Some clarity for C

Collections are the second half of the famous Ernie Talley rent-to-own formula: Rent and Collect. It would be easy enough to install televisions in customers' homes if that were all there were to it. But one must also get the customer to pay in order to have that lovely big screen in the living room—or else, what is the point? And there, of course, is the rub in rent-to-own. No rental dealer, no matter how enlightened or evolved, takes delight in having a customer watch the dealer's television for free—and so, perforce, the dealer must collect, or try to collect, the rent. ☆ Every dealer out there has either heard of or lived through some eye-popping, cringe-inducing, stomach-curdling tale of collection efforts gone awry. Given the nature of the business, it is no surprise that customers and dealers alike occasionally get emotionally involved with the television and the situation. All those emotions, running amok, can cause harsh words and even harsher actions. That there have been relatively few lawsuits over rent-to-own collections over the years is a tribute to the training that dealers practice and preach with their employees and the persistent patience at play in successful rental companies.

By Ed Winn III

collections

If there once was a day when dealers could hire "muscle" to collect on accounts, or failing that, recover the televisions by intimidating customers into doing what they were told, those days are long gone. Dealers today have to play by the rules and when, in the heat of the moment, they do not, they get sued and most often end up giving away the television and writing a check, to boot.

Even though the federal *Fair Debt and Collection Practices Act* does not apply to rental dealers, there are state debt-collection statutes, collection-practices provisions in several state rent-to-own statutes and common-law rules concerning breach of the peace, trespass, privacy and other tort-enducing conduct that do apply.

Most allegations of collection abuse occur one customer at a time, as opposed to the occasional class-action suit challenging the legality of the rent-to-own transaction itself. The nature of the collections process is that it occurs customer by customer and the strategy adopted by the dealer to get the money or the television will vary, within reason, according to who is not paying and why.

Only occasionally does the government get involved in reviewing a dealer's collection practices, but over the past couple of years, two state attorneys generals' offices have exacted settlements from two different rental companies resulting in the payment of money for multiple alleged abuses in the one case and payment for attorneys' fees and an investigation fund in the other. In both cases, there were agreements by the companies to tweak collection practices in ways demanded by the attorneys general. In one case, it was an Assurance of Voluntary Compliance and, in the other, it was a Consent Decree. In both cases, it was an agreement reached by the rental company involved and the state attorney general and approved by a state court judge.

Most of the debt collection regulations that apply to rent-to-own dealers offer only vague guidance as to what one can and cannot do when trying to collect money or recover a television. "Do not call the customer at unreasonable times." "Do not contact the customer at unreasonable places." These kinds of rules leave a lot of gray area and it is in the gray area that lawyers make their money and rental dealers can lose theirs.

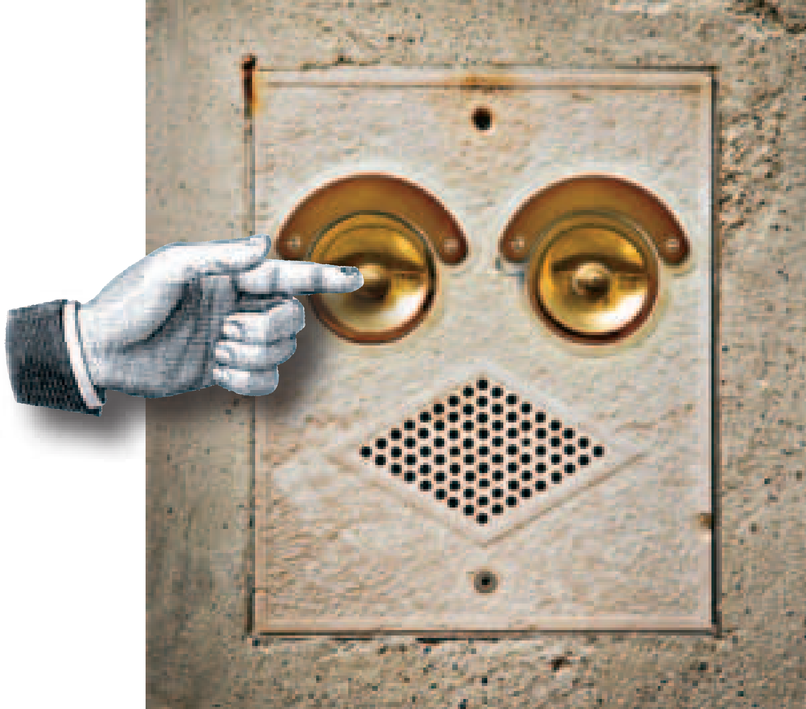
The two settlements are conceptually different in that one company agreed to maintain training and enforcement programs to achieve compliance with its internal policies against certain practices and the other company agreed to outright prohibitions of the practices themselves. A seemingly subtle distinction, but one that could have significance in a subsequent enforcement action, at least to the thinking of the lawyers who negotiated and drafted it. Both of the settlements with the attorneys general do, however, have to contemplate the same kinds of vague prohibitions, usually a repeated recitation of the state debt-collection laws, but they also contain some very specific limits on behavior for the companies involved. Some aspects of these settlements will surely impede collections; some will have little impact on how the company does business. The extent to which these agreements will actually cost either of the companies involved any money at the store level remains to be seen. In any case, the prohibitions in the settlements only apply to the companies who agreed to them.

Calling all customers

The most recent settlement with the attorney general may have answered one of the age-old rent-to-own collection questions: "How many times can you call a customer about his account before you have made 'too many' calls and are guilty of harassment?" This settlement allows the rental company to "actually speak with a customer, by telephone or in person, six times per week for the purpose of discussing a past-due account." That might be once per day for a week, or six times on Friday. Either way, the customer has no beef until the seventh contact. Also, note that the agreement does not address unsuccessful efforts to contact the customer. There has to be *actual* contact—the customer has to answer the phone or come to the door—before it counts as one of the six. Voice messages and door hangers do not count as contacts. The attorney general would like to have set some limits on attempts to contact customers, but the rent-to-own company was adamant that it had the right and business necessity to contact past-due customers about their accounts and was entitled to keep trying until the company could actually make contact.

The settlement also requires the company to train its employees to refrain from discussing a customer's account with anyone who has not signed the agreement, except for a spouse. Nor can the company's employees ask anyone who has not signed the agreement to make a payment on the account. The company also is required to maintain its prohibition against leaving phone messages with any communication other than the caller's name, name of the company, date and time of the call and "a courteous request that the customer return the call." In other words, no editorial comments about the customer's character or mother.

The other attorney general settlement, from a couple of years ago and in a different state, offers more challenges to the dealer's collection practices. This settlement prohibits the company from making more than two telephone calls to any one person per day, unless that person makes and then breaks a promise to pay on that day. (Note that this prohibition is different from the six-times-per-week



Call the attorney general's office and politely inquire whether there are any complaints on file against your company. Usually, you can get the answer over the phone.

rule in the other settlement, because this rule refers to calls regardless of whether anyone actually makes contact with the customer.)

Another rule in this second settlement is that the company can only make one additional call to a customer who has told the company that he is not willing to pay any more on the account or after he tells the company not to call again. This rule will require the company to make the choice of either writing the account off or "going legal" on the customer sooner than the company might prefer. This write-off-or-sue decision is not a choice that dealers are typically eager to make because either one will cost the dealer time and money. It is a decision that dealers ultimately must make on hard accounts, of course, but most dealers will want to work the account for weeks or even months before coming to that decision. Under this rule, the dealer has lost the power to decide when to make the call and, instead, must make it as soon as the customer tells the store not to call again.

Both settlements are full of additional provisions. The companies admit to no wrongdoing, for example. In addition, the companies agree not to break any existing laws concerning collections, which are repeated in the settlement agreements. Both affected companies agreed to implement training programs to ensure that all current and future employees are aware of the prohibitions in the respective settlements.

Importantly, the prohibitions in the settlement agreements only apply to the companies involved in those settlements and only in the states where those settlements were reached. All other dealers will have to decide for themselves whether the strictures agreed to by the affected companies would work for them. If they do not, it does not necessarily mean that the attorney general will launch an investigation. Most attorney general actions in the consumer arena arise from consumer complaints. If you keep your customers happy and solve their problems promptly as they arise, they will have no reason to file a complaint and you can continue to work collections like you want—within the bounds, of course, of whatever laws that may apply to your particular business.

Calling attorneys general

One of the attorney general investigations arose because the rental company allowed unresolved consumer complaints to accumulate in the attorney general's office. Every state attorney general has a department of consumer protection where consumers can complain when they feel aggrieved. An attorney general, after all, is the people's lawyer. It is easier than ever for consumers to file complaints against a company, and often they can do it online. When a complaint is filed, a copy is sent to the store location where the customer acquired the merchandise and where the dispute arose. Ordinarily, the attorney general's office will not send a copy of that complaint to the home office. Rental companies have procedures in place for funneling all such complaints—if they cannot quickly be resolved—to the home office, but sometimes that does not happen. Instead, the complaint stays in the store; store personnel fret over it for a while and then, finally, toss it in a drawer and forget about it. One unresolved complaint will not likely unleash the wrath of the attorney general consumer protection attorneys, but several might, and in one instance, anyway, did.

There is an easy solution to avoiding this dilemma. Periodically, call the attorney general's office and politely inquire whether there are any complaints on file against the company. Usually, you can get the answer over the phone, although a few states require a written request for this information. If you own one store, maybe you call once a year. If you operate more stores, call more often. If you have knowledge of rogue employees in your stores that you have had to fire, call more often still. Today, as government offices become more automated, it may be possible to contact an attorney general's offices and get a person in the home office on file to whom all consumer complaints are to be sent. Some offices will be set up for this procedure; others not.

We have not had any real collection horror stories in a long time. Let's keep it that way. ✳

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