The member is most likely to redeem if repossession takes place early in the collection process

UCC ARTICLE 9 – STATUTORY NOTICE

- Notice of repossession: *Discretionary notice sent 10 or more days before repossession. Must identify the lender, member, and collateral. Must include the amount due, any additional costs, and the member's rights after repossession.*
- *Failure to provide the notice of repossession (in many states) will absolve the member from paying repossession expenses.*

UCC ARTICLE 9 – STATUTORY NOTICE

- Notice of the members right to redeem: *The notice must include the amount due, the location of the vehicle, and the payment address. Must advise the member of the right to redeem, the rights concerning the vehicle resale, the liability for any remaining balance, point of contact for questions.*
- *15-day redemption period in Maryland . The lender may request reasonable fees associated with the repossession.*

UCC ARTICLE 9 – STATUTORY NOTICE

- Notice of sale: *Timeline – Reasonable (10 days or more before disposition. Must include but not limited to:*
 1. *Description of the debtor and secured party*
 2. *Description of the collateral*
 3. *Method of intended disposition*
 4. *State that the debtor is entitled to an accounting of the debt*
 5. *State the time and place of the disposition*
 6. *Point of contact for the debtor to ask questions*

UCC ARTICLE 9 – STATUTORY NOTICE

- Surplus/Deficiency balance breakdown: *Must provide a complete breakdown of the sale proceeds including the net remaining balance on the vehicle, and a statement of the condition of the vehicle that might affect the market value.*
- *Provide a phone number or mailing address from which additional information concerning the transaction is available*

DUE DILIGENCE IS CRITICAL

- Ambulance chasers are looking for a reason to sue
- Wrongful repossessions can lead to class-action suits
- The higher the volume, the higher the risk
- Recommend legal counsel review statutory notices
- Do not hesitate to consult with legal counsel when needed

TYPES OF REPOSSESSIONS

- Self-help: *The lender is allowed to repossess the vehicle without judicial process provided it can be done without a breach of peace*
- Judicial Process: *Court ordered repossession. Can be expensive and time consuming*
- Verify individual state laws concerning all elements prior to starting the repossession process

VOLUNTARY REPOSSESSION

- Great if you can get the member to agree, and the vehicle is in good condition
- Convince member to sell, auction brings less money
- Still required to provide statutory notices
- If the member wishes to waive his/her redemption rights (*not recommended*), get it in writing
- Do not recommend any other waiver (*notice of sale, and deficiency balance breakdown*)

CHOOSING A REPO AGENT

- Sufficient bond and insurance coverage
- Review insurance policy and declarations page
- Apply vendor due diligence guidelines
- Compare costs
- Investigate connections with auctions/remarketing firms
- If local, visit offices and inspect storage lot/repo yard
- Check the level of automation (*access to records*)
- Develop a relationship

OUT OF STATE ASSIGNMENTS

- Obtain a referral from the League/Association or a credit union in the state where the collateral is located
- Use local agent for referral or assignment
- American Recovery Assoc./Time Finance Adjusters now one company
- Obtain fee schedule in writing
- Compare fee schedule with what in-state CU's pay

ASSIGNMENTS

- Direct assignment or through a 3rd party (*additional cost*)
- Collection agency assignments are costly
- Validate address prior to assigning repo
- Provide complete information (*additional info obtained in the collection process may speed up recovery*)
- Be sure all assignments are well documented

MONITOR REPOSSESSION EFFORTS

- Periodic review of status reports (*should be automated*)
- Provide any new information obtained by CU staff
- Consider moving the assignment if no recovery within two weeks
- If determined a skip, consider using a third-party skip agent to locate (*no cost unless vehicle is recovered*)
- Unable to locate the vehicle, or the member is hiding the vehicle, consider filing suit on the strength of the loan agreement

THE VEHICLE IS ON THE HOOK



VEHICLE IS IN THE BARN

- Obtain a complete/detailed condition report
- The report should include engine & drive train condition
- Maintain a list of all personal property found in the vehicle
- Pictures should clearly show all damages listed on the condition report (*should be automated to view online*)
- Identify any repairs needed in the event the member does not redeem the vehicle

REDEMPTION

- Provide statutory notice to the member
- Time period allowed to redeem may vary by state
- Confirm/update member information (*including insurance*)
- Does the CU's policy address redemption requirements?
- Balance in full (*depending on state*), plus repossession and storage fees

PAYMENT ARRANGEMENT REDEMPTION

- Does the CU's policy provide definitive guidance for out of state repossessions?
- Is the vehicle worth more to the member than the CU?
- Was reason for delinquency temporary?
- Confirm member's ability to continue payments
- Member must pay all fees plus amount due (*do not add fees to the loan*)
- Consider account possible high risk for future delinquency
- Second time vehicle is repossessed early in the loan

COLLATERAL DISPOSITION

- Has the notice of sale been sent?
- Written procedures defining methods of disposal
- Must be accomplished in a commercially reasonable manner
- Complete disposition within a reasonable time following expiration of the redemption period
- Be aware of the vehicle's decreasing value and prepare the vehicle for auction (*repair if reasonable, and clean*)
- Sell the vehicle as soon as possible without infringing on the members right to redeem

COMMERCIALLY REASONABLE

- The procedure, not the price, ultimately determines if the sale is commercially reasonable
 1. Manner
 2. Time
 3. Place
 4. Terms of the sale (*efforts*)
- Sales practices in specific areas may determine what is commercially reasonable

PREPARE VEHICLE FOR SALE

- Is the vehicle running? If not, why? (*battery, starter, etc.*)
- Approve minor repairs to make the vehicle run (*a no run vehicle, beings no run money*)
- Minor cosmetic repairs may increase bid amounts (*lights and light covers, windshield, tires, wipers, wheel covers, floor mats, handles and knobs, minor body repair, etc.*)
- Complete detail (*a \$100 detail can bring an additional \$400+*)
- Be sure the vehicle is worth making the repairs

DISPOSITION OPTIONS

- Dealer only auction
- Sealed bids
- Public auction
- Newspaper ads
- Internet auction
- Retail
- Remarketing assignment
- Beware of internal Sweetheart Sales (*Rapson Rule*)

SWEETHEART SALE

- Repossessed vehicles sold to insiders
- Insider sales normally leave higher deficiency balances
- Insider includes staff, board members, and family members
- Under the Rapson Rule, the lender is required to credit the loan balance for 100% of the retail price on insider deals
- Best practice – CU policy forbids Sweetheart Sales
- Win or lose, attorneys are expensive

DEALER ONLY AUCTION

- May not be considered commercially reasonable in some states
- Dealers tend to pay less for vehicles

SEALED BIDS

- The sale must be advertised publicly
- Sufficient advance notice must be published in a way that reaches a substantial number of potential buyers
- Advertisement must contain a complete description of the vehicle
- The vehicle must be available for buyer to inspect
- Potential to be deemed a private sale
- Close date

PUBLIC AUCTION

- The sale must be advertised publicly
- Sufficient advance notice must be published in a way that reaches a substantial number of potential buyers
- Advertisement must contain a complete description of the vehicle, location and time of the auction
- The vehicle must be available for buyer to inspect
- These requirements are normally handled by the auction
- Conduct due diligence to ensure advertising is sufficient
- Visit the auction site (*if possible*)



PUBLIC AUCTION CONCERNS

- After initial condition report is completed, the vehicle is moved to storage until auction day
- Little or no effort placed in preparing the vehicle
- Potential buyers are looking to spend as little as possible
- Some low-end dealers attend (*makes it difficult for private buyers*)
- The vehicle is normally not represented at the auction
- Buyers must wait for CU's decision to sell the vehicle
- Lack of controls to monitor for insider dealing

OTHER DISPOSITION OPTIONS

- Newspaper ads – Normally used with sealed bids
- Internet Auction – Third party provider, allows for national viewing of the vehicle
- Retail – Normally done through a dealer, recommended for high-end specialty vehicles do to costs

REMARKETING ASSIGNMENT

- Third party handles the sale of the credit union's vehicle
- Inspects the vehicle on site to determine what repairs if any are needed
- Monitors preparation activity and time
- Conducts research to determine the best marketing location for each vehicle
- Assist in determining vehicle value
- Represents the vehicle at the auction (*increases bids*)
- Minimal costs – Increases return

OTHER 3RD PARTY REPOSSESSION SERVICES

- Skip tracing
- Transportation (*vehicle may sell better in another state*)
- Title processing
- Insurance claims filed against the member's policy
- Collateral protection insurance

COLLATERAL PROTECTION INSURANCE

- CPI – Forced placed insurance – Members do not understand
- Policy should provide definitive guidance
- Must re-amortize the loan
- Increased payment amount may cause delinquency
- Bigger problems if you don't re-amortize and continue adding CPI
- Recommend do not continue adding multiple CPI premiums
- Lack of insurance defined in default clause

SALE PROCEEDS

- Proceeds from the sale of property which secured a loan in excess of \$2,000 at the time the loan was made must be applied:
 1. Actual and reasonable cost of the sale
 2. Actual and reasonable cost of retaking and storing the property
 3. The unpaid balance owing under the agreement at the time the property was repossessed

DEFICIENCY BALANCE

- Short sale agreement made – Rewrite remaining balance immediately
- No arrangements – Assign remaining balance to a collection agency or attorney
- A delay in continued collection activity will reduce the chances for recovery, and increase collection costs

ADDITIONAL CHALLENGES

- Chapter 7 Bankruptcy
 1. Automatic stay – unable to repossess
 2. Lift stay required to repossess prior to discharge
 3. Cross-Collateral Clause
 4. Pay and Stay rule
 5. Debt is discharged
 6. Member destroys the vehicle and stops paying

ADDITIONAL CHALLENGES

- Chapter 13 Bankruptcy
 1. Automatic stay – unable to repossess
 2. Automatic stay protects co-maker
 3. Cram-Down
 4. Lift stay required to repossess vehicle
 5. Cross-Collateral clause – Proof of Claim must list all balances as secured

BANKRUPTCY

Bankruptcy Abuse Prevention and Consumer Protection Act Of 2005

- Budget and credit counseling required during the 180-day period preceding the petition filing date
- Means Testing – To determine if a Chapter 7 Case can be filed (*courts test for abuse*)
- Median Income Test – Income is compared against state income levels
- Failed tests may result in converting Chapter 7 petitions to Chapter 13
- Reaffirm, Redeem or Surrender loans that are secured by property within 45 days (*not so true today, member can pay and stay*)

Most Common Forms of Consumer Bankruptcy

- Chapter 7 – Liquidation of debts
- Chapter 13 – Reorganization of debts
- Chapter 11 – Business (*Subchapter 5 added for small business, simplified the process*)

CHAPTER 7 BANKRUPTCY

- Automatic Stay (Does not protect co-maker)
- Can reaffirm, redeem, or surrender collateral
- Debts that are not reaffirmed are liquidated at discharge

REAFFIRMATION REQUIREMENTS

- Must be voluntary
- Must be enforceable under bankruptcy law
- Can rescind prior to discharge or 60 days after the agreement is filed with the court
- Must be a written agreement filed with the court
- Must be in the member's best interest and not cause an undue hardship

CHAPTER 13 BANKRUPTCY

- Automatic Stay (Protects co-maker)
- Credit union must file a proof of claim
- Trustee approves plan to repay a % of unsecured debt
- Secured debt may be paid outside the plan (*Pending court approval*)
- Remaining unsecured balances are discharged at the end of the plan
- Cram Down – Collateral is worth less than the amount owed

BANKRUPTCY EARLY WARNING SIGNS

- Taking advances on lines of credit to pay other debts
- Balances on credit lines are at 75% or more of approved limits
- Sporadic payments made on large balance accounts
- Removal of direct payments made via payroll
- Delinquent mortgage

BANKRUPTCY ABUSE

- Obtaining credit with no intention to repay
- Creating excessive debt immediately following a discharge in Chapter 7
- Transferring balances from secured loans to unsecured lines of credit prior to filing a Chapter 7 petition (*cash advances on credit cards to pay off vehicle loans*)

CROSS-COLLATERAL CLAUSE

- Driven by state law & always under attack (*may lose its enforcement teeth*)
- Use as a tool to strengthen collection efforts (*retain credit union's lien*)
- Chapter 7 Bankruptcy – Do not repossess the vehicle
- Chapter 13 Bankruptcy – File secured claim, vehicle value may have impact

Public Access to Court Electronic Records

<http://pacer.psc.uscourts.gov>

When it comes to Bankruptcy
Always

Consult with Legal Counsel

3RD PARTY COLLECTION AGENCIES

- Do your research first
- Talk to peer credit unions
- Visit the facility (*get a free lunch*)
- Let each agency know you are looking at more than one (*let them compete for your business*)

3RD PARTY COLLECTION AGENCIES

- Pay close attention to the agreement
- Agreement may restrict your ability to use additional agencies or collect in-house
- Avoid long term contracts (*no contract*)
- Per account fee provides the agency with no incentive to collect (*normally comes when collections is outsourced*)
- Comply with third party due diligence requirements

3RD PARTY COLLECTION AGENCIES

- Monitor cost for repossession assignments - *Agency is entitled to % of sale proceeds*
- Have the ability to monitor collector activity
- Frequent and consistent detailed reports
- Limit the agencies authority (*decisions to repossess, charge-off, and legal decisions should remain with the credit union*)
- Place charge-offs with a different agency

POST CHARGE-OFF ACCOUNTS

- Provide settlement authority (*example: 75% of total balance*)
- Use multiple collection agencies
- Reassign accounts following period of no activity (*should be addressed in policy*)
- Monitor 1099-C requirements
- Billing (*invoice credit union or send net proceeds*)

OUTSOURCING ENTIRE DELQ PORTFOLIO

- May affect member retention rate
- Understand the agreement
- What's the incentive to collect your debt?
- Fair Debt Collection Practices Act (*credit union liable*)
- Try to avoid or immediately resolve disputes (*occur often with 3rd party*)
- The 3rd party collector's policies, procedures and timetable should mirror the standards set by the credit union

3RD PARTY COLLECTION AGENCY

- Timely assignments can reduce cost
- Maintain a detailed record of payments
- Review and monitor member complaints
- Immediately address unacceptable service
- Do not hesitate to stop sending accounts

Let's Get Creative

COMPLIANCE CONCERNS

- Truth-In-Lending/Reg. Z (*written clearly and conspicuously*)
- Fair & Accurate Credit Transactions Act (*amendment to the FCRA*)
- Equal Credit Opportunity Act/Reg. B (*a creditor shall not discriminate*)

REASONS TO BE CREATIVE

- Increased cost of living
- Unemployment
- Large corporations experiencing cuts and closings
(*Sears, Kmart, Foot Locker, Toys “R” Us, Shoppers*)
- Government shut-downs (*total nightmare*)
- Pandemic

POLICIES

- Do current policies limit your options?
- Policies and procedures should provide flexibility with collection efforts

Example:

Extension agreements require 3 consecutive monthly payments

- Why wait 3 months if the member starts an allotment or direct deposit?

EXAMPLE

- A member cannot afford to keep their vehicle and it is not worth the balance owed. To avoid repossession cost and the negative impact on your member's credit, will your current policy allow you to release the title for less than the balance owed (*vehicle sold by the member*) and rewrite the deficiency at a special low interest rate?

EXAMPLE

- The member suffered a setback that had a long-term affect on his/her ability to continue paying established debt
 1. How low can you reduce the interest rate?
 2. How many months/years can you extend the loan?
 3. Can you combine secured and unsecured debt?

Get creative with department & staff titles

- Account/Loan Servicing Department
- Debt Management Specialist
- Accounts Control Department
- Quality Control Department

MORTGAGE WORK-OUTS

- Credit unions must be ahead of the game (*COVID*)
- Recognize potential problems early (*late mortgage pmts, increased unsecured debt, increased activity on ODP/courtesy pay*)
- Have flexible guidelines in place that will allow you to step outside the box (*no cost refinance, extended term loans, etc.*)
- Communicate with peer credit unions (*find out what's working for them*)

Troubled Debt Restructuring (TDR) Modified Loans

MODIFICATIONS

- **Legal** – Any contractual change to a loan is considered a modification
- **Regulatory Accounting Principles (RAP)** Done under certain circumstances when meeting capital requirements
- **Generally Accepted Accounting Principals (GAAP)**
Rules used to prepare, present, and report financial statements

MODIFIED LOANS

- All TDRs are modified loans
- Not all modified loans are TDRs
- Loans refinanced or modified to Fair Market Value (FMV) are not reported as TDR's (*Member can get a better deal down the street*)

TROUBLED DEBT RESTRUCTURED

- A TDR is a loan whose terms have been modified by the credit union for economic or legal reasons related to the debtor's financial difficulties (provides a reduction in interest or principal). A loan extended or renewed at a stated interest rate equal to the current interest rate for a new debt with similar risk is not considered a TDR.

TROUBLED DEBT RESTRUCTURED

- A TDR may include any loan regardless of the underlying collateral
- Mortgage loans included in Chapter 13 Bankruptcy should be reported as TDR's. *(Examiners are catching this error when credit unions list 0 TDRs on the call report)*

TROUBLED DEBT RESTRUCTURED

- Is the member experiencing financial difficulties?
- Is the member delinquent on this and other loans they may have?
- What is the Fair Market Value (FMV)?
- Did the credit union grant a concession?
- The loan does not have to be delinquent to be a TDR.

CONCESSION

- Reduction in interest rate below FMV
- Forgiveness of principal (*1099-C*)
- Forgiveness of interest
- Forgiveness of late fees, taxes, insurance, etc.

- Should have a comprehensive written underwriting policy for modifications.
 - Value the property
 - Verify the member's ability to pay

A LITTLE OLD SCHOOL COLLECTIONS

Let's try to avoid telling our age, but how many remember:

- Closing a loan, and the consumer is sitting across the table facing you. The loan contract is placed in front of the customer while you read through the disclosures (*the contract is up-side-down to you*)
- We should know disclosures and the loan documents as well now

REMEMBER WHEN

- You had to complete a two-page application each time you wanted to get a \$500 loan (*today you just sign your name for \$5,000*)
- You kept written detailed notes on the back of a work-card for each collection call and reviewed these notes prior to making the next call (*your pen is your best friend – still applies today – only automated*)

REMEMBER WHEN

- The collection call placed to a 15-day delq. account was not only to find out why they had not made their payment, but to also offer the consumer additional cash to help them through their difficult times (*that principle should still be applied today – find out why and offer to help*)

REMEMBER WHEN

- You went to the consumer's house to pick up the TV or stereo that was purchased through a sales contract and the consumer was behind on the payments (*indirect lending is a lot older than you think – the only change is automation*)
- Refinancing delinquent loans normally included additional cash out (*how can we apply this principle today?*)

COLLECTIONS

- Collections is a very dynamic field and requires a disciplined approach
- The primary responsibility of collections is to prevent unnecessary losses while controlling costs and providing good member service
- Successful consumer collections is a combination of art and science and is critical to the success of the credit union

TIPS TO TAKE AWAY

- Timing is critical
- Being consistent is a must
- Time is money, the more time you take, the less money you get
- Litigation risk can be high, consult with legal counsel
- Automation is great, but at the end of the day, the human element partnered with “back to the basics” works best
- **While collectors may make poor loan officers, loan officers can become pretty good collectors**

This presentation is general in nature and for informational purposes only. It should not be relied upon as legal advice or legal opinion. Should you have any questions concerning the information provided, please contact:

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