Class Action Lawsuits Again Swirl Around Collection Letter Deficiencies

Plaintiff attorneys continue to be successful with class action lawsuits against credit unions due to deficiencies in collection letters. Specifically, Notices of Intent to Sell Collateral that has been repossessed and Deficiency Notices sent after the collateral has been sold are the letters/notices targeted. Lack of detail in these notices is being scrutinized. These lawsuits have been going on for several years with credit unions being required to waive remaining deficiency balances, return payments toward deficiency balances, return 10% of the principal amount of the original debt, and pay statutory damages.

Details

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Recent lawsuits against credit unions have included several of the usual claims alleging the Notices of Disposition:

- Do not state the borrowers have a right to redeem the collateral until it is sold;
- Do not inform the borrowers they have a liability for a potential deficiency balance;
- Do not inform the borrowers they may attend a public sale and bring bidders.

A newer allegation claims a credit union’s Notice of Disposition lists the charge for an accounting as a higher amount than allowed for that state. The claim indicates the Notice of Disposition’s statement representing the borrower is entitled to an accounting of the unpaid balance stating the charge, if any, for an accounting includes a charge in excess of that State’s limit of $25.00.

Most states require the credit union provide an accounting upon request with no charge for the first one and the credit union may charge if the member requests a second accounting within six months.

Deficiency Notices have also been targeted by recent lawsuits with the claim they did not mention possible affects future additions, or subtractions, may affect the deficient loan balance going for forward. UCC 9-616 requires the notices include future debits, credits, charges, additional service charges, interest, rebates and expenses may affect the amount of surplus or deficiency.

To learn more about the risks surrounding collection letters and mitigation tips including wording requirements, review the Collection Letters Risk Overview available within CUNA Mutual Group’s Protection Resource Center.
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Risk Mitigation
Credit unions should consider these loss controls:

- Understand your States’ laws to ensure you have satisfied the requirements for these notices
- Review your letters to ensure they have the required components.
- If you are relying on outside legal counsel for compliant letters, be sure that you have a written opinion from them. The written opinion should be clear that your Notices of Disposition are compliant with the requirements of UCC 9-613 and 9-614, and that your Notices of Deficiency are compliant with UCC 9-616; and any applicable State requirements for both.
- Consider specific state(s) requirements when sending notices to borrowers in different states than you have a recent legal opinion on
- Train employees to properly complete the notices.
- Periodically audit notices to ensure they are properly completed.

Risk Prevention Resources
Access CUNA Mutual Group’s Protection Resource Center at cunamutual.com for exclusive risk and compliance resources to assist with your loss control efforts. The Protection Resource Center requires a User ID and password.

- Collection Letters Risk Overview
  (This resource contains specific wording requirements)