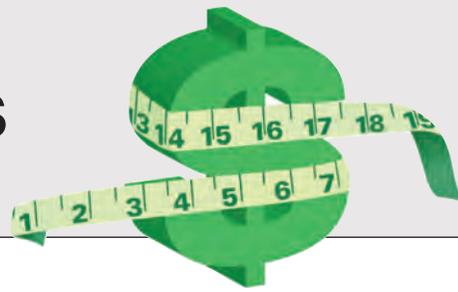


# Financial Fitness

[financial management for your business]



## The Truth About Financing Clients

*By Bryan Stevens, president of Red Apple Capital*

***“No good deed goes unpunished.” There is a reason old adages become so well known. Case in point, helping someone out with a financial obligation to your business changes your status in ways you may not be fully aware of.***

So at the risk of using two old adages one after another – and regretfully this one is often referred to by government regulators – “Ignorance of a law is not a defense.”

There are going to be times, when the grieving family does not have the means to pay the bill, regardless of the amount and the financing available. Rather than turning them away, you decide to finance the funeral yourself – thus doing the right thing.

What you don’t know is once you have a client sign a promissory note, retail installment contract, promise to pay – or a sheet of paper that outlines a payment due by the client – you have now entered the complicated world of consumer finance. Regardless of whether you finance one or two funeral services a month or two in a year, the results are the same – you are now a consumer finance company – thus the negative consequences.

### **What does being a consumer finance company mean to me?**

A consumer financing company provides both unsecured and secured loans to consumers. The difference between banks and consumer finance companies is primarily based around the consumer interest rate and the types of loans that consumer finance companies can fund. Interest rates are higher than bank interest rates, but con-

sumer finance companies are willing to fund unsecured loans where banks are primarily funding loans that are collateralized by consumer assets. Consumer finance companies can take on higher loan risks than a conventional bank, which allows consumers with less-than-perfect credit to buy products they normally cannot afford without a loan.

### **Do you have a license to lend money or finance clients?**

About 30 percent of the states require a state license when lending to a consumer. Another 40 percent of states require a consumer lender to register with the state for audit purposes. If a consumer finance company is not registered or licensed, it can be penalized or fined. If you hold the note for a consumer that pays you back over a period of time, that note is considered a consumer loan.

### **What is the state-regulated interest rate?**

Most states regulate the maximum consumer interest rate that can be charged to a consumer. If your interest rate exceeds the state maximum rate, state regulators can require a reimbursement of the difference of those rates.

### **Do you have the right contract that meets all federal and state laws, including truth-in-lending language?**

If the proper language within a retail installment contract or promissory note is not contained within the

contract, the contract may not be enforceable by the lender to collect on the debt. It is also important that contracts contain the state- and federal-specific language for debt collections, enforceability and consumer and lender rights. Contracts used by consumer finance companies have been vetted by specialized attorneys in this area. Using a generalist attorney to draft consumer retail installment contracts or consumer promissory notes puts the funeral home at risk, since it may not have the specialized training in this area.

That’s the easy stuff. Where you get into more trouble is through your collection efforts.

### **Does your contract give you the right to call the client on their cell phone to collect a debt?**

If your note does not contain specific language for calling a mobile phone – calling that mobile phone is a violation.

### **Are you saying the proper things to the client while on the phone?**

Are you threatening the consumer or scaring the consumer into paying? That’s a violation under the Fair Debt Collections Practices Act.

### **Are you calling at the proper times of the day?**

If you call at night – that could be a problem. The FDCPA outlines specific times that a call can be made to the consumer.

**Are you sending the proper statement on what is owed?**

Is the statement accurate and does it contain all the necessary language about due dates and late fees that are required?

Any of the items listed above are regulated by the Consumer Finance Protective Bureau, which enforces most of the provisions of the FDCPA, the Equal Credit Opportunity Act, the Fair Credit Act and the Truth in Lending Act. These agencies exist to protect the consumer against bad actors. Failure to follow state and federal guidelines results in fines and penalties. These penalties can be as high as two times the loan

amount. Penalties can be severe in the collection efforts under the FDCPA.

### **Be Knowledgeable**

#### **Know and Understand the Risk**

You're trying to do the right thing – no one can fault you for that – but understand that in today's environment, what worked prior to 2008 is now very different. Because of the Internet and the focus on lenders due to the mortgage crisis in 2008, consumers are educated on their rights and their options when it comes to paying debts.

#### **What You Should Do**

It's OK to try to help someone in

need, but you need to think about how to protect your business and your family from any undue regulatory burden.

1. Use a third-party finance company to finance the clients that need financing. This will remove your risk entirely.

2. Make sure you're using the right contract, and have a consumer attorney review the contract.

3. If you need to carry a client, use a third-party collection company to collect the debt. Transferring the risk from you to a legitimate third-party collection company will substantially lower your liability and risk. •

*This article was written in collaboration with Tony Colson, former president of Wilbert Funeral Services, and owner of E. Harper & Son Funeral Directors in New Haven, Indiana.*

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