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COLLECTIONS - A CENTRAL CASH FLOW ISSUE FOR BUSINESS

A central cash flow issue for any business dependent on the good credit of its customers - whether a construction company, equipment dealer, lending institution, private school, or doctor's office is the efficient and effective collection of accounts receivable. Unfortunately, many businesses often encounter customers who are unwilling or unable to pay according to the agreed upon terms. Ultimately, litigation may be the only remedy, and even after a judgment is entered the business faces the issue of whether the judgment will ever be satisfied. Whenever business is conducted on a credit basis, careful consideration must be paid to the issues of effective collection strategies and procedures.

Effective collection begins with the agreement creating the obligation to pay. Depending on the nature of the business, that agreement may take the form of a note, mortgage, security agreement, purchase agreement, credit application, lease, or other document. Careful drafting of this document by legal counsel may avoid future problems and lay the groundwork for successful collection efforts. Consideration must be paid to such details as security interests, liens, choice of courts, jurisdiction, interest rates, personal guaranties, and attorneys fees.

In addition to drafting a sound document, the pre-agreement stage must include a comprehensive information gathering process. The business should obtain as much information as possible about customers to enable it to track down a customer and collect the account in the event that the customer fails to abide by the terms of the agreement. Such information includes bank account information, addresses and telephone numbers and asset, property, and personal contact

information.

When an account remains unpaid, a series of business decisions must be made. For example, how patient and flexible should the business be with the customer? At what point and at what amount will the business write-off an account as not collectible? How much time will elapse before seeking legal counsel?

A significant question to address at this stage is whether to hire a "collection agency." Unfortunately, collection agencies can do only so much. Collection agencies cannot file suit or represent clients in court, nor can they engage in the post-judgment collection process. Importantly, businesses usually find that customers respond much more swiftly and meaningfully to communications from attorneys than from collection agencies.

When internal collection procedures prove unsuccessful, the next issue to be considered is whether and on what terms legal counsel should be retained. A law firm, such as the Dougherty Law Offices, with a strong collection background can effectively administer all phases of the collection process. A client should expect to receive complete representation from the initial "dunning" or demand letter through to the lawsuit and judgment stage, and thereafter to the post-judgment collection phase. In addition, this law firm can advise a business on setting up a strong internal collection procedure and in drafting the appropriate agreements and credit applications.

Oftentimes, the initial dunning letter from a law firm generates a favorable response. If a response is not received or an acceptable repayment plan cannot be achieved, suit should be filed. Generally, obtaining a judgment against the customer is a relatively easy part of the process. The real

challenge comes at the post-judgment collection phase.

There are a number of tools available for this purpose. They include wage attachment, bank account garnishments, foreclosure, and oral examinations of the customer under oath. In addition, experienced and effective collection attorneys have in place an internal system designed to track, coordinate, and formulate an effective collection strategy. Creativity and persistence are, perhaps, the most important attributes for effective post-judgment collection.

Occasionally, a customer will file bankruptcy to avoid paying the judgment. Bankruptcy filings have reached an all-time high and some customers recognize that bankruptcy may be an easy way out. When the customer declares bankruptcy, the collection firm must have attorneys familiar and experienced in this area of the law. It is important that the transition from ordinary post-judgment collection to bankruptcy be accomplished as smoothly as possible so that the business's rights are fully protected in the bankruptcy proceeding.

Effective collection should be viewed as a process that begins prior to the credit agreement and ends with full and final payment. The goal is always, of course, to avoid having to collect in the first place. When effective internal collection procedures are not in place, a partnership between the business and an experienced law firm is the best remedy for yielding positive results.

The Dougherty Law Offices remain available to guide your business through the often rugged terrain of collection practice.
www.doughertylawoffices.com