

DO'S & DON'TS OF ONLINE DEBT COLLECTION

Prepared by:
Michelle Dunn
Michelle Dunn Writer, LLC

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Dos & Don'ts of Online Debt Collection

The FDCPA and the FCRA don't specifically talk about the "do's and don'ts of online debt collection since when these laws were written, there was no internet. Most of it you can figure out by using common sense but here are some things to think about when utilizing the internet for your debt collections:

Do's

E-learning

Skip tracing or locating debtors

Accepting debtor payments

Researching collection tools, such as software or skip tracing tools

Credit reporting

Use database technology to maintain account information on customers that owe you money

Access consumer payments only with authorization for EACH specific payment or transaction.

Don'ts

Emailing debtors about a debt

Instant messaging a debtor about a debt

Initiating more payments on a bank account when additional transactions have not been authorized.

Send debt collection emails, faxes or text messages

What you CAN do

Utilize social networking sites to locate or find a debtor; get a mailing address or employment information in order to enforce any in-house collections.

Creditors can use database technology to maintain the account information of customers to whom they have already extended credit.

What you should NEVER do

Never converse with a debtor using social media sites, utilizing the email feature or comment feature.

Do not email a debtor about a debt if you think a third party can ever see that email.

Do not instant message a debtor about a debt.

If a debtor doesn't respond to your email after authorizing you to email them, stop emailing and use traditional methods to try and collect, such as phone calls or letters.

What are the risks of online debt collection?

Many new collectors or people new to debt collection don't realize the implications of third party disclosure and how it affects the industry, the collectors and the consumers in the long run.

On March 31, 2009, Ryan Singel wrote a story titled "Woman sues debt collectors for "MySpace posting" According to Singel, a consumer

fell behind on her payments in early January on her 2005 Chevy Impala, the last thing she wanted to do was share that information on her Myspace profile or any other social networking website.

But that's what the debt collector assigned to her debt did. This woman then filed a civil lawsuit against the collection agency accusing them of violating collections law by harassing her online, on the phone and in person. She is asking for \$25,000.00 in damages.

The court found that because of the post to her Myspace page, she suffered damage to her business and community reputation, extreme mental distress, aggravation, humiliation and embarrassment.

Under most state laws, debt collectors may not publicize a debt or even tell a debtor's friends, family members, or work associations about a debt in order to shame a person into paying. Collectors must also refrain from using abusive or oppressing methods, and generally have to stop calling one's home or work after being asked to communicate in writing.

The Fair Debt Collection Practices Act regarding online collections

The FDCPA does not cover online technology in reference to debt collection. We are hopeful that as the FDCPA is updated and changes are made that online collection techniques and technology will be specifically addressed.

I would like to bring to your attention a portion of the February 2009 Federal Trade Commission workshop report:

“Consumer advocates, however, expressed serious misgivings about the possible consumer harm that might arise if debt collectors were free to contact consumers via mobile phones and other newer technology methods.

These commenters noted three primary concerns:

1. That some of these methods, such as mobile telephones, email, text messages and instant messaging, may lack the requisite level of data security or confidentiality to be used for sensitive debt collection matters.
2. That consumers may incur costs for some contacts using new technologies if, for example, the mobile calling plan of a consumer who receive a debt collection call does not permit unlimited minutes, or imposes charges for text messages.
3. That debt collectors using newer technologies may inconvenience or embarrass consumers by contacting them when they are driving, in appointments or at work.”

It is my understanding that the FTC roundtables going on now will be a stepping stone to FDCPA reform. The FTC has concluded that major problems exist in the flow of information within the debt collection system and debt collection laws need to be modernized to take into account the changes in technology since the laws were put in place.

Some things the FTC is looking into changing include:

- The law needs to be changed to require that debt collectors have better information, making it more likely their attempts to collect

- are for the right amount and are directed to the correct consumer.
- The law needs to be changed to mandate that collectors provide better information to consumers explaining their rights under the FDCPA.
 - Debt collectors generally should be allowed to use all communication technologies, including new and emerging technologies, to contact consumers. The law, however, must be carefully crafted and applied to avoid collections use of communication technologies in a manner that causes consumers to incur charges, or otherwise subjects them to unfair, deceptive, or abusive practices or acts.
 - Debt collectors generally should be allowed to use newer electronic payment methods to receive payments from consumers. To deter unauthorized access to the accounts of consumers through the use of these methods, however, the law needs to be changed to require that collectors obtain express verifiable consent from consumers before accessing their accounts.

The penalties for online violations

Unless you are experienced and know the FDCPA & FCRA make sure to research and double and triple check before communicating with a debtor by email, text or any other online communication tool.

It is undisputable the cost benefit for a collection agency to communicate with debtors via email. The risk is too big. It is not against the FDCPA to communicate via email with debtors, but if you do, you are opening up yourself and your agency to a topic not

specifically covered in the current FDCPA and it could end up costing you a violation.

Using the internet to improve your collections

Common mistakes using online portals and how to avoid them

When you use a social networking site to locate a debtor, to then try to collect from them by phone, or mail, there normally won't be a problem. The problems arise when someone contacts a debtor through one of these social websites. Since the information, messages or conversations on these types of websites is not private and is available to many people to see, this would not be a tool to use in debt collection without violating federal laws specifically applicable to consumer debt collections. Most of these types of websites are integrated with electronic mail and one can send email to one specific person, BUT, just how private is this? How can you be sure? Better safe than sorry – don't utilize the email tool on these sites to contact someone who owes money. You can run into legal problems and violate privacy laws.

Top methods for online collections

I recently took a poll of the top methods collectors use as debt collection tools. The top 2 answers were:

1. Accepting debtors payments online
2. Stay away from using the internet until the laws are changed

RESOURCES for online collectors

Full 120 page February 2009 FTC Workshop Report:

<http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>

Where collectors connect...online

<http://www.collectionstechnology.net/>

Online location or skip tracing websites:

Accurint

Lexis Nexis

Peoplesearch.net

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