

# Credit Reporting: Take the Time – Do It Right



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# 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.



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# Agenda

- Legislative Overview
- Responsible and Accurate Credit Reporting
  - In the COVID era
- Common Mistakes in Reporting Delinquencies
- Verbal and Written Disputes
- Conducting a Reasonable Investigation
- Frivolous or Irrelevant Disputes
- 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.

# Legislative Intent Behind FCRA

## 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.

# Governs 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



# Credit Reporting and the CARES Act

If a creditor makes an accommodation because of COVID, the creditor has to continue to report the debt as current if the debtor is up to date on the debt when the creditor agrees to:

- defer one or more payments
- accept a partial payment
- forbear any delinquent amounts
- modify a loan or contract, or
- give any other assistance or relief



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

# Reporting Delinquencies Examples

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

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

# Reporting Delinquencies Examples

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

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 Examples

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

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.

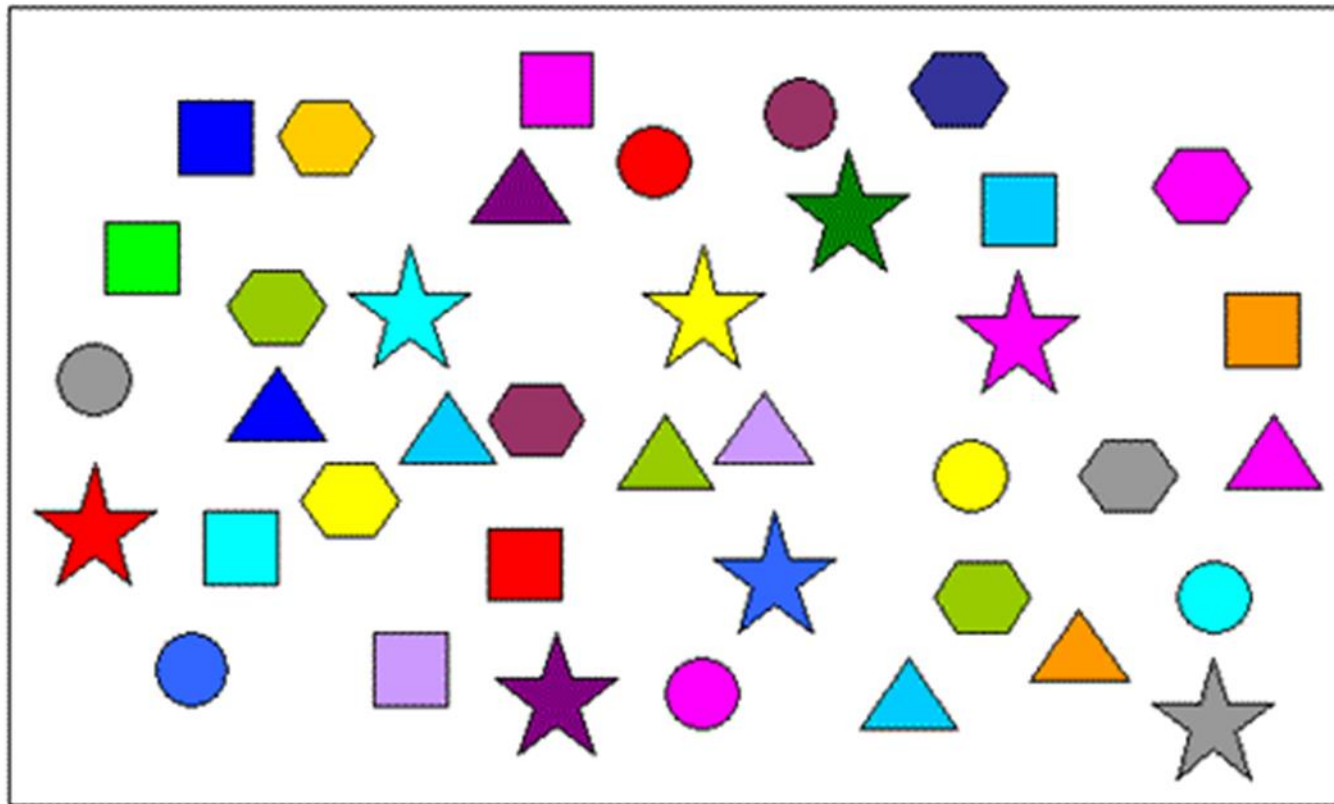
# Reporting Delinquencies Examples

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

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.

# Credit Report Disputes

*Come in All Shapes and Sizes*



# Credit Report Dispute - Direct

- Letter Disputing Debt?
- Letter from Someone Other Than the Debtor?
- Fax
- Response to a Lawsuit
- Motion to Set Aside Judgment?



# Credit Report Disputes

- “It’s Not Mine.”
- “I don’t owe that debt.”
- “I don’t remember this debt.”
- “I’m not paying this. I don’t have a job.”
- “I’m never paying this.”
- “You can go pound sand.”
- “I don’t owe interest.”
- “This is wrong.”
- “My credit report is wrong.”



# How to Dispute Your Credit Report



Well, maybe not  
that way...

## Handling Disputes

# Consumer Disputes

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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 within 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.

# FDCPA Duty to Inform Third Parties of Dispute

No duty to report dispute to client.

- *Kinel v. Sherman Acquisition II LP*, No. 05 CIV. 3456(RC)THK, 2006 WL 5157678, at \*17 (S.D.N.Y. Feb. 28, 2006), *report and recommendation adopted*, No. 05 CIV. 3456(KMW), 2007 WL 2049566 (S.D.N.Y. July 13, 2007)
- *Hilburn v. Encore Receivable Mgmt., Inc.*, No. CIV 06-6096-HO, 2007 WL 1200949, \*4 (D. Or. Apr. 19, 2007) (court addressing liability of debt buyer when collection agencies it hired knew debt was disputed)

But doesn't it make business sense to report dispute to client?

- Duty of client to inform collection agency
  - *Plummer v. Atl. Credit & Fin., Inc.*, 66 F. Supp. 3d 484, 490 (S.D.N.Y. 2014)





# Errors on Credit Reports

## Investigating Disputes

## 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

# Reasonable Investigation

- Maintain a system reasonably capable of receiving and archiving information regarding disputes, including supporting documentation, from CRAs and other sources;
- Conduct an investigation regarding disputed information, including reviewing:
  - “all relevant information” forwarded by the CRA and;
  - the furnisher’s own information with respect to the dispute;
- Report the results of the investigation to the CRA that sent the dispute within 30 days;
- Provide corrected information to every nationwide CRA; and
- Modify/delete inaccurate information internally or permanently block reporting.

## Reasonable Investigation

### Common Allegations in Litigation

- No re-investigation of dispute.
- Investigation limited to reviewing only system notes (alleged to be not reasonable under the circumstances).
- Failure to obtain proper documentation from creditor during investigation.
- Lack of internal documentation to track compliant investigations.

## Reasonable Investigation

Re-Investigation not required for direct dispute when dispute relates to:

- Identity of employers
- Inquires or requests for consumer report
- Information available from public records is requested
- Information related to fraud or active duty alerts
- Information provided to CRA from another furnisher
- Reasonable belief a credit repair organization is disputing



# Frivolous and Duplicate Disputes

# Duplicate Disputes

Different standards apply if the dispute was received directly or through CRA.

- Direct Disputes:
  - Need to investigate unless dispute is frivolous or irrelevant
    - No private cause of action
    - Government regulated (e.g., CFPB)
- Dispute to Credit Reporting Agency:
  - Need to investigate – no ability to claim dispute frivolous or irrelevant (i.e., must always investigate – NO EXCEPTIONS)
    - Private cause of action
    - Government regulated

# Frivolous or Irrelevant Disputes

- An investigation or reinvestigation is not necessary when the data furnisher reasonably determines the direct dispute is frivolous or irrelevant.
- A dispute is frivolous or irrelevant if:
  - A consumer fails to provide sufficient information to investigate the disputed information;
  - A consumer previously submitted substantially the same dispute either directly or indirectly through a CRA and the data furnisher has already fulfilled its duties with respect to the dispute; OR
  - It meets any of the conditions of “when investigations are not required”



# Frivolous or Irrelevant Disputes

Once it is determined a dispute is frivolous or irrelevant, the data furnisher must:

- Notify the consumer within five business days of making the determination; and
- The notice must:
  - be sent by mail or other means authorized by the consumer;
  - set forth the reason(s) for the determination; and
  - identify any information required to investigate the disputed information.

# Liability



# Liability

## Willful Violation

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

## Negligent Violation

- Actual Damages
- \*\*Attorneys' Fees and Costs



# Litigation Strategy

- Lack of standing where a consumer views report after a dispute letter sent. *See Coleman v. Charlottesville Bur. of Credits, Inc.*, 2017 WL 1381666 (E.D. Va. Apr. 17, 2017); *Higgins v. Trident Asset Mgmt.*, 2017 WL 1230537 (S.D. Fla. Mar. 28, 2007).
- Failure to properly dispute
- Did anyone view the credit report with wrong information?
- Failure to allege the existence of a consumer debt.
- Failure to state a claim (e.g., direct disputes are not actionable)
- Noticing Plaintiff's deposition.
- What are the damages?
  - Adverse action
  - Other negative tradelines

# Possibility of Sanctions?

- Non-Appearance
- Non-Compliance with Court Deadlines/Court Orders/Court Hearing Appearances
- *Holmes v. Contract Callers, Inc.*, No. 17:148 (E.D. Va.) (holding Aryeh Stein in contempt for failing to appear at a Pre-Trial Conference and at a Show Cause Hearing directing him to explain his non-appearance)
- Failure to Respond to Discovery/Appear at Deposition
- Frivolous Case
- *Higgins v. Trident Asset Mgmt., LLC*, No. 16-24035-CIV, 2017 WL 1230537 (S.D. Fla. Mar. 28, 2017) (Spokeo standing); *see also Coleman v. Charlottesville Bur. of Credits, Inc.*, No. 3:17-CV-147-HEH, 2017 WL 1381666 (E.D. Va. Apr. 17, 2017)

Q&A

You have

Questions

We have

Answers

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Let's Do It Right