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**Legal Credit and
Collection in Tough
Economic Times**



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HANDING OVER FOR COLLECTION IN A TIMELY MANNER

WHEN IS THE RIGHT TIME TO HANDOVER?



Generally, if an account is 30 days and older, most creditors have already broken the terms and conditions of the credit granted and the relationship has deteriorated. By now, the debtor has received all statements and letters and the creditors have also expressed their lack of response to payment.

The following are indications of serious cash flow problems and are good reasons to hand over earlier than the prescribed 90 days.



- **TELEPHONE NUMBER DISCONNECTED** The quicker you investigate and follow up the better your chances of recovery
- **REPEATED REQUESTS FOR DOCUMENTATION** This is a common practice and is mostly used when debtors want to buy more time



- **“I WILL TAKE CARE OF THE ACCOUNT” but refuses to provide a specific date and time of payment**
- **BROKEN TWO OR MORE PROMISES -**
Indication that debtor could not manage to raise the funds and the quicker you get in line the better your chances of recovery

- **“I KNOW I RECEIVED THE GOODS / SERVICES BUT WHOEVER IS RESPONSIBLE IS.....”**

This phenomenon occurs in many cases. The one party incurs the debt and refers it to the other party to pay. These disputes are not easy to deal with and tact should be used when confronting the debtor



- **“CAN’T PAY - DO WHATEVER YOU WANT”** In most cases this is only a threat with the expectations and hope that you forget about it
- **RETURN TO SENDER MAIL** - A clear indication the debtor has absconded
- **DISPUTE ARISES WHICH WAS NOT RAISED PREVIOUSLY** This is often another delay tactic to buy more time

- **DEBTOR CLAIMS * TO BE UNEMPLOYED - If in doubt a very good reason to hand over**
- **NEVER RECEIVED AN ACCOUNT - The most popular excuse under the sun**
- **I JUST DID AN EFT - No! You did not**

DIFFERENT MODELS OF DEBT COLLECTION AGENCIES:



- **CESSION**
- **CONTINGENCY FEES**
- **ANNUAL FEE**



TECHNOLOGICAL IMPLEMENTATION AND MANAGEMENT OF COLLECTION STRATEGIES



- **CENSEO?**
- **AUTOMATED IN-HOUSE SYSTEM (E.G. PRO COLLECT, CREDIT INTEL)**
- **ON PRO COLLECT, COLLECTORS CAN WORK 150 TO 200 ACCOUNTS PER DAY**
- **TRACKING ACCOUNTS AND SETTING UP REPORTS**

DEMAND OF CREDITORS: A ONE-STOP SHOP

- **ONLINE PORTAL FOR CLIENTS TO ACCESS**
- **ONLINE PAYMENT SYSTEM**

Demand for credit is still increasing, especially in the run up to Christmas. This, combined with the need for financial institutions to ingratiate themselves with customers, puts a lot of pressure on collections departments, which need to successfully communicate with customers, adapting and using new technologies to stay ahead.

FINANCIAL CLIMATE

THE NEW BREED OF DEBTOR

The economic crisis of the past few years has created a new breed of debtor. These people have sometimes been dubbed "fallen angels" – people who used to pay their bills on time but lost their jobs or experienced other financial hardships that made them fall behind in their payments. For example, in the troubled Eurozone, we have seen grandparents fall behind on their grocery cards, having lived their whole lives as reliable bill-payers.



The new breed of debtor can also be more difficult to work with. Why? It doesn't yet know how to be a debtor. It has never had to pay off a large, overdue debt. Needless to say, it doesn't want to get calls or letters from collections agencies – but rather than face the music, it may be even more inclined to ignore collectors out of **frustration or embarrassment.**



This is why **less-intrusive** contact methods, such as using mobile communications, as well as self-service online payment plans, are such a good idea. Unlike the past generation of debt-savvy delinquents, these new debtors need a gentle touch.

Creditors must get the customer's attention before other creditors vying for a piece of the debtor's pay check enter the fray. In countries shaken by financial crisis - even where consumer debt and delinquency levels are declining - many consumers are still struggling to pay all their bills. In such an environment, using every possible channel to connect with the customer is crucial.

WHAT WORKS?

- **MOBILE PHONES** – THEY ARE EVERYWHERE – ALSO OFFERS DIRECT AND PERSONALISED ENGAGEMENT
- IMPORTANT TO **VERIFY CONTACT INFO** AS, FOR EXAMPLE, SIM CARDS CAN EASILY BE CHANGED
- EVEN WHILE THE TECHNOLOGY CHANGES, THE ADVICE REMAINS SIMPLE

The quickest method (and most scalable for high volumes) is usually an automated call, text or email to a mobile phone. Yet **the undifferentiated SMS blasts some creditors send every few days to all delinquent customers are not very effective.** In most cases, the creditor has no visibility into whether these one-way outbound messages were even delivered to a valid number.

To fully leverage the potential of automated contacts to mobile devices, collections organisations need **finely targeted, even customer-specific communications strategies.** Analytics, business rules and workflows should be used not only to segment delinquent populations based on credit risk, but also to determine which channels and sequence of actions are most likely to be **effective based on the customer risk profile, customer preference and the results of past contacts.**

Well-targeted automated messages are generally positively received. In fact, when one of the world's largest electric utility companies surveyed its customers, 61 per cent said they preferred an automated contact (voice, email or SMS) over dealing with collection agents. **Consumers prefer automated contacts because they find it less embarrassing than talking with a real agent.** Automated contacts enable personal, secure and convenient self-service options for making a payment or even negotiating a payment plan.

An automobile credit company is having considerable success with such methods. Using an appropriate solution for both outbound and inbound contacts, the company found that 79 per cent of customers contacted successfully used self-service options, resulting in payments made on 44 per cent of the assigned portfolio. Similarly, a UK banking group achieved a 75 per cent self-service rate for inbound contacts. Consumer attitudes toward debt are changing in many parts of the world — toward the desire to have a greater sense of control.

AFTER HOURS COMMUNICATION

**The Council for Debt Collectors says this a no-no but studies in Europe show good debtor responses to after hours contact
ESPECIALLY VIA MOBILE OR TEXT.**

Are we constrained by regulation?

Today's best practices recognise the role of collections as a customer service, and they build from a foundation of stronger ongoing **customer relationship management**. Whatever your current collections processes and particular challenges, you can move towards the new best practices **incrementally**, achieving measurable gains that multiply with each improvement made.

EXAMPLES OF DEBT COLLECTION SOFTWARE EASILY ACCESSIBLE IN SA:

- **LEXPRO**
- **EXCALIBUR**

**SOME ORGANISATIONS HAVE A SYSTEM THAT
IS CREATED IN-HOUSE**

The Post Office has launched its electronic registered mail service. This service is fully compliant with legislative requirements to provide a secure alternative with complete audit trail, to the lawful service of notices by “physical” registered mail.



SECTION 129 & 130 OF THE NCA

- **Section 129:** Notice via registered mail giving a debtor 20 business days' notice of legal action
- **Section 130:** Can send notice giving debtor only 10 business days' notice in cases where creditor wants to obtain a court order

It will enable customers to send single or bulk registered mail any time, day or night from any device wherever they are, and get proof of delivery that will stand up in court, according to their commercial head Nkosinati Tolom.



ENFORCEMENT OF CLAIMS AGAINST A DEBTOR

**ACKNOWLEDGEMENT OF DEBT IS IDEAL
(TACIT OR EXPRESS)**

A SOUND CREDIT POLICY

AN EFFECTIVE CREDIT CONTROL POLICY SHOULD DEAL WITH AT LEAST THE FOLLOWING AREAS:

- MECHANISMS FOR APPROVING CREDIT FOR NEW CUSTOMERS;**
- MECHANISMS FOR DETERMINING CREDIT RATINGS AND TERMS FOR NEW CUSTOMERS;**
- PROCEDURES FOR TAKING ACTION AGAINST CUSTOMERS WHERE SUMS DUE ARE NOT PAID**

Credit Control Policies should also incorporate criteria to allow the business to determine:

- **The conditions of sale to be issued to customers;**
- **Payment terms and conditions;**
- **Interest payable to be applied to accounts which become overdue;**
- **Details of any cash discounts;**
- **Details of assessing which credit ratings should apply to customers;**

- **Details of when accounts will be frozen and recovery action taken thereafter;**
- **Details of the stage at which legal action should be raised against the debtor;**
- **Whether or not credit data from external sources should be investigated and whether credit insurance should be taken out.**

OFTEN, GOODS OR SERVICES ARE PROVIDED ON CREDIT WITHOUT HAVING FULL ADDRESS OR COMPANY DETAILS. DETAILS SUCH AS THE EXACT TRADING NAME ARE ESSENTIAL IN PURSUING PAYMENT THROUGH THE LEGAL PROCESS, SHOULD THE NEED ARISE.

ASSISTS IN VALID TRACING, E.G. REGISTERED BUSINESS ADDRESS

COURTS OF LAW AMENDMENT ACT, NO. 7 OF 2017

- **It appears that the Amendment Act will make it so that court appearances are required for all requests for default judgment, and that if the debtor was not present when judgment was given, a notice will have to be sent to the debtor via registered mail giving 10 days' notice before the court order can be enforced.**
- **106C also makes it illegal to make a debtor consent to judgment prior to the granting of a loan.**

WHAT CAN A CREDITOR DO TO RECOUP MONIES?



- **Update and change collection policies on a regular basis**
- **Calling of debtors and follow-up must be scheduled and tracked**
- **Effective training of staff**
- **Signing of a suretyship form is ideal**
- **Your customers should be fully aware of your terms and conditions**
- **Written agreements are strongly advised**

Businesses who handle their own debt collection through their accounts receivable departments need to be aware of the regulatory and legislative regime within which they operate.

Debtors are covered by laws that protect their privacy and other rights, and it is vital that debt collection practices do not infringe on these rights. **Common mistakes include:**

- **Revealing a debt** (even unintentionally) to third parties, without the debtor's permission.
- **Contacting a debtor too often**, to the point where it can be construed as harassment.
- **Falsely misrepresenting** that a request for payment is from an official source (i.e. using a government or lawyer's letterhead).
- **Threatening to take legal action** against a debtor, when there is no intention to do so.

- **Failing to record amounts paid** by the debtor in a timely manner, causing damage to their credit score.
- Using **threatening or intimidating behaviour** towards a debtor.



METHODS TO CONSIDER WHEN NEGOTIATIONS ARE UNSUCCESSFUL

- ***DOMICILIUM CITANDI ET EXECUTANDI ADDRESS***
- ***EFFECTIVE TRACING (OCTAGON, CPB, MARISIT)***
- ***THREAT OF LEGAL ACTION: CAN'T THREATEN, MUST
DO IT***
- ***PRESCRIPTION INTERRUPTED WHEN A PERSON
LEAVES THE COUNTRY***
- ***NCA AMENDMENT ACT APPLIES TO MATTERS
COVERED BY THE NCA***
 - ***ACCELERATION CLAUSE***

Thank You



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