

The Collector Chronicle

NORTH AMERICAN RECOVERY

November 2021

America's Collection Authority

BEST PRACTICES FOR THE BEST OUTCOMES

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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.

If you haven't heard of Regulation F, consider yourself lucky. What is Reg F? It's a new regulation published by the *Consumer Financial Protection Bureau* that introduces new restrictions and safe harbor practices for debt collectors. It goes into effect December 1, 2021 and it's been the number one topic of discussion in the collection industry since the first rule was released back in August of 2020. While we've been ready for the Reg F changes for several months, I thought I would take the opportunity this month to discuss some best practices regarding the terminology in your financial agreements. I know, it's not the most exciting topic, but it really can help us improve our results for you if your agreements include these terms.

To start with, ask yourself this: Do you answer calls on your cell phone from unknown numbers? Do you know anyone that does? If you do, it's not a lot of people. Next question: Do you read an email or text message you receive? Most likely you do. When we are contacting consumers, speed certainly matters, but so does actually getting a response. Sending a letter through the postal service is costly and slow with equally slow response times. Calling someone is still a valuable tool, but people don't answer the phone like they used to.

So what does all this mean for you? The changing laws and the steady march of progress means that making sure you have terms in your agreements that allow you to communicate with a consumer through all modern mediums is essential. Ergo, contacting a consumer via email or text is critical. Like the disclaimer says, each industry is unique and you should consult your attorney for legal questions, but the wording I'm about to give you is wording I've seen several of our clients use which has given both of us better options to collect more money. Here's some of the wording I've been talking about:

LAST MONTH'S LUCKY WINNER

The lucky winner of our client prize for October is Rosewood Dental. They have been using our agency for over sixteen years! We will be sending them a gift basket from the Chocolate Covered Wagon. Enjoy! 😊



THIS MONTH'S PRIZE

For the month of November, we will be giving away a gift basket from the Chocolate Covered Wagon. Each client who sent new accounts during the month of November had their name entered into a drawing. Tomorrow, December 1st, we'll draw a name, and if it's yours, you'll win the gift card.



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Collection Fee, Attorney Fees, & Interest:

You agree to pay interest at the rate of 18% annually on all past due balances from the original due date, plus court costs and reasonable attorneys' fees, with or without suit, incurred in collecting any past due balance, and a collection fee of up to 40% of the remaining unpaid balance if your account is assigned to a collection agency.

Communication:

We want to stay in touch with you regarding your account. You agree, for us to service your account or to collect any amounts you may owe, we may contact you by calling or texting any telephone number, including wireless telephone numbers, or by emailing any e-mail addresses that you have or may attain. We may also contact you using pre-recorded/artificial voice messages and/or use of an automatic dialing device, as applicable.

Restrictive Endorsement Protection:

We may accept late or partial payments without losing any of our rights under this agreement. You agree not to send us partial payments marked "paid in full," "without recourse," or similar language. If you send such a payment, we may accept it without losing any of our rights under this agreement.

Arbitration Clause:

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate (the "Claims"), shall be determined by binding arbitration administered by the American Arbitration Association in accordance with its then applicable arbitration rules and procedures. By entering into this Agreement, you expressly waive your right to pursue any claim in any court of law; except, however, in the event your claim is within the jurisdiction of a small claims court, either party may elect to have that claim determined in small claims court. In the event you do not make any payment(s) which may be due under this Agreement, and in the event legal action is commenced to enforce your payment obligations, or to otherwise collect any debt(s) owed by you, under this Agreement, either party may elect for such collection action to be filed in state court, and you agree that the filing of a collection action in state court shall not be construed as, or otherwise constitute, a waiver of the right to compel arbitration with

respect to any other Claims. In the event a collection action is commenced in state court, and in the event any counterclaims are filed in such collection action, either party may demand that the entire action be determined by binding arbitration.

The arbitration shall be held within 25 miles of where you resided at the time you entered into this Agreement; except, however, the arbitration may be held remotely if the parties so agree or if otherwise ordered by the arbitrator(s). Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

The parties shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

In any arbitration arising out of or related to this Agreement, the arbitrator(s) are not empowered to award punitive or exemplary damages, except where permitted by statute, and the parties waive any right to recover punitive damages, except in any state or jurisdiction where the waiver of punitive damages is prohibited by law.

Except in any state where prohibited by applicable law, in any arbitration arising out of or related to this Agreement, the arbitrator(s) shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. Any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

Class Action Waiver:

You expressly agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated, or representative action. The parties expressly waive any ability to maintain any class action in any forum. The arbitrator(s) shall not have authority to combine or aggregate similar claims, and shall not have authority to determine any issues or Claims on a class basis.



The Collector Chronicle is published monthly by NORTH AMERICAN RECOVERY for prospective and current clients. Please direct questions or comments to the Editor, Dave Saxton at: DaveSaxton@North-American-Recovery.com

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