



Finance, Real Estate & Bankruptcy News

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FURNISHERS' OBLIGATION TO HAVE POLICY & PROCEDURES RELATING TO CREDIT REPORTING

- Patricia Scott and Steve Owen

One of the more challenging areas of the Fair Credit Reporting Act ("FCRA") relates to properly furnishing information to credit reporting agencies. In that regard, as a reminder, each furnisher must have policies and procedures implemented to ensure accurate information is reported.

The regulations require that "[e]ach furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency."

Furnishers must review their policies and procedures periodically and update them when necessary to ensure "continued effectiveness." The regulations establish specific components to include in the policies and procedures. For example, a furnisher should:

- Delete, update, and correct information in the furnisher's records as needed to avoid furnishing inaccurate information
- Conduct reasonable investigation of disputes
- Develop IT programs to communicate information to credit reporting agencies to avoid duplicative reporting of accounts or reporting of erroneous information
- Train staff that participate in activities related to furnishing information
- Conduct periodic evaluation of procedures

Additionally, the FCRA prohibits reporting information with actual knowledge of errors, or information that the furnisher knows or has reasonable cause to believe is inaccurate. A furnisher

must not report information after notice and confirmation of errors. In furtherance of the obligations to provide accurate information, furnishers have the following obligations:

- Duty to correct and update information
- Duty to provide notice of dispute relating to accuracy of information furnished
- Duty to provide notice of closed or delinquent accounts
- Duty to respond to notification from credit reporting agency relating to customer identity theft
- Provide notice of negative reporting to customer for initial reporting

The Consumer Financial Protection Bureau's ("CFPB") regulators recently issued its *Supervisory Highlights* for supervision work completed between July and October 2013, and highlighted a few areas of concern and unfair practice in this area.¹

One example from the CFPB *Highlights* is the improper coding of short sales as foreclosures. Similarly, another example is misreporting borrowers in a trial loan modification as being in the foreclosure process and inaccurately reporting whether the loan modifications were made under governmental or proprietary programs.

¹ The CFPB regulates financial institutions with assets greater than \$10 billion but the CFPB, a member of the Federal Financial Institutions Examination Council, has influence with regulators of institutions with less than \$10 billion in assets. It is our opinion that subjects of examination that are the focus of the CFPB will become areas of focus for other smaller institutions.

JUDICIAL CONFERENCE RAISES BANKRUPTCY FEES

- Patricia Scott

The Judicial Conference of the United States approved two amendments increasing various fees for Bankruptcy cases, effective June 1, 2014. The revised fee structure is:

Bankruptcy Court Miscellaneous Fee Schedule Changes (28 U.S.C. § 1930)

	Current Fee	New Fee Effective 6/1/14
Chapter 7 Filing Fee	\$ 306	\$ 335
Chapter 9 Filing Fee	\$ 1,213	\$ 1,717
Chapter 11 Filing Fee	\$ 1,213	\$ 1,717
Chapter 12 Filing Fee	\$ 246	\$ 275
Chapter 13 Filing Fee	\$ 281	\$ 310
Chapter 15 Filing Fee	\$ 1,213	\$ 1,717
Motion to Deconsolidate a Chapter 7	\$ 306	\$ 335
Motion to Deconsolidate a Chapter 11	\$ 1,213	\$ 1,717
Motion to Deconsolidate a Chapter 12	\$ 246	\$ 275
Motion to Deconsolidate a Chapter 13	\$ 281	\$ 310
Adversary Proceeding	\$ 293	\$ 350

LAWYERS CAN MAKE YOU MONEY

What? Is that possible? It is. We will gladly give you names of clients who have seen a 100 percent increase in recoveries. So what exactly are we offering? A streamlined system that cuts out the middleman and reduces your fees.

Credit bureaus or collection agencies must hire lawyers when litigation becomes necessary. Our contingent fee is significantly less than their fees so you receive an increase from the recoveries that begins immediately.

Our plan provides for all legal costs to be paid from recoveries. There is no risk for you. It's simple; if we do not collect, we do not get paid.

With no attorney fees or costs to pay, there is nothing to lose and everything to gain. Scott is eager to discuss with you any questions you may have and provide you a list of references. Please contact Scott to learn more about how we can help you by phone or email at 517.371.8133 or schernich@fosterswift.com.

FINANCIAL INSTITUTIONS MUST RESPOND TIMELY TO CONSUMER DISPUTES

- Patricia Scott and Steve Owen

One of the significant obligations under the Fair Credit Reporting Act (FCRA) is the duty of financial institutions that provide information to consumer reporting agencies to respond timely upon notice of a dispute filed with the reporting agency by a consumer. This duty to respond carries with it a significant risk, if the financial institution is negligent in the way it responds!

In general, after the financial institution receives notice **from the reporting agency** that a dispute regarding completeness or accuracy of information has been filed with the reporting agency by a consumer, the financial institution must do all of the following:

- conduct an investigation that includes a review of all the information provided to the financial institution by the consumer reporting agency;
- then the institution must report the results of its investigation to the consumer reporting agency that gave notice of the dispute;
- if the review finds that incomplete or inaccurate information was initially provided, then the results must also be reported to any other agencies to which the financial institution provided such information;
- finally, if the financial institution finds inaccuracy or incompleteness in the information initially provided, or if the disputed item of information **cannot be verified** in the course of its investigation, the institution must
 - alter its reporting to consumer reporting agencies by promptly (1) modifying that item of information, (2) deleting that item, or (3) permanently blocking the reporting of the item.

All of this must be done within 30 days of receipt of notification of the dispute from the consumer reporting agency.

The FCRA emphasizes the significance of this obligation by imposing civil liability on a financial institution for negligent non-compliance with the steps outlined above. A financial institution can be liable to the consumer in an amount equal to the sum of actual damages sustained by the consumer, as well as the costs of litigation, including reasonable attorney fees as determined by the court. Significantly, the individual consumer has the right to bring a lawsuit for recovery of these damages and costs.

There is a similar duty of the financial institution if the dispute about accuracy of reported information comes **directly from the consumer**, rather than through the consumer reporting agency. The financial institution must:

- conduct an investigation;
- review all relevant information provided by the consumer;
- report the results of the investigation to the consumer within 30 days; and
- if the investigation reveals that the reported information was **inaccurate**, report that inaccuracy to all agencies that received the information and also provide any correction to the information.

Unlike the first scenario when the notice of dispute comes from the credit reporting agency, in this case when the dispute comes directly from the consumer, the law **does not** give the consumer the right to file a lawsuit to force the financial institution to comply with its duty to investigate and correct. Instead, the right of enforcement in this instance is left to state and federal agencies and officials.



OUR GRAND RAPIDS OFFICE IS EXPANDING



Foster Swift recently expanded its Grand Rapids office space by 50 percent. Prior to the new build out, Foster Swift occupied the second level of the building at 1700 E. Beltline.

The newly renovated space on the first floor includes 10 offices, four support staff workstations, two conference rooms with video conferencing abilities, a kitchen and a copy room.

The additional space is necessary to accommodate Foster Swift's growth. In the past five years, the office has grown to 22 attorneys. Together with the Holland office, a total of 26 attorneys practice in West Michigan. The firm's growth will

continue this fall when five new associate lawyers start. Two of the five lawyers will be based in the Grand Rapids office.

The firm plans to continue the growth trend in West Michigan by advancing its Grand Rapids and Holland offices and considering additional opportunities in West Michigan.

UPCOMING WEBINAR

Mark your calendars. Attorney Randy Harbour is presenting a webinar on June 23 titled "Address Your Red Flags before the Examiners Do." Learn what bank examiners said about issues they see at community institutions that commonly cause enforcement actions.

Register here: <https://www1.gotomeeting.com/register/638632448>

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