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USING COURT PROCEDURE TO DEFEAT DEBT COLLECTORS

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The mindset of most attorneys and in turn judges is that if a debt has been owed, then somebody has to be paid for it. And they think that because they do superficial research in county records to demonstrate that you have owed a debt to someone, you now owe it to them instead.

The only person a debtor is obligated to pay is someone who suffers a financial injury, the person who executed any original contract, or who otherwise lent you money.

Yet most of the time those bringing suit to collect debts are those who neither lent money nor have since suffered a financial injury.

Once assignments are made on a debt after a default has been declared, it is now an issue of debt collection subject to debt collection law only. It is not a matter of debtorship to a creditor.

Debt collectors argue that a right to judicial foreclosure is waived in the deed of trust. This is so. BUT it is only waived before the original creditor. It is not waived before a debt collector. Once the alleged loan goes into default and is assigned to a debt collector, the effective law changes. The FDCPA is now the law under which action is governed.

Once under the conditions of the FDCPA, debt collectors have no legal right to ply the legal remedies owed only to creditors who make loans, including notices of default, assignments to servicers, substitutions of trustee, etc.

Third party debt collectors have remedy only to sue in court for debts allegedly owed. They are not entitled to the collateral used to secure those loans.

The elements of the FDCPA are very simple and straightforward at setting the rules for debt collectors.

1. *Consumer is defined in 15 USC 1692 (a)(3)*
2. *Creditor is defined in 15 USC 1692 (a)(4) – someone who extends credit creating a debt, and does NOT include anyone who receives a debt in default by assignment or transfer for the purpose of collecting on the debt for another (namely, third party debt collectors, servicers, attorneys).*
3. *Debt is defined in 15 USC 1692 (a)(5)—money owed by a consumer of personal goods.*
4. *Debt collector is defined in 15 USC 1692 (a)(6)—includes a creditor trying to collect a debt under another name.*

The debt collector is defined and boxed in by these clauses. Relationship of the debtor to the mortgage instrument is not at issue. The identification of the debt collector for who they are and what they can do under this law is what is at issue.

It is to the debt collector's advantage to focus on the mortgage instrument outside this box as if in the role of a creditor. But the debt collector did not create any alleged loan or establish the indebtedness. Therefore, the debt collector can lay no case based in whatever the mortgage instrument has to say.

The debt collector always says the borrower is in default, never that the loan is in default. That is because they cannot speak about creditor related issues.

Everything always comes back to what law defines the debt collector's behavior and basis of standing—what the debt collector can and cannot claim and do.

1692(i) Prevents Non Judicial Action by Debt Collectors

5. *Venue for debt collection is defined in 15 USC 1692 (i)—any contest over real property must be brought before a judicial court as a judicial action. This means there can be no "non-judicial foreclosure by a debt collector."*

Attorneys want to stick to the creditor language because that is rich for them. The debt collection options are far less lucrative to them.

Identify the difference between a creditor and a debt collector. Don't send a QWR to a debt collector. Don't send a dispute letter to a creditor.

Once you have verified you are dealing with an assignment post default, you know you are dealing with a debt collector and must know what governs the debt collector's actions.

Attorneys will not engage discussion on 15 USC 1692 **(i) This one law is all that is necessary to stop a non judicial foreclosure by a debt collector.**

Attorneys depend on litigation that takes years to make their money.

Withstanding Judicial Action

If the collectors bring a judicial action they must have

- *Admissible evidence*
- *Competent fact witnesses*

They have neither.

When attorneys file judicial foreclosure actions they put together a story about what the debtor owes and assert that the plaintiff has been financially harmed, but they never define that harm.

The story that the debtor executed a mortgage and defaulted on it is a hearsay story.

A plaintiff must at all times plead that

- *a defendant had a duty,*
- *the duty was breached, and*
- *there are damages resulting from that breach.*

They must show a specific harm and loss to the plaintiff, not just allege a story based on an original loan. But they do not do so because a debt collector has not been harmed. They never made a loan which was defaulted.

They do not even allege harm based in what they paid for the debt.
They do not allege that the original creditor ever made a loan.

Defendants repeatedly make the mistake of arguing the subject matter put before them without trial of proof, and thereby making the case for the debt collector. They draw you into making an affirmative defense rather than to deny their allegation which they must then prove.

Attacking the Complaint

You must defend at the beginning by preventing debt collector attorneys from bringing their complaints based in hearsay—nothing corroborated or verified.

You must deny everything the plaintiff alleges and force the burden of proof back on the plaintiff.

You must question them on everything from:

- *Who are you?*
- *What loan are you saying I received?*
- *What proof do you have that I received that loan?*
- *What documentation are you providing? Is it admissible or is it hearsay?*

You deny!

- *I don't know what you are talking about.*
- *I never received a loan.*
- *I have no proof that I received a loan*
- *I don't know who you are.*
- *I don't know if you have capacity or standing to sue me.*
- *Even if what you said is right, you have to prove that you are the person that has any right to collect any debt.*

Attacking Standing as Holder in Due Course

You will also not find the plaintiff pleading that they are the holder in due course.

A holder may be in possession of but does not have the legal authority to dispose of something.
"Any person entitled in his own name to the possession of the negotiable instrument and to recover or receive the amount due thereon from the parties thereto."

A holder in due course is a holder *"who takes the instrument in good faith for consideration before it is overdue and without any notice of defect in the title of the person who transferred it to him."*

This means they must show that they acquired that instrument for consideration and are therefore injured by your fail to pay on it. They never demonstrate what the consideration is or that they were therefore injured. The assignments vaguely say "for consideration received" which could just as well be barter. Demand proof of the consideration. This will be the only amount a debt collector can possible allege injury for were they able to at all.

If someone is only a holder, they are holding it for the holder in due course.

Attacking Attorney Hearsay Testimony

All of this is "marinated" in hearsay by an attorney who is not allowed to testify and is not a competent fact witness to any transaction that may have occurred prior to his involvement in it.

Read Tricks and Traps Used by Attorneys...Concerning Evidence.

Attorneys may freely speak about process and procedure. They can offer very little by way of facts. They must be sworn in and cross examined to testify to facts. Attorneys file hearsay complaints. Complaints may not be the attorney's own words, but must be the words of the harmed party represented. The complaint must cite the source accuser behind the complaint.

An attorney can only listen to the story of another and extrapolate the legal information necessary to plead it through a complaint. They cannot be his words, but must be the words of the financially injured party.

From Tricks and Traps Used by Attorneys...Concerning Evidence.

> *The trial court has the discretion to admit or exclude evidence. The appellate court will reverse only on abuse of discretion standard. ...*
>
> *An attorney's unsworn statements are not evidence. However on appeal a lawyer's unsworn statement can be considered evidence unless the other side objected at the trial.*

Therefore you need to deny the complaint and ascertain who is saying it. The complaint ends only with the signature of an attorney, and not that of a competent fact witness complainant.

The complaint is usually not supported by an affidavit from a competent fact witness or anybody with personal firsthand knowledge making the complaint nothing but hearsay.

Attacking Allegations Presented as Facts

Whenever you see "statement of facts" or "factual allegations" in the complaint, you must immediately challenge them on the bases described herein. In foreclosure these are issues that usually go back many years and cannot just be asserted as facts.

You must object to the allegations of facts and deny them, even if you know they are true. You must make them prove their case.

After objecting, ask that the lawyer be sworn in and subject to cross examination. Ask the court, "*Is the attorney here as counsel or is he testifying as a witness?*"When they admit he is present as counsel, then order the court that he be stopped from offering alleged facts uncorroborated by a competent fact witness unless he is willing to be sworn in and cross examined by the defendant. Hearsay is not allowed in the courts.

Attacking Affidavits of Indebtedness.

These supposed affidavits come from servicers and people in loss mitigation departments of the debt collector affirming familiarity with the records and processes of the servicer who is also a debt collector appearing to add substance to the debt collection case.

Familiarity with who puts a spreadsheet in a system has nothing to do with the validity of the information.

These affidavits must be objected to and the alleged witnesses must be deposed.

Attacking the Documentary Evidence

You have to deny the signature, deny that you executed the contract and deny that you received a loan—not because it may not be true, but because the plaintiff is the one that has the obligation and duty to prove his case. The lawyers instead wait for you to offer affirmative defenses on the allegations that admit to their "facts" so that they do not have to prove them. Their complaint does not contain actual "facts" from any competent firsthand material fact witness. The complaint is entirely hearsay.

Your answer to the complaint must be:

- *I don't know what you are talking about.*
- *That documentation has not been authenticated.*
- *It is not admissible as evidence.*
- *I deny that that is my signature.*
- *I do not recognize that document.*
- *I deny that I received a loan.*
- *I deny that the alleged creditor funded any loan.*
- *I deny that you are a creditor or are anything but a debt collector who has no financial interest in this alleged contract and has suffered no monetary harm with respect to it.*
- *You are bringing forth mere hearsay without any firsthand competent fact witness to support the alleged "facts."*

They will have to prove that the contract is authentic original.
They have to prove the entire money trail, not just produce the note.
They need to prove that the creditor bank has a bank entry demonstrating a withdrawal from their account corresponding to a deposit to the account of the seller of the house. They can't just allege a

loan. They have to show the book keeping entries that prove the loan. Because if the creditor bank is not proven to have made the loan, the debt collector certainly did not get the loan. Somebody else might have gotten a loan on the secondary market, but that doesn't matter.

Q&A

Setting Up a Court Attack from the First Correspondence

Debt collectors should be answered with a single letter in which is rebutted all their claims.
Verify that they are a debt collector, not a "payment collector." They will send back a copy of the mortgage contract. But that is not verification. Verification means they have to go to the original creditor or source of the numbers and validate and verify those numbers. Sending back a spreadsheet or screenshot is not validation, per the Consumer Financial Protection Bureau. Such records are not admissible and are not an exception to the business records rule.

You notify them in the original response letter that if they respond back without the required information in an easy to understand format (must be easily understandable), they may be subject to litigation without further notice. You can also already have the complaint written up to be sent with the letter.

You may then proceed to begin either your small claims action or federal suit against them.

Debt collection is a legitimate business, but debt collectors cannot comply with all the rules required for their business to work.

Your response should demand:

- *Show me how I was given a loan.*
- *Show me how I was put in default*
- *If the contract was executed 10 years ago, where did you get your numbers?*
- *Is it not from somebody else? Is that not hearsay? Is that "somebody else" still around so as to be able to testify and be cross examined by me as to whether that amount is valid or not?*

Therefore I must sue you just for threatening to take an action you cannot take, for a deceptive act, for misrepresenting the character and amount of the debt.

Demand that they explain how they arrived at that number with admissible evidence. They must be on point to the dollar. This can only come from the original creditor. It cannot come from self serving affidavits or from employees of the debt collector.

Using Depositions

You must be willing and able to depose people in discovery with critical questions:

- *What firsthand knowledge do you have of this account?*

- *When did you come into contact with this alleged account?*
- *When was the account allegedly executed?*
- *How would you have personal firsthand knowledge of anything at the time this account was allegedly executed?*

How can you as an attorney say anything about this when I am the only one here who would have knowledge as to what may have happened pertaining to me so many years ago?

Get this hearsay type testimony by attorneys stricken from the record. Attorneys need admissible evidence or competent fact witness.

There is simple truth v. simple fiction. The questioning route is easy. Lawyers are paid to evade and obfuscate away from simplicity. Demand simple yes / no answers from attorneys to these questions and do not allow rabbit trail divergences:

- *Do you have any admissible evidence?*
- *Are you a competent fact witness?*
- *Are you testifying here today?*
- *Do you have any admissible proof that I owe that debt?*
- *Are you willing to testify on the stand under penalty of perjury and be cross examined by me that I owe you a debt based on that third-fourth-fifth generational transferred information?*

Depose anybody sending you a letter by way of assignment or MERS or whatever alleging you owe them a debt. Ask questions as:

- *Did you send me this notice and say that I owed you X dollars?*
- *What was that based upon? (our computer program)*
- *Who wrote the computer system your info is based on? (our company)*
- *Who in your company has access to it? (everybody)*
- *So is it possible for anyone of these company employees to go in and manipulate that information?*
- *And so where did you get the information? (somebody else)*
- *Is that information you are willing to testify under penalty of perjury and statement of record that I owe you something based on information you got from somebody else or based on records that you say are readily accessible to anybody in the company and subject to possible manipulation or error?*

These questions can be used for any monetary claim issue.

Be Careful with Loan Modifications

In modifications including forbearances, if the modification is drastically cut, it indicates serious doubt about the enforceability of the original loan, and that the current players want a new contract with a fresh signature. One must decide however if it is worth it to take up the fight over the original loan documentation, or to accept the newer more favorable contract. Note that in most loan modifications

the principle is rarely adjusted. So then if a drastic cut is offered, it is likely being made up for elsewhere such as a longer term.

Using a Notice of Dispute to Stop a Complaint

When debt collectors meet initial resistance, they will often move straight to a complaint and summons figuring that most people can't defend against it.

In this case, you answer the complaint in pleading form, denying everything in the complaint and put your notice of dispute on the record.

If they continue with the case after the notice of dispute is on the record, they are in violation of the FDCPA and you then file a counterclaim for FDCPA and FCRA violations or if within 30 days remove it thereto.

If they do not stop the action or do not file for a stay pending their verification which they should, you do a notice for grant of leave for 30 days

Most debt collectors use small claims courts for every day debts. These courts use their own forms. Use the forms to put in your answer to the complaint including the denials of the counts, it all appears to be hearsay, you demand validation and verification of the alleged debt with admissible proof.

You proceed in court to ask as above:

- *What credit card, where, when, with whom?*
- *Who is saying this? Who are you? Who are you speaking for?*
- *Where did that information come from? If it came from someone else, why is that person not here to support the allegation?*

You may also need to answer:

- *I don't know if I ever used that credit card. I had several credit cards. I don't recall the one you are speaking of. Can you provide proof and jog my memory if you present some admissible proof to the court that I might recognize? My senses are not geared to recognize inadmissible evidence. I don't recognize copies. If I give you a copy of a hundred dollar bill will you accept it?*

- *I may have been to that gas station, but can you prove that I used that card 10 years ago at that station? How can I admit to that?*

Attacking Consideration

At most debt collectors could assert injury in the amount for which they bought a debt. This is usually 3-5 cents on the dollar. For an assignment, valuable consideration is often only 5 or 10 dollars. You could force admission of this amount and then possibly send them that amount and then demand a satisfaction of claim, mortgage or lien from them.

Then if you don't want to get into heavy litigation, go down to small claims court, file an action stating you sent the debt collector notice and the consideration and you demanded satisfaction for the

instrument and they denied you. Ask for declaratory judgment from the court. You showed they paid $10 for the assignment and you paid them that $10 back—their only consideration.

Moving from Motion to Dismiss to Motion for Summary Judgment

You should be able to knock out a debt collector with a motion to dismiss for failure to state a claim on which relief can be granted. Without proof behind their hearsay and unsupported allegations, they have stated no claim with the elements of breach, duty and injury.

A complaint is supposed to be a short statement of facts. In some jurisdictions, allegations may be pled as facts prior to proving through discovery.

Subpoena everybody that sent you a letter, and everybody that is signed on the assignments (which will include robosigners). Then do depositions.

Use 1692(i) in your deposition questions for foreclosures:

- *Are you familiar with consumer protection laws?*
- *Are you familiar with 15 USC 1692(i)?*

After the deposition, you move for immediate summary judgment on the basis that they have no admissible evidence, proven facts or witnesses. It is a paper case of hearsay and allegations without corroboration by the plaintiff. Order the court to enter judgment in your favor.

Preserving Errors on the Record through Objection

Always preserve your objections on the record and give the judge the rule behind the objection, such as the admissibility of evidence. Get the judge to rule on that the counsel appears to be testifying and providing hearsay. Always use the phrase "*appears to be*" in an objection. Get the judge to rule on the admissibility of the documents as authenticated or not. Preserve objections to adverse rulings for appeal.

Attacking the Assignment

The very first thing to attack is the assignment. The assignment is the only piece of paper they rely upon for standing. Get the court to rule on the admissibility and authentication of that document.
Is the assignment

- *signed by a robosigner*
- *or by an unauthorized party*
- *or that doesn't work for MERS (is not a MERS employee),*
- *or doesn't list a consideration amount,*
- *or is ambiguous and devoid of information?*

It says it was executed by MERS. The lender is dead.

- *Is MERS a placeholder for dead entities?*
- *Can MERS use a power of attorney on behalf of a dead entity?*

You can do a Motion to Strike the assignment.

When making charges of violations of specific statutes such as in the FCRA or FDCPA, do not directly allege the violation as a conclusory statement. Use the phrase "*appears to have violated*."

Debt Collectors May Not Pull Credit

15 USC 1681(b) qualifies who has a permissible reason to pull a credit report. Debt Collectors have no permissible reason and can be sued under this statute. If they are not a creditor, you did not apply for credit or insurance with them, you did not apply for employment with them, then they are not allowed to pull your credit report.

95% of debt collection cases will not go to trial.