



WELCOME!



RFP&J

Rudolph, Fine,
Porter & Johnson, LLP

REAP WHAT YOU SOW!

A Discussion of Contracts and Collections

Presented by:

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Agenda



1. Demand Letters – Fair Debt
2. Collections/Small Claims
3. Bankruptcy
4. Invoice & Service Agreements
5. Mechanic's Liens
6. Personal Guarantees & Being Secure
7. Q & A

Demand Letters – Fair Debt

What is a Demand Letter?

- a. Anatomy of a Demand Letter
 - i. Facts
 - ii. But Not Too Many Facts
 - iii. Amount Demanded
 - iv. Time When Due
 - v. Legal Action/Collection



Demand Letters – Fair Debt

Fair Debt Collection Practices Act (FDCPA)

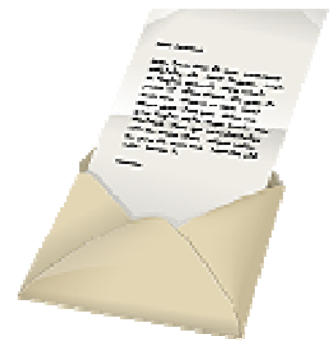
15. U.S.C. §1692

a. Who Does it Apply To?

- i. “Debt Collector” defined
- ii. Internal collectors for an “original creditor” not applicable

b. Prohibited Acts

- i. Hours of phone contact
- ii. Failure to cease communication
- iii. Contacting consumer known to be represented by an attorney*



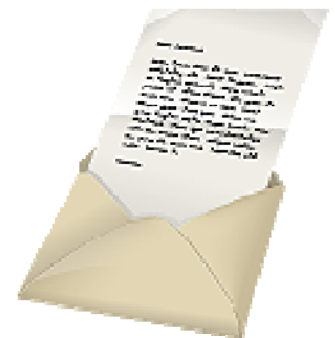
Demand Letters – Fair Debt



Fair Debt Collection Practices Act (FDCPA)

15. U.S.C. §1692

- c. Required conduct
 - i. Identify themselves and notify consumer



Collections/Small Claims

- a. Who can file in small claims?
- b. What is the maximum collectable?
- c. Do I need an attorney?



Collections/Small Claims

- d. Procedure:
 - i. The complaint
 - ii. Initial Hearing (depends on venue)
 - iii. Hearing / Judgment
 - iv. Proceeding Supplemental

What Not to Wear?

What Not to Say?



Collections/Small Claims

- e. Garnishments
 - i. What is it?
 - ii. How do I get one?
 - iii. How does it work?
 - iv. Advantages / Disadvantages



What Happens if a Client/Customer Files for Bankruptcy?

- a. Automatic Stay - Don't do **ANYTHING** to try to collect!
 - i. Consequences of violation of Automatic Stay
 - ii. Story about what did happen

- b. 341 Hearing.
 - i. Trustee (and creditors) can ask Debtor about debt, income, and assets
 - ii. Held under oath



What Happens if a Client/Customer Files for Bankruptcy?

- c. What Chapter Bankruptcy did the client/customer file?

- d. Chapter 13
 - i. Wage-Earners Plan
 - ii. Lasts 3-5 years unless converted
 - iii. Monthly repayments to creditors
 - iv. Debtors that don't qualify for Chapter 7



What Happens if a Client/Customer Files for Bankruptcy?

- e. Claim Amount:
 - i. Secured Creditor
 - a. Priority fight between you and other creditors
 - b. Receives collateral up to amount of claim
 - i. (car vs. house example)
 - ii. If under secured, becomes unsecured creditor for rest
 - ii. Unsecured Creditor
 - a. Receives pro-rata share of customer's unsecured assets



What Happens if a Client/Customer Files for Bankruptcy?

- f. Relief from Stay – In all 3 bankruptcies – you can get “Relief from Stay” for secured creditors

- g. Chapter 7
 - i. Personal liquidation
 - ii. Short in duration
 - iii. Either a “no asset” case, or an “asset case”
 - iv. If no asset case, no need for representation or monitoring – bad debt



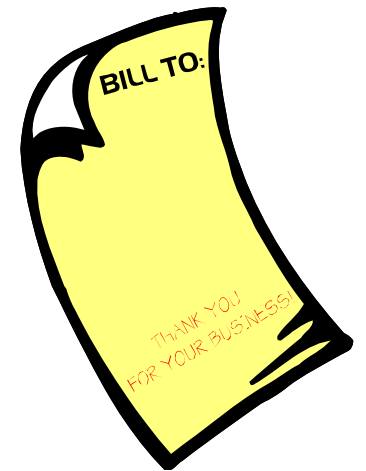
What Happens if a Client/Customer Files for Bankruptcy?

- g. Chapter 7
 - v. If asset case, could require monitoring
 - a. Must review debtor's schedules to assure claim is recognized and will be partially paid
- h. Chapter 11
 - i. Business reorganization
 - ii. Can be very short (GM's took 40 days), or very long (think years)



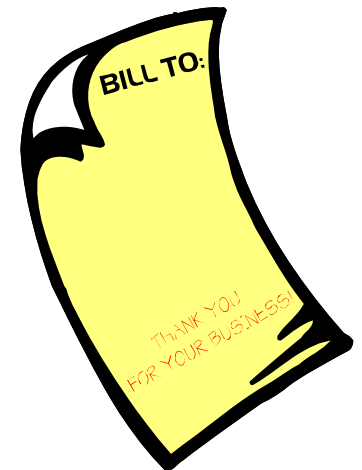
Invoice & Service Agreements

- a. Disclaimer – this section is rather industry specific
- b. If you don't have an Invoice Form, recommend you start utilizing them
 - i. A form agreement is much easier to enforce than a “quote” that does not have specific terms.
 - ii. Additionally, such an “Agreement” can have terms that favor you, the service provider.



Invoice & Service Agreements

- c. A short list of terms to include:
 - i. Authorization of services
 - a. What happens if customer says: never agreed to services?
 - b. What happens if customer says: services were supposed to be limited?
 - ii. Indication of power to act
 - a. Who is customer? Husband? Wife? Both husband and wife?
 - b. If customer is a business, does this person have the power to authorize you to act?
 - c. For small businesses, have person sign for business AND as person



Invoice & Service Agreements

c. A short list of terms to include:

iii. Indemnification provision

- a. Protect yourself against lawsuit

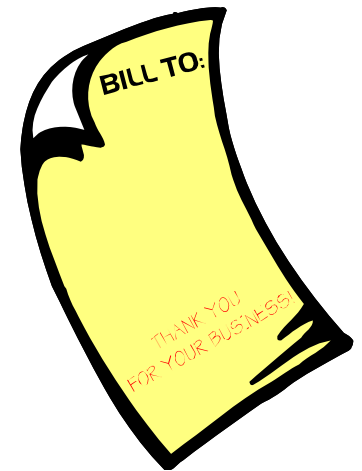
iv. Termination

- a. Regardless of the services you provide, you may want to reserve the right to terminate services for a variety of reasons.
- b. You also want to be able to recover for the work you completed if the customer terminates relationship.



Invoice & Service Agreements

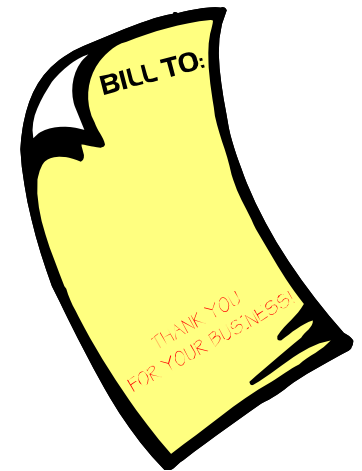
- c. A short list of terms to include:
 - v. Attorney's fees and costs of collection
 - vi. Law and Venue
 - a. If you do business in Henderson, do you want to be subject to Henderson and Kentucky law?
 - b. Or would you prefer to stay in Indiana and Vanderburgh County?
 - vii. If large enough amount (and can't obtain mechanic's or other liens), consider requesting security



Invoice & Service Agreements

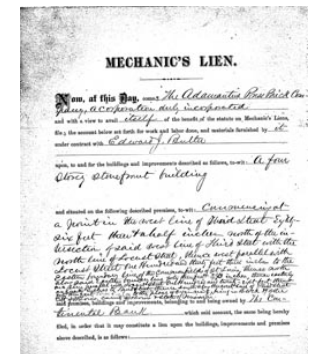
c. A short list of terms to include:

viii. Be secured in items provided or installed



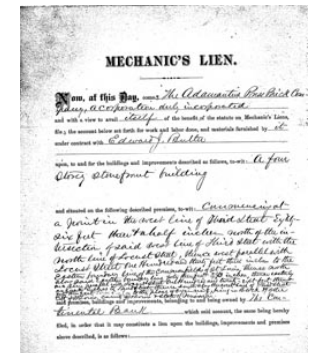
Mechanic's Liens

- a. What is a Mechanic's Lien?
- b. Who can File a Mechanic's Lien?
- c. No Lien Contracts ... what do they mean?
- d. How can I use a Mechanic's Lien?



Mechanic's Liens

- e. Notice of Intention to hold Lien
 - i. Time to file – 60 vs. 90 days
 - ii. What office?
 - iii. Content:
 - a. Amount claimed
 - b. Name & address of claimant
 - c. Owner's name & address
 - d. Legal description

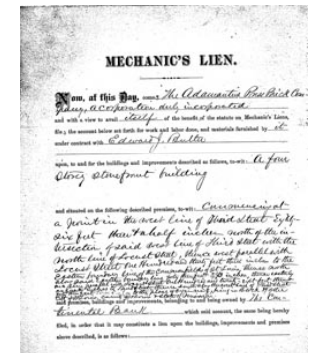


Mechanic's Liens

f. Priority of Liens

g. Enforcement of Liens

- i. File suit
- ii. Judgment
- iii. Sale of property to satisfy



Personal Guarantees & Being Secure

- a. Being secured
 - i. May allow you to obtain collateral, either by self-help, or judicially
 - a. (Don't commit breach of the peace)

- b. What is a personal guaranty?
 - i. Much like a Security Agreement
 - a. Person(s) is also responsible for debts of business

 - ii. Effect – gives you 2 people to go after.
 - a. Very frequently, business or person might declare bankruptcy, but other person/entity will not.



Questions & Answers

Feel Free to Contact Us



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THANK
YOU!



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