

# The Collector Chronicle

NORTH AMERICAN RECOVERY

AUGUST 2020

AMERICA'S COLLECTION AUTHORITY

## LAST MONTH'S LUCKY WINNER

The lucky winner of our client prize for last month is Pacific Credit Services. They were originally signed in 2005! We will be sending Kelly a gift card to Fleming's Steakhouse! Enjoy!

**Fleming's**  
**Steakhouse**

## THIS MONTH'S PRIZE

This month we will be giving away a gift card to The Cheesecake Factory! 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!!*

**The**  
**Cheesecake**  
**Factory**

## WHO CAN WE COLLECT FROM? PART 2

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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.*

Last month I discussed collecting a debt even if a signed agreement doesn't exist, and collecting from a minor. This month I wanted to talk about collecting from family members.

Why would we want to do this? Because we find situations where the person who signed the financial agreement doesn't have any assets, and if we want to collect the debt we have to look elsewhere. A good example is the account where the mother is a stay-at-home mom, and she takes the kids to the dentist, signs the financial agreement, but doesn't pay. We need to go after the father if we want to collect the bill.

This is just one example of why we need to collect from someone who may never have received services or signed anything. Other examples are when a grandparent takes a grandchild to the dentist and signs the financial agreement. The client may not want us to collect from the grandparent so we need to collect from someone else.

Then there's the situation where the wife was the only one who signed an apartment lease, but now she's divorced, doesn't work and can't pay. If we want to collect, we will have to go after the ex-husband.

And yet another situation we run into is when a husband receives medical or dental services, signs the agreement, but refuses to pay. We find that all the assets are in the wife's name so we need to collect from her if we're going to get paid.

So how can we do this? Well, in the examples listed above we can collect from someone other than the person who received the services or signed the agreement because of Utah law **30-2-9 Family expenses—Joint and several liability**. This law states that: "The expenses of the family ... are chargeable upon the property of both husband and wife or of either of them, and in relation thereto they may be sued jointly or separately."

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This part of Utah code is commonly known as the family purpose law. It allows us to collect a family expense from both the husband and wife, no matter which member of the family incurred the debt or signed the agreement. The two factors we must consider are:

1. Is the debt a “necessary family expense”? and
2. Was the family living together and acting as a family unit at the time the debt was incurred?

One example of a case that dealt with these two issues was *Berrow v. Shields*, and it dates all the way back to 1916. In discussing what a “necessary family expense” is, this case determined that “All that is required by this section is that the things purchased be legitimate or proper family expenses (*Berrow v. Shields*, 48 Utah 270, 159 P. 538 (1916)).

This case, along with our practical experience, has helped us determine the wording “legitimate or proper” means that the debt must be a necessity. It can’t be something that is a luxury, such as a set of golf clubs or a spa membership. A debt like that is not a necessary family expense, and we would only go after the person who signed the agreement or purchased the item.

However, bills for things like food, clothing, shelter, and medical or dental care are considered necessary family expenses under this law, and we can collect from either spouse.

The *Berrow v. Shields* case also addressed the issue of whether or not there was an existing family relationship: “In order to hold either spouse liable under this section, the family relation must exist; there is no liability if the family relation had been intentionally and permanently severed at the time the goods in question were purchased.” (*Berrow v. Shields*, 48 Utah 270, 159 P. 538 (1916)).

So this means that if the husband and wife were separated and living apart, and the husband incurred an expense during this time, we would not be able to go after the wife—and vice versa. But any bill incurred while they were together that was a necessary family expense, could be collected from either one.

This opens up more options for us when collecting. So when we look at the first example I used of a stay-at-home mom taking the children into the dentist and signing the agreement, we can collect from the mother and the father under this law because the dental care is a necessary family expense.

In the second example of the grandparent taking the child to the dentist's office, we can collect from the parents even though the grandparent signed the agreement. Again, it’s because the dental care was a necessary family expense. (We could still collect from the grandparent if the client wanted because of the signed financial agreement. But each case is different, and we have to carefully consider all the factors.)

The third example I used of the apartment lease that was signed by the wife while married, but she is now divorced, isn’t a problem either. Even though the husband tells us that he doesn’t owe it because he didn’t sign anything, it doesn’t matter. The apartment was a legitimate family expense that was also a necessity so we can collect from him. We explain to him that he is responsible under the family expenses law and he must pay.

And lastly, when considering the example of a husband that receives medical or dental services personally, and he is the only one who signed the financial agreement, we can still collect from the wife, as long as the medical or dental care wasn’t elective. Remember the debt must be a necessity *and* a family expense in order for us to collect from both husband and wife.

Well, I hope this article has shed some light on why we sometimes collect from people other than those you thought we could. It’s made a big difference in allowing us to collect accounts that would never have been paid otherwise.

Using this law to collect is just one example of our commitment to excellence. We do whatever it takes: we research the laws, we find new ways to collect, and it’s all part of our overall philosophy of striving to be the best. It keeps us at the forefront of the industry, and it’s one of the reasons we continue to provide you with the best collection results available.



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](mailto:DaveSaxton@North-American-Recovery.com)

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