

Credit Reporting: Take the Time - Do It Right

Let's Do It Right



MOSKOVITZ TIEDEMANN & GIRARD

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Presented by

June D. Coleman

Legal Disclaimer

This information is not intended to be legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to confirm that this information is up to date as of the date of this presentation. It is not intended to be a full and exhaustive explanation of the law, nor should it be used in lieu of your legal counsel's advice.



June Coleman

Kronick, Moskovitz, Tiedemann & Girard



June Coleman is a defense litigator with more than 18 years of experience. Her areas of emphasis include defense of consumer rights actions involving the FDCPA, TCPA, and FCRA. She has a deep understanding of permissible debt collection conduct and how best to defend claims and minimize liability in the collection industry. She is also familiar with governmental investigations and prosecutions, including those conducted by the AGs and the CFPB, as well as defending collection attorneys before the California State Bar. For 8 years (2008-2012, 2014-2016), Ms. Coleman has been voted by her peers as one of the top 5% of lawyers practicing in Northern California, earning her a spot on the Northern California Super Lawyers list; and has been voted by her peers to the "Best of the Bar" list by the Sacramento Business Journal from 2013-2016. Sacramento Magazine has also named Ms. Coleman to their inaugural 2015 Top of the Bar list based on a peer review. Ms. Coleman is a Martindale Hubbell AV rated attorney.



Agenda

- Legislative Overview
- Accurate Credit Reporting
- Handling Disputes
- Reporting Credit History Details
- Obtaining Credit Reports
- Liability



Legislative Overview



Legislative Intent Behind FCRA

Accuracy and Fairness of Credit Reporting

- The financial credit system is dependent upon fair and accurate credit reporting.
- Inaccurate credit reports directly impair the efficiency of the financial credit system.
- Unfair credit reporting methods undermine the public confidence which is essential to the financial credit system.



Consumer Reporting Agencies

- Consumer reporting agencies have a vital role in the financial credit system.
- Credit reporting agencies (and the entities that furnish them with information) must report with fairness, impartiality and respect for consumer rights to privacy.
- The FCRA sets forth reasonable procedures to ensure that credit reporting serves the needs of commerce for consumer credit in a manner that is fair and equitable.



Statutory Acts That Govern Credit Reporting

- FCRA governs those that report information to a credit reporting agency
- State laws also governs those that report information to a credit reporting agency, such as the California Consumer Credit Reporting Agencies Act
- Fair Debt Collection Practices Act also governs credit reporting



Accurate Credit Reporting



Reporting Correct Information

- You may not furnish information that you know or consciously avoid knowing is inaccurate. (FCRA)
- You may not furnish information that you know or have reason to know is inaccurate. (California)
- You must correct incomplete or inaccurate information.



What Is Incomplete or Incorrect Information

- Incorrect on its face - false
- Misleading to such an extent that it can be expected to adversely affect credit decisions
- Omitting information that could materially alter how the reported debt is understood



Handling Disputes

How to Dispute Your
Credit Report



Well, maybe not
that way...

Consumer Disputes

If a consumer disputes the information that you have provided and you provide that information again to a CRA, you must also tell the CRA that the information is disputed.



Dispute Directly from Consumer

In response to a valid direct dispute, you must do the following:

- Conduct a reasonable investigation
 - Investigation guided by specific dispute
 - Review all information you have
- Complete investigation and respond to consumer within 30 days of receipt of dispute



Dispute Directly from Consumer

Exceptions to Duty to Investigate Direct Disputes:

- Dispute submitted by a Credit Repair Organization or submitted on forms created by a Credit Repair Organization
- Dispute is frivolous or irrelevant
 - Document basis of determination
 - Provide written notice to consumer with 5 business days of determination



Dispute Directly from Consumer

How to handle disputes combined with a notice to cease communication?

- FTC advisory opinion states you must still respond to dispute as required under the FCRA
- Dispute acts as partial waiver as to dispute
- Communication strictly limited to notice, not collection



Consumer Dispute from CRA

- If a CRA notifies you that a consumer disputes information you provided, you must investigate the dispute and review all relevant information you have guided by the information provided by the CRA.
- You must report your findings to the CRA.
- If your investigation shows the information to be incomplete or inaccurate, you must provide corrected information to all national CRAs that received the information.




Reasonable Investigation

- Driven by Automated Consumer Dispute Verification
- Review all information relevant to dispute as described in ACDV – even information you received from other sources
- Checking your computerized records may not be enough



Reporting Credit History Details

ABC LENDING CO												
123 Millbrook Ave Birmingham, AL 35201 (205) 555-5252												
Account Number:	422XXXX	Current Status:	PAYS AS AGREED									
Account Owner:	Joint Account	High Credit:	\$12,000									
Type of Account 	Installment	Credit Limit:	\$0									
Term Duration:	60 Months	Terms Frequency:	Monthly (due every month)									
Date Opened:	09/2003	Balance:	\$0									
Date Reported:	04/2006	Amount Past Due:	\$0									
Date of Last Payment:	04/2006	Actual Payment Amount:	\$330									
Scheduled Payment Amount:	\$231	Date of Last Activity:	04/2006									
Date Major Delinquency First Reported:		Months Reviewed:	31									
Creditor Classification:		Activity Description:	Paid and Closed									
Charge Off Amount:	\$0	Deferred Payment Start Date:										
Balloon Payment Amount:	\$0	Balloon Payment Date:										
Date Closed:	04/2006	Type of Loan:	Auto									
Comments:												
81-Month Payment History												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	*	*	*									
2005	*	*	*	*	*	*	*	*	*	*	*	*
2004	*	*	*	*	*	*	*	*	*	*	*	*
2003	*	*	*	*	*	*	*	*	*	*	*	*
2002	*	*	*	*	*	*	*	*	*	*	*	*
2001	*	*	*	*	*	*	*	*	*	*	*	*
2000					*	*	*	*	*	*	*	*

Account Details



Reporting Account Closings

You must notify CRAs when consumers voluntarily close credit accounts.



Reporting Delinquencies

You must notify the CRA of the month and the year of the commencement of the delinquency that immediately preceded your furnishing of information if debt is charged off or placed for collection.



Reporting Delinquencies

How do you report accounts that you have charged off or placed for collection?

For example:

A consumer becomes delinquent on March 15, 1998. The creditor places the account for collection on October 1, 1998.

Reporting Delinquencies

Example:

A consumer falls behind on monthly payments in January 1998, brings the account current in June 1998, pays on time and in full every month through October 1998, and thereafter makes no payments. The creditor charges off the account in December 1999.



Reporting Delinquencies

Example:

A consumer's account becomes delinquent on December 15, 1997. The account is first placed for collection on April 1, 1998.

Collection is not successful. The merchant places the account with a second collection agency on June 1, 2003.



Reporting Delinquencies

Example:

A consumer's credit account becomes delinquent on April 15, 1998. The consumer makes partial payments for the next five months but never brings the account current. The merchant places the account for collection in May of 1999.



Reporting Information and Bankruptcies

- After Bankruptcy Filed
- After Chapter 7 Discharge
- After Chapter 13 Plan Approved
- After Chapter 13 Discharge



Obtaining Credit Reports



Pulling Credit Reports

You may pull a credit report if you have a permissible purpose:

- Court order
- Written consent from consumer
- Extending credit
- Collecting a credit transaction



Liability



Liability

Willful Violation

- Actual Damages/\$100-\$1,000 Statutory Damages
- Punitive Damages

Negligent Violation

- Actual Damages

Obtaining Credit Report Under False Pretenses

- Actual Damages/\$1,000 Statutory Damages
- Punitive Damages
- Attorneys' Fees and Costs

Questions?



Thank You!

For more information please contact me at:

June Coleman

Kronick Moskovitz Tiedemann & Girard

400 Capitol Mall, 27th Floor

Sacramento, CA 95814

www.kmtg.com

JColeman@kmtg.com

916-321-4528

