

A Guideline for Auto Lenders: What You Need to Know Before Securing Judgment for Bad Debt

While lending may generate billions in revenue annually, it also carries great risk. In fact, in 2013 the auto finance industry reached a new high—\$822.1 billion in outstandings*—a noteworthy source of lost revenue for many auto finance lenders.

As you know, loans default even with the best loan origination policies and software in place. Borrowers may contest the debt, become non-responsive to requests for repayment, or have additional assets which could be used to satisfy a portion of their debts. In cases like these, pursuing litigation increases the chances of recovery from the borrower.

So, how does an auto finance lender determine if they have the in-house expertise required to successfully pursue a litigation strategy, or if outside counsel should be considered? How do you ensure an attorney has the expertise to handle your specific type of debt? And, how can auto finance lenders better prepare for successful outcomes?

Guidelines for Assessing When to Pursue Judgment:

1. Become an expert on state and federal statutes

Federal and state statutes as well as case law govern all areas of collections, recovery, and judgments; however, each state also has its own statutes and case law which may narrow the purview of the federal laws. The rules, as interpreted by each state, will dictate your ability to collect. In addition, case law must be considered since a court's decision may further narrow and modify the relevant law or even interpret it in such a manner so as to reach a different conclusion than expected. Such precedence reigns supreme over the plain language of the statute unless and until a legislative amendment is passed, or the case is overruled by a higher court.

Familiarity with your own state's laws provides a solid foundation, but what will you do when a debtor leaves the state? You need to be an expert on the statutes and case law in every state and territory. Moreover, at any given time there is contemplated legislation regarding collections and recoveries that, if passed, could impact how you proceed. This is a daunting and burdensome task, even with numerous resources on the states' government and legislative websites.

So, what's the good news in all of this? If you don't have the manpower, there are agencies that specialize in legal referral programs for collections and recovery, including litigation, that can do all of this on your behalf. Bottom line, you don't need to become an expert in collection law as long as you hire knowledgeable advisors.

2. Verify the attorney you hire has the proper expertise

When hiring outside counsel to handle litigation on your accounts, ensure they have the requisite experience and proper expertise to handle the specific loan type—real estate, auto, student loan or otherwise. As you know, lending is not a one-size-fits-all approach; each loan type has its own unique decision criteria and underwriting guidelines. That same philosophy holds true with regard to the rules and regulations governing the collection and recovery of various loan types.

So, how do you validate an attorney has the specialized expertise necessary to be successful?

- a. Establish that your outside counsel is competent in the required field by utilizing the National Association of Retail Collection Attorneys (NARCA) or another national database.
- b. Ensure they have the necessary security measures in place as well as a favorable reputation. Confirming the attorney is in good standing with their state bar is a good place to start.
- c. You're fortunate if you already have an established legal network, but if you don't, it behooves you to find an agency that has a strong vetting process for the attorneys in their legal network. [read more](#)



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3. Conduct a cost-benefit analysis

Considering all of the nuances involved with potential litigation of your charged-off portfolio, it's imperative to first undertake a cost-benefit analysis before pursuing debt. Many times a state statute won't allow you to garnish wages, or a court decision may restrict your recovery ability. And, if your outside counsel requires upfront payment, you may just be throwing good money after bad. First, determine whether each account has realistic potential to produce a positive return. This may take a considerable amount of time on your part, or on the part of your outside counsel.

Moral of the story? It's imperative that you find someone trustworthy who can provide a realistic expectation of each file so you can make an educated decision before proceeding. Your attorney or agency should have an internal scoring system that can estimate the collectability of each file.

The key to creating a stable economy is to foster an environment of financial responsibility where borrowers honor their obligations because they recognize there will be consequences if they don't. While we understand that borrowers may find themselves in difficult financial circumstances, it's important to ensure all parties meet their contractual obligations. As auto finance struggles to grow and thrive, every recovered dollar is vital for future growth. Only a healthy auto finance lender can continue to serve its community of borrowers and dealers as a valued and trusted financial institution.

About Stawiarski & Associates, P.C.

A Colorado-based law firm, Stawiarski & Associates utilizes its longstanding expertise to provide nationwide legal recovery to the financial services industry through its comprehensive network of collection law firms. The firm streamlines all avenues of communication between its clients and network firms to efficiently manage nationwide litigation on delinquent and charged-off mortgage, auto, student loan and commercial receivables. To find out more about Stawiarski & Associates, visit www.sacollect.com.



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**“Best Practices for Successful Debt Recovery:
A Collections Checklist for Auto Finance”**

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