

Commercial Collection Agencies of America Inc. Operative Guidelines

Disclaimer

The information and recommendations contained in this document were developed by representative members of the Commercial Collection Agencies of America, Inc. as advisory information. However, do not assume that all acceptable practices are contained in this document or that additional measures may not be required under certain circumstances or conditions. Please consult the appropriate regulatory authorities for additional laws and rules of conduct that may apply.

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While Commercial Collection Agencies of America recommends the use of and reference to these Operative Guidelines, this document is intended to be voluntary and not binding.

Other than recognition of certified agencies, Commercial Collection Agencies of America does not approve or endorse any particular companies, agencies, firms, products or services. These Operative Guidelines shall not be referenced in any way which would imply such approval or endorsement.

Preamble

Commercial Collection Agencies of America, Inc. is an organization dedicated to elevating the standards of the commercial collection industry. To fulfill its mission, membership in Commercial Collection Agencies of America is limited to certified agencies and affiliate members (law firms and law lists) whose members are held to the highest of professional standards and are expected to adhere to a rigorous code of ethics.

In recognition of the mission of Commercial Collection Agencies of America and to foster relationships among its members, these Operative Guidelines have been developed and adopted to provide guidance and best practices in the forwarding and handling of business through the triadic system supported by the Commercial Collection Agencies of America. These Operative Guidelines are intended to set forth a basic framework within which members can conduct business guided by good practices and the mutual respect of Commercial Collection Agencies of America members, to encourage proper and unambiguous communication, and to foster amicable resolution of conflicts.

It is understood that these Operative Guidelines are to provide guidance; that other laws and rules of conduct will govern the relationship and conduct of the parties. Law firm members are subject to applicable Rules of Professional Conduct and ethical rules; agency members are likewise governed by rules of conduct to which they are bound to adhere. Further, it is understood that the foundation for these Operative Guidelines is the underlying premise that the parties should set forth all matters relevant to the relationship in writing, in advance, to include all terms of engagement and expectations to minimize opportunity for confusion or conflict.

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In the spirit of the triadic system, Commercial Collection Agencies of America places great confidence in its members to be guided by mutual respect and fairness in all matters contemplated by these Operative Guidelines.

Responsibilities & Duties

Our members and affiliate members support the triadic system comprised of collection agencies who work on behalf of creditors and forward cases to receiving attorneys utilizing member law lists to make those referrals. Work is commonly handled on a contingent fee arrangement which is defined in the forwarding letter which serves as the contract laying out the terms of the engagement.

Once an agency deems it necessary to have a file forwarded for legal handling and possibly having the claim reduced to Judgment, they look to find a creditor's rights attorney in debtor's venue to represent their client. The agency typically seeks an attorney from a law list who has deemed the law firm knowledgeable in the field of creditors' rights and has agreed to work within the triadic system. The law list offers a bonding program which ensures the creditor some protection of their claim. In any triadic system, communication is the backbone of success. The triad of law lists, attorneys, and agencies needs ensure all available lines of communication – telephone, email, fax, text, mail – are always open to keep sustainability. Every forwarder is urged to communicate with the receiving attorney, and the receiving attorney to communicate with the forwarder. If any issue arises in the breakdown of communication on either side, utilize the law list to assist in resolving the communication breakdown.

Both receiving attorneys and agencies should uphold certain responsibilities.

It is the duty of the forwarder to make available to the receiving attorney all information regarding the claim from the creditor. The receiving attorney may expect to get the full name of the creditor, and all documents and contracts involved with the claim. If the creditor wants the matter reduced to judgment, the forwarder should alert the creditor that testimony may be required, answer all questions relating to the claim, and give full support.

It is also up to the forwarder to relay all requests from the attorney to the creditor in a timely manner. All requests for court costs and fees will be relayed on to the creditor to have checks issued to the attorney.

While it is the attorney who is actually working for the creditor, the forwarder is expected to make certain that the creditor understands the role of the receiver and helps minimize any extra work for the attorney. The forwarder will be responsible to communicate the process to the creditor to keep the file moving efficiently and in a timely manner.

The receiving attorneys are responsible for immediately acknowledging the claim from the forwarder, conducting a cursory review of the claim and giving feedback to the forwarder for the creditor. If the attorney chooses not to accept the claim, the claim should be returned immediately. If the claim cannot be handled under the contingency fee arrangement, then immediately a request should be submitted to the forwarder to accept the claim under a different compensation arrangement.

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The receiver is expected to update the forwarder on status of the claim as new information arises. The forwarder should diary their file in accordance with the timeline set out by the receiver.

Dispute Resolution

The forwarder and receiver agree that any disputes not covered by the terms of the forwarding contract and which otherwise cannot be resolved amicably between them may be resolved through mediation pursuant to the dispute resolution process set forth herein. The Commercial Collection Agencies of America Dispute Resolution form is filed with the Executive Director of Commercial Collection Agencies of America with a copy to the other party with due proof of service to both noted thereon. Unless an objection to participation in this process is received by the Executive Director within 30 days after service thereof, mediation proceeds as outlined herein. Commercial Collection Agencies of America maintains a list of approved mediators, from which each party selects one. By mutual consent, the parties may agree to one single mediator. Otherwise, two are selected and serve. The mediation may be handled telephonically, in writing, by video call, or in person based on the agreement of the parties or as determined by the mediator(s). Mediation expenses and fees, as determined on a case-by-case basis, are paid equally by the parties barring allocation by the mediator(s) to the contrary. The forwarder and the receiver agree to be bound by the resolution of the dispute as decided by the mediator(s).

Exhibit E from the Standards Board Certification Requirements is the document utilized to file a resolution request.

Financial Considerations

Court costs: Costs associated with the filing of suit are the responsibility of the creditor through the forwarder. Unless there is an agreement to the contrary, costs will not be incurred without express permission of the creditor through the forwarder.

Compensation, Fees: A clear statement as to the compensation earned should be provided by the forwarder to the receiver that are applicable to the given claim when a claim is forwarded, unless there is a standard fee arrangement in place between the parties prior to the claim being sent.

Remittances: Remittances will be timely, given allowance for collected funds to be verified.

Suit Fees, Retainers: Suit will not be filed without consent of the creditor through the forwarder. If suit is filed, the receiver may collect additional suit fee if agreed to prior to filing.

Attorney Fees: Unless otherwise agreed, fees collected over and above principal and interest are the property of the creditor and commissions will be calculated the same as on interest. Where prohibited by law, the receiver retains as its own.

Trial Fees and Counterclaim Defense Fees: Trial fees if applicable and any fees associated with defense of a counterclaim are outside the compensation agreement unless otherwise specified. The

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creditor has the right to retain other counsel for defense of the claim, or a new agreement for compensation of the defense of the claim should be agreed upon before proceeding.

Placement, Withdrawal, & Fee

A fee typically is earned by the receiver on any collections made after the date of the receiver's acknowledgment of the claim and demand to the debtor for payment. If a claim is withdrawn, fees typically are earned on any collections **that are the result of a payment plan or payment arrangement made by or with the assistance of the receiver**. Nothing prohibits the forwarding of a claim to a receiver on different terms provided that those terms are clearly stated in the forwarding documents.

Fees:

- A clear statement as to the fees that are applicable to the given claim should be provided by the forwarder to the receiver when a claim is forwarded, unless there is a standard fee arrangement in place between the parties prior to the claim being sent, and that fee arrangement is binding on that claim.
- If no term is set forth as to the value of returned merchandise, the value of said merchandise generally is deemed to be 50% of the price of the merchandise and billed as a collection 50% of the value of the merchandise.
- A claim may be withdrawn in the event of a bankruptcy filing. Fees will be due on any monies already collected at the time of the bankruptcy filing.

Glossary of Terms

Claim An account that a creditor has asked a collection agency to collect

Commission Compensation payable by a creditor and earned by a receiver for his services (typically computed as a percentage of the sum collected)

Compensation Money awarded for services

Cost Advance The sum of money advanced by the creditor to the receiver as a fund from which court costs are to be expended

Court Costs The sum of money the receiver requires to cover the expenses necessary to file all the paperwork for a lawsuit from the filing of suit through the entry of judgment

Forwarder The entity who is sending a creditor's rights attorney a claim to handle

Forwarding Contract Agreement between the creditor and the receiving attorney outlining the services to be provided, along with the commission or other compensation structure

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Non-Contingent Suit Fee Money sent to an attorney for filing a lawsuit. The money is kept by the attorney once suit has been filed whether or not the claim is collected

Law List An organization who bonds receivers and markets law firms for forwarders

Receiver The law firm that the forwarder sends a claim to for handling

Retainer Sum of money paid in advance to hire the services of an attorney

Suit Fee The fee payable to the receiver, in addition to the commission, for legal services rendered on behalf of the creditor in connection with the court action during litigation. (The suit fee may be partially, or in its entirety, contingent upon collection)

Trial Fee A sum of money charged to a creditor by the receiver for representing them at trial



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