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The Essential Resource for Today's Busy Insolvency Professional

Complete Guide to Credit and Collection Law

Written by:

Jay Winston and Arthur Winston
(Aspen Publishers 2011)

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As the headlines over the past year have shown, there is a surge in political support for increased consumer protection laws. After the 2008 financial crisis, Congress created the Consumer Financial Protection Bureau (CFPB), with rulemaking authority effective this past July. The CFPB regulates the application of the Fair Credit Reporting Act (FCRA), Fair Debt Collection Practice Act (FDCPA) and Truth in Lending Act (TILA). While the leadership of the CFPB is uncertain, changes to creditor and collection law could potentially be in the pipeline.

In their 2010-11 edition of the *Complete Guide to Credit and Collection Law*, Jay Winston and Arthur Winston have updated this important resource to help navigate potential and actual changes in this area of the law. The significance of this book to creditors and debt collectors is evident from its sheer size (the table of contents is more than 40 pages long). The topics range from repossession of vehicles to Health Insurance Portability and Accountability Act of 1996 (HIPAA), and even include a chapter entitled "What to do when you are served."¹ In an attempt to keep up with the ever-changing world of technology, there is also a whole chapter dedicated to e-commerce.

At times it may seem that sections are thrown in haphazardly, but with such wide breadth of coverage, one can understand the difficulty of attempting to organize such a resource. Despite its daunting appearance, this book offers valuable and relevant advice applicable to everyday life regardless of the reader's actual experience

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with debt collection. The very first chapter of the book sets out a glossary of the legal terminology typical of collection cases.

One of the most beneficial aspects of the book is the "Credit and Collection Tips" placed throughout each chapter. Based on their decades of experience in the field, the authors insert practical tips that serve as a best practices guide. Removing the complexities of legalese, the authors synthesize the law into practical advice. In a chapter dedicated to the FDCPA, the authors provide actual scripted phone call scenarios as examples of "dos and don'ts" when contacting a debtor. Having seen it all, the authors are particularly good at getting inside the head of a debt collector

Uniform Commercial Code and Bankruptcy Code. Combined with the practical advice, the book could provide just enough information to get in trouble.

As much as they have attempted to provide a comprehensive guide to collection law, the authors are quick to note that for many of the topics addressed, consultation with an experienced attorney is recommended. Throughout the book, the authors continually warn that the road to debt collection is paved with landmines. In addition to the CFPB and potentially stricter enforcement of federal law, many states have recently passed laws offering increased consumer protection.

Courts have also been active in developing this area of the law. While the book's discussion of such cases is limited to short summaries, many of the cases are footnoted for further research. Without delving into the

Suggested Reading

and reveal some of the creative means by which they often try to obtain information to help in collection.

While the law requires certain conduct from creditors, the authors' recommendations are often more arduous, as they confront problems they frequently see occur; *i.e.*, always file a claim regardless of whether or not it is required or even if the creditor is properly listed in the schedules. In the section covering preferences, the authors lay out the elements courts use to evaluate such transfers and then describe how to use them in avoiding litigation with the trustee. As the authors put it "[n]ever pay the amount requested upon receipt of the first letter."²

Those favoring the black-letter law need not fret. Behind every chapter are extensive appendixes containing the relevant law, including the FCRA,

particular statutes and case law of each state, the authors emphasize the importance of familiarizing oneself with the local law—and the importance of an experienced attorney.

The *Complete Guide to Credit and Collection Law* is great resource to be added to the bookshelf of any individual who is in the business of extending credit and is sure to help avoid some of the headaches that are frequent in collection law. ■

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¹ Jay Winston and Arthur Winston, *Complete Guide to Credit and Collection Law* (2010-11 ed.).

² *Id.*