

SILVERMAN  THEOLOGOU

MACUMA ANNUAL LEADERSHIP CONFERENCE

The Five Most Important Things to Do after a Loan Gets to Charge-Off and Recovery Stage

 SILVERMAN
THEOLOGOU

Gary Silverman, Esq.



Table of Contents

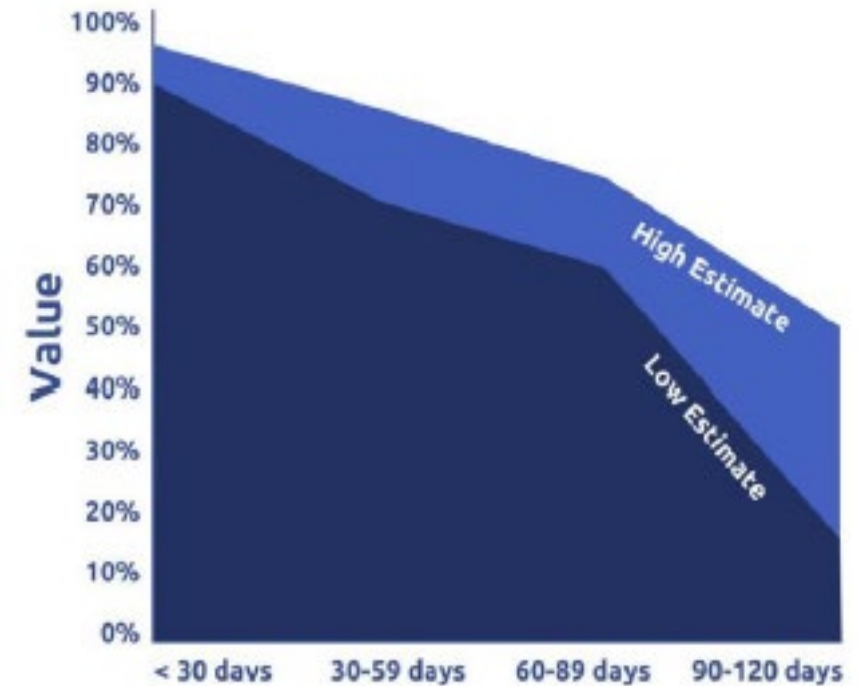
- Bad Debt Collection – General
 - Referral Timeline
 - Referral Criteria
 - “Suit Ready”
 - Avoiding Estoppel Issues
 - Communication is Key
- Bad Debt Collection – Replevin
- Bad Debt Collection – Death of a Member
- Bad Debt Collection – Bankruptcy
- Bad Debt Collection - Foreclosure



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 Collectibility



Delinquent Accounts Age



Criteria for Referring Accounts

- Establish a criteria for referring accounts
 - Type of Account
 - Credit Card
 - Automobile Loan
 - HELOC
 - Dollar Amount
 - Over \$5,000
 - Under \$5,000
- When referring accounts, the same criteria must be used so that accounts are referred on a uniform basis thus avoiding any potential CFPB issues.



“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 attorneys’ fees
- The accuracy of the demand letter
- Identifying potential statute of limitation issues
- Timely filing of lawsuits
- Avoiding potential FDCPA violations



“Suite 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)
- Photocopy of member driver’s license or other
- Picture ID (if available)



“Suit Ready” Documentation by 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 to 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, then copy of application and 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.

§ 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. 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.



For Additional Information



**WASHINGTON, DC METRO
OFFICE**

11200 Rockville Pike
Suite 520
North Bethesda, MD 20852
Phone: (301) 468-4990
Fax: (301) 468-0215

VIRGINIA OFFICE

9097 Atlee Station Road
Suite 304
Mechanicsville, VA 23116-
2525
Phone: (804) 381-4616
Fax: (804) 381-4641

CALIFORNIA OFFICE

11630 Chayote Street
Suite 3
Los Angeles, CA 90049
Phone: (213) 226-6922
Fax: (213) 226-6964