



FECA

Florida Electric Cooperatives Association, Inc.

2916 Apalachee Parkway
Tallahassee, Florida 32301
(850) 877-6166
FAX: (850) 656-5485

March 10, 2011

TO: General Managers
Finance Directors

FROM: Michelle Hershel

SUBJECT: Debt Collection Practices

One of our members is currently involved in a legal dispute which questions the legality of their debt collection practices under Chapter 559, the "Florida Consumer Collection Practices Act" (the Act). Section 559.72, F.S., delineates nineteen prohibited practices in collecting consumer debt. Though the Act appears to apply only to consumer collection agencies, the 1st District Court of Appeals has ruled that "the legislature intended the prohibited practices to be applicable to persons generally and not just to collection agencies." The civil remedy under the Act is up to \$1000 plus costs and attorney's fees.

The complaint alleges violations of a number of practices under Section 559.72, F.S. (attached), but is primarily focused on door hangers left at the customer's residence. They claim this amounted to abuse, embarrassment and harassment by the co-op since the door hangers were not sealed or covered and were open for the public to examine. In addition, the co-op's use of large, red letters on the door hangers allegedly attracted the attention of the public. Further, it is alleged that the co-op had other forms and methods of conveying written communications to the customer besides door hangers that should have been used.

We believe most utilities use door hangers for notification purposes. The PSC rules (apply only to IOUs) specify that the utility must diligently attempt to get the customer to comply with nonpayment of bills but does not address the form or method of conveying notice to the customer. We will discuss a possible legislative fix of this issue at the March board meeting but we encourage you to re-examine your notification methods for any procedures that may leave you open for liability.

(3) Renewal of registration shall be made between October 1 and December 31 of each year. There shall be no proration of the fee for any registration.

History.—ss. 5, 13, ch. 93-275; s. 679, ch. 2003-261.

559.5556 Maintenance of records.—

(1) Each registered consumer collection agency shall maintain, at the principal place of business designated on the registration, all books, accounts, records, and documents necessary to determine the registrant's compliance with this part.

(2) The office may authorize the maintenance of records at a location other than a principal place of business. The office may require books, accounts, and records to be produced and available at a reasonable and convenient location in this state.

(3) The commission may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of registrants so that such records enable the office to determine the registrant's compliance with this part.

(4) All books, accounts, records, documents, and receipts of any debt collection transaction must be preserved and kept available for inspection by the office for at least 3 years after the date the transaction is completed. The commission may prescribe by rule requirements for the destruction of books, accounts, records, and documents retained by the registrant after the completion of the 3 years.

History.—s. 1, ch. 2010-127.

559.563 Void registration.—Any registration made under this part based upon false identification or false information, or identification not current with respect to name, address, and business location, or other fact which is material to such registration, shall be void. Any registration made and subsequently void under this section shall not be construed as creating any defense in any action by the office to impose any sanction for any violation of this part.

History.—ss. 5, 13, ch. 93-275; s. 680, ch. 2003-261.

559.565 Enforcement action against out-of-state consumer debt collector.—The remedies of this section are cumulative to other sanctions and enforcement provisions of this part for any violation by an out-of-state consumer debt collector, as defined in s. 559.55(8).

(1) An out-of-state consumer debt collector who collects or attempts to collect consumer debts in this state without first registering in accordance with this part is subject to an administrative fine of up to \$10,000 together with reasonable attorney fees and court costs in any successful action by the state to collect such fines.

(2) Any person, whether or not exempt from registration under this part, who violates s. 559.72 is subject to sanctions the same as any other consumer debt collector, including imposition of an administrative fine. The registration of a duly registered out-of-state consumer debt collector is subject to revocation or suspension in the same manner as the registration of any other registrant under this part.

(3) In order to effectuate this section and enforce the requirements of this part as it relates to out-of-state consumer debt collectors, the Attorney General is expressly authorized to initiate such action on behalf of the state as he or she deems appropriate in any state or federal court of competent jurisdiction.

History.—ss. 5, 13, ch. 93-275; s. 818, ch. 97-103; s. 2, ch. 2010-127.

559.715 Assignment of consumer debts.—This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default.

History.—s. 1, ch. 89-69; ss. 6, 13, ch. 93-275; s. 3, ch. 2010-127.

559.72 Prohibited practices generally.—In collecting consumer debts, no person shall:

(1) Simulate in any manner a law enforcement officer or a representative of any governmental agency.

(2) Use or threaten force or violence.

(3) Tell a debtor who disputes a consumer debt that she or he or any person employing her or him will disclose to another, orally or in writing, directly or indirectly, information affecting the debtor's reputation for credit worthiness without also informing the debtor that the existence of the dispute will also be disclosed as required by subsection (6).

(4) Communicate or threaten to communicate with a debtor's employer before obtaining final judgment against the debtor, unless the debtor gives her or his permission in writing to contact her or his employer or acknowledges in writing the existence of the debt after the debt has been placed for collection. However, this does not prohibit a person from telling the debtor that her or his employer will be contacted if a final judgment is obtained.

(5) Disclose to a person other than the debtor or her or his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false.

(6) Disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing that fact. If a disclosure is made before such dispute has been asserted and written notice is received from the debtor that any part of the debt is disputed, and if such dispute is reasonable, the person who made the original disclosure must reveal upon the request of the debtor within 30 days the details of the dispute to each person to whom disclosure of the debt without notice of the dispute was made within the preceding 90 days.

(7) Willfully communicate with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family.

nd enforce the
o out-of-state
y General is
tion on behalf
ite in any state

ch. 2010-127.

debts.—This
/ a creditor, of
ebt. However,
notice of such
assignment is
ction to collect
erest and may
een assigned

2010-127.

rally.—In col-

enforcement
ental agency.

umer debt that
er or him will
ig, directly or
or's reputation
ing the debtor
ie disclosed as

unicate with a
nal judgment
ves her or his
is employer or
the debt after
However, this
he debtor that
final judgment

a debtor or her
btor's reputa-
s, with knowl-
erson does not
information or

ie existence of
by the debtor
sure is made
d and written
ny part of the
asonable, the
e must reveal
ays the details
closure of the
ade within the

debtor or any
quency as can
btor or her or
duct which can
ass the debtor

(8) Use profane, obscene, vulgar, or willfully abusive language in communicating with the debtor or any member of her or his family.

(9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.

(10) Use a communication that simulates in any manner legal or judicial process or that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law, when it is not.

(11) Communicate with a debtor under the guise of an attorney by using the stationery of an attorney or forms or instruments that only attorneys are authorized to prepare.

(12) Orally communicate with a debtor in a manner that gives the false impression or appearance that such person is or is associated with an attorney.

(13) Advertise or threaten to advertise for sale any debt as a means to enforce payment except under court order or when acting as an assignee for the benefit of a creditor.

(14) Publish or post, threaten to publish or post, or cause to be published or posted before the general public individual names or any list of names of debtors, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer debts.

(15) Refuse to provide adequate identification of herself or himself or her or his employer or other entity whom she or he represents if requested to do so by a debtor from whom she or he is collecting or attempting to collect a consumer debt.

(16) Mail any communication to a debtor in an envelope or postcard with words typed, written, or printed on the outside of the envelope or postcard calculated to embarrass the debtor. An example of this would be an envelope addressed to "Deadbeat, Jane Doe" or "Deadbeat, John Doe."

(17) Communicate with the debtor between the hours of 9 p.m. and 8 a.m. in the debtor's time zone without the prior consent of the debtor.

(a) The person may presume that the time a telephone call is received conforms to the local time zone assigned to the area code of the number called, unless the person reasonably believes that the debtor's telephone is located in a different time zone.

(b) If, such as with toll-free numbers, an area code is not assigned to a specific geographic area, the person may presume that the time a telephone call is received conforms to the local time zone of the debtor's last known place of residence, unless the person reasonably believes that the debtor's telephone is located in a different time zone.

(18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication

with the debtor, or unless the debtor initiates the communication.

(19) Cause a debtor to be charged for communications by concealing the true purpose of the communication, including collect telephone calls and telegram fees.

History.—s. 18, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 6, ch. 81-314; ss. 2, 3, ch. 81-318; ss. 1, 3, ch. 83-265; ss. 7, 13, ch. 93-275; s. 819, ch. 97-103; s. 1, ch. 2001-206; s. 4, ch. 2010-127.

559.725 Consumer complaints; administrative duties.—

(1) The office shall receive and maintain records of correspondence and complaints from consumers concerning any and all persons who collect debts, including consumer collection agencies.

(2) The office shall inform and furnish relevant information to the appropriate regulatory body of the state or the Federal Government, or The Florida Bar in the case of attorneys, if a person has been named in a consumer complaint pursuant to subsection (3) alleging violations of s. 559.72. The Attorney General may take action against any person in violation of this part.

(3) The complainant, subject to penalty of perjury as provided in s. 837.06, shall certify on a form approved by the Financial Services Commission a summary of the nature of the alleged violation and the facts that allegedly support the complaint, and shall submit the form to the office.

(4) The office shall investigate complaints and record the resolution of such complaints.

(5) The office shall advise the appropriate state attorney or the Attorney General of any determination by the office of a violation of this part by any consumer collection agency that is not registered as required by this part. The office shall furnish the state attorney or Attorney General with the office's information concerning the alleged violations of such requirements.

(6) A registered consumer collection agency must provide a written response to the office within 45 days after receipt of a written request from the office for information concerning a consumer complaint. The response must address the issues and allegations raised in the complaint. The office may impose an administrative fine of up to \$250 per request per day upon any registrant that fails to comply with this subsection.

History.—ss. 8, 13, ch. 93-275; s. 681, ch. 2003-261; s. 5, ch. 2010-127.

559.726 Subpoenas.—

(1) The office may:

(a) Issue and serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all books, accounts, records, and other documents and materials relevant to an investigation conducted by the office. The office, or its authorized representative, may administer oaths and affirmations to any person.

(b) Seek subpoenas or subpoenas duces tecum from any court to command the appearance of witnesses and the production of books, accounts, records, and other documents or materials at a time and place named in the subpoenas, and an authorized representative of the office may serve such subpoenas.