

The Collector Chronicle

NORTH AMERICAN RECOVERY

JUNE-JULY 2020

AMERICA'S COLLECTION AUTHORITY

LAST MONTH'S LUCKY WINNER

The lucky winner of our client prize for last month is Physicians Emergency Services Inc. They have been using our agency since 2011! We will be sending Dr. Adams an Apple gift card ! Enjoy!



THIS MONTH'S PRIZE

This month we will be giving away a gift card to Fleming's Steakhouse! Each client who sends new accounts during the month of July 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 July!
Good Luck!!*



WHO CAN WE COLLECT FROM? PART 1

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DISCLAIMER: *The opinions and ideas expressed herein are those of the author and are based on his personal experiences. He is not giving legal advice or rendering a legal opinion. You should consult your attorney if you have questions regarding a legal matter.*

It seems like a simple question, "Who can we collect from?" But depending on the circumstances surrounding the debt, the answer can be very complicated.

In the simplest of cases, an adult will agree to pay for merchandise or services and sign a contract that outlines the terms of re-payment. For accounts that fall into this category, the person who signed the agreement is the one we collect from. (There are some instances where we can hold additional people responsible, and I will discuss those in next month's article.)

But many accounts aren't that simple. For example, let's say a client doesn't have a signed agreement. Can we collect the debt? What about an account where the agreement was signed by a 16-year-old? Can we collect from the minor or his parents? What can we do when a Grandparent takes a grandchild to the dentist and signs the financial agreement? Should we collect from the grandparent, the parent or both? What about the divorced mother who takes her child to the doctor and lists her ex-husband as the responsible party for insurance purposes? Who do we collect from after the insurance pays? The Mom? The Dad? And what about the situation where a husband received medical or dental services, signed the agreement, but won't pay? Can we also hold the wife responsible?

We run into these questions all the time and because of the way the laws are, we sometimes collect from someone other than you'd expect. So, this article is designed to help you understand why we collect from the people we do.

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Let's start with the account that slipped through the cracks and there isn't a signed agreement. You might think that we can't collect the debt, but that isn't the case. We collect accounts every day without ever seeing a signed agreement. A signed agreement helps clarify things if there's a dispute, but for the most part these accounts aren't disputed so we collect them without issue.

We can do this because most states have laws that address instances like this. Let's take a look at the laws in our home state, Utah. The section of the law that addresses collecting an account if a signed agreement doesn't exist is Utah Code Annotated § 78-12-25. The main purpose of this section is to set the statute of limitations for collecting a debt at four years when a signed agreement doesn't exist, but the part that specifically addresses the collection of a debt without a signed agreement states:

An action may be brought within four years:

(1) upon contract, obligation, or liability not founded upon an instrument in writing; also, on an open account for goods, wares, and merchandise, and for any article charged on a store account; also, on an open account for work, labor or services rendered...

So, regardless of whether the consumer signed an agreement or not, we can collect!

The next scenario I wanted to cover is the case of the underage consumer. In most states, an individual is considered an adult at 18. This means, among other things, he or she can enter into contracts. But what happens if someone under 18 signs an agreement? Can we enforce the terms of that agreement?

Maybe. If we wait until they turn 18 we can try. If we receive an account owed by a person who is under 18, we will investigate the possibility of collecting from the parents (and I will discuss how we

may be able to do this in next month's article.) But if we can't collect from the parents, we will need to wait until the consumer turns 18.

However, just because someone turns 18 it doesn't automatically mean we will be successful. Utah law allows them a way out. If we look at U.C.A. § 15-2-2 the text for this section says:

A minor is bound not only for reasonable value of necessities but also by his contracts, unless he disaffirms them before or within a reasonable time after he attains his majority and restores to the other party all money or property received by him by virtue of said contracts and remaining within his control at any time after attaining his majority.

So someone who signs a contract when they are under 18 years old can "disaffirm" it any time before they turn 18 or within a reasonable time after. Several cases have established that there is no specific "form" for disaffirming, so simply telling a creditor that they "disaffirm" the debt would suffice. In addition, there is no set time after the consumer has turned 18 in which they must disaffirm; the cases have allowed a consumer to disaffirm up to six months after turning 18. And lastly, if the consumer has squandered the property or goods, and can't restore the value to the creditor he can still disaffirm. The key here is that the consumer must take the step of disaffirming the debt soon after he turns 18. If he doesn't, we can collect.

Next month I will address the other issues I mentioned that deal with grandparents, parents, services for children and family members. Until then, happy collecting!



The Collector Chronicle is published by NORTH AMERICAN RECOVERY for prospective and current clients. The owner, David Saxton, welcomes your questions or comments. DaveSaxton@North-American-Recovery.com

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