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## Collection Practices

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## COLLECTION PRACTICES

To many, the term "collection agent" may create the idea of an unscrupulous individual who will stop at nothing to insure collection of a debt. Regardless of the truthfulness of this belief, in order to deter tactics such as threatening letters, persistent offensive calls and unsolicited personal visits, the Louisiana legislature has included in the Louisiana Consumer Credit Law<sup>1</sup> section 3562 which prohibits certain "unauthorized collection practices."<sup>2</sup> The purpose of this section is to prevent the more unreasonable and coercive small debt collection practices.<sup>3</sup>

The provision prohibits a creditor<sup>4</sup> from contacting any person not living or present in the debtor's household, other than an extender of credit<sup>5</sup> or a credit reporting agency, regarding the debtor's obligation to pay a debt. This broad prohibition should prevent the occurrence of certain collection abuses such as general publication of debtor lists,<sup>6</sup> calculated plans of harassment which include calls to the debtor's neighbors<sup>7</sup> and contacts with a debtor's employer to solicit assistance in debt collection.<sup>8</sup>

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1. LA. R.S. 9:3510-68 (Supp. 1972).

2. *Id.* 9:3562 (Supp. 1972).

3. See generally THE NATIONAL CONSUMER ACT, §§ 7.201-.209 (1970) (providing remedies for abusive collection tactics which may be compared to section 3562).

4. LA. R.S. 9:3562 (Supp. 1972): "Except as otherwise provided by law or this section, the creditor, including, but not limited to the creditor in a consumer credit transaction . . ."

5. An extender of credit or creditor "as used in this chapter includes a seller in a consumer credit sale or transaction made with the use of a seller credit card or otherwise, a lessor in a consumer lease, or a lender in a consumer loan, a revolving loan account, or a lender credit card transaction." *Id.* 9:3516(16) (Supp. 1972).

6. In *Tuyes v. Chambers*, 144 La. 723, 81 So. 265 (1919), the court held that the creditor was liable as a result of the debtor's mental suffering caused by the creditor's disparaging remarks made to the debtor's daughter and the publication of a list of delinquent debts by the creditor.

7. In *Boudreaux v. Allstate Finance Corp.*, 217 So. 2d 439 (La. App. 1st Cir. 1968), the creditor attempted to enforce collection of a debt due by making repeated unauthorized phone calls to the debtor's neighbors, by making a personal visit to the debtor's home, and by creating a disturbance in his backyard.

8. See *Booty v. American Fin. Corp.*, 224 So. 2d 512 (La. App. 2d Cir. 1969). This decision involved numerous calls by the creditor to the debtor's employer soliciting assistance in collection of the debt. The creditor also threatened to have the plaintiff fired from all jobs until the debt was paid. See also *Pack v. Wise*, 155 So. 2d 909 (La. App. 3d Cir. 1963), noted in 24 LA. L. REV. 953 (1964) (creditor contacted the debtor's employer on several occasions after notification that the debtor considered that he had a valid defense); *The Work of the Louisiana Appellate Courts for the 1963-1964 Term—Torts*, 25 LA. L. REV. 341 (1965); *Quina v. Robert's*, 16 So. 2d 558 (La. App. Or. Cir. 1944) (creditor contacted plaintiff's employer, overstated the debt and made demands on the plaintiff over the telephone).

Section 3562 does not prohibit contacts with the debtor. However, it specifically provides a method whereby the debtor may limit the opportunity of a creditor to contact him after the debt has become delinquent.<sup>9</sup> If the debtor has defaulted and given specific notice in writing by registered or certified mail that he is not to be further contacted on the debt, the creditor is limited to one mail notice per month and a maximum of four personal contacts.<sup>10</sup> In this manner, the section affords a creditor an opportunity to further his objective of debt collection without unnecessary encroachment on the debtor's privacy. At this stage of the credit process the debtor is aware of his delinquency and unlimited communications by the creditor could only be deemed coercive. Therefore the section limits these contacts with the anticipation that the creditor will resort to legal processes.

There are exceptions to the broad prohibition in section 3562. When a person applies for credit the creditor may, without consent of the prospective debtor, contact others for information concerning his credit worthiness, character and general reputation to determine eligibility for credit or insurance.<sup>11</sup> Furthermore, a creditor may contact others to determine the debtor's whereabouts when he has reason to believe that the debtor has moved or changed employment.<sup>12</sup> The debt collection provisions of the section do not prohibit an extender of credit from contacting anyone to learn the location of property for seizure to satisfy a debt reduced to judgment<sup>13</sup> or from making an amicable demand and filing suit.<sup>14</sup> Also, he is not deterred from reasonable contacts with persons related to the debtor if the debtor has given specific written permission.<sup>15</sup> Notwithstanding the general non-waivability provision of the Act,<sup>16</sup> a debtor may waive the benefits of

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9. LA. R.S. 9:3562(3) (Supp. 1972).

10. *Id.* Although "personal contact" is not defined in the Act, this would clearly seem to include telephone contacts.

11. *Id.* 9:3562(2)(a) (Supp. 1972).

12. *Id.* 9:3562(2)(b) (Supp. 1972). *See* *Everett v. Community Credit Co.*, 224 So. 2d 145, 149 (La. App. 1st Cir. 1969) (where agent's acts in visiting a sick woman to ascertain the whereabouts of her debtor husband were held not to abridge the woman's right to privacy).

13. LA. R.S. 9:3562(4)(a) (Supp. 1972). *See* *Passman v. Commercial Credit*, 220 So. 2d 758 (La. App. 1st Cir. 1969) (where liability was denied because the creditor had merely informed the debtor's employer that he would use garnishment to satisfy an existing judgment).

14. LA. R.S. 9:3562(4)(b) (Supp. 1972). *See* *Campbell v. Parker*, 209 So. 2d 337, 339 (La. App. 3d Cir. 1968) (where the court held that the creditor's actions were not unlawful since he was merely informing the debtor of his legal rights and that alone was insufficient to constitute a tort).

15. LA. R.S. 9:3562(4) (c) (Supp. 1972).

16. *Id.* 9:3513 (Supp. 1972).

this section provided he gives his consent after his debt arises.<sup>17</sup>

Prior to the Act's adoption, Louisiana jurisprudence had awarded damages under article 2315 for a creditor's abusive collection tactics.<sup>18</sup> The courts have used several legal theories to support these awards but, in general, if the creditor's actions can be characterized as unreasonable or as amounting to wrongful coercion then recovery would result.<sup>19</sup> Although the Commissioner may sue to enjoin future violations of the Act,<sup>20</sup> section 3562 lacks any specific civil remedy which a debtor may use to redress a breach of its prohibitions. However, section 3562 (5) states that its provisions "shall not limit a debtor's right to bring an action for damages provided by Article 2315 of the Louisiana Civil Code," and it is arguable that an action for a violation of section 3562 may therefore be available pursuant to article 2315.

Since article 2315 requires proof of damage<sup>21</sup> and fault, it is necessary to determine whether a single violation of section 3562 would be sufficient to constitute fault under article 2315 or whether the breach would only go to the weight of the evidence against the creditor with liability depending on the gravity of all the creditor's actions.<sup>22</sup> Due to the remedial nature of the legislation and since the

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17. *Id.* 9:3562(1) (Supp. 1971).

18. The damages allowed have ranged from \$100 for mental pain and anguish in *Quina v. Robert's*, 16 So. 2d 558 (La. App. Orl. Cir. 1944), to an award of \$5000 for loss of job, damage to reputation and mental pain and suffering in *Pack v. Wise*, 155 So. 2d 909 (La. App. 3d Cir. 1963).

19. *Tuyes v. Chambers*, 144 La. 723, 81 So. 265 (1919) (mental suffering); *Boudreaux v. Allstate Fin. Corp.*, 217 So. 2d 439 (La. App. 1st Cir. 1968) (mental suffering); *Pack v. Wise*, 155 So. 2d 909 (La. App. 3d Cir. 1963) (invasion of privacy). See also *The Work of the Louisiana Appellate Courts for the 1963-1964 Term—Torts*, 25 LA. L. REV. 341 (1965) (where Professor Malone suggests that the theory of inducing breach of contract should have been the approach followed by the court); Note, 24 LA. L. REV. 953 (1964) (where the theories of invasion of privacy, intentional infliction of mental suffering and defamation are discussed); *Quina v. Robert's*, 16 So. 2d 558 (La. App. Orl. Cir. 1944) (libel).

20. LA. R.S. 9:3555 (Supp. 1972).

21. See, e.g., *Columbia Fin. Corp. v. Robitcheck*, 142 So. 2d 625 (La. App. 2d Cir. 1962) (where the court held that the debtor produced no evidence that he suffered any loss of position, pay, reputation or that his credit rating was impaired; thus the debtor had failed to prove he was damaged).

22. In *Cunningham v. Securities Investment Co. of St. Louis*, 278 F.2d 600, 604 (5th Cir. 1960), a creditor inquired of a patient's physician whether he could speak to the patient concerning a debt. Subsequently, the patient heard of the conversation between the two and contended that she suffered a setback in health due to anxiety, since she had not wanted her physician to learn of her financial position. The court held that there had been no actionable invasion of privacy. In this decision the person contacted was the debtor's physician; a contact not authorized by section 3562. This

statute establishes affirmative standards of conduct, the better view may be to consider any violation of the section as constituting fault even though the conduct is not unreasonable or coercive.<sup>23</sup> This approach is also supported by the fact that one of the purposes of the section is to urge the creditor to seek judicial relief in lieu of continued harassment of the debtor. However, this is one of the few sections in the Act that is waivable,<sup>24</sup> which weighs against the fault per se concept.<sup>25</sup> It is clear, however, that since section 3562 (5) does not limit a debtor's right under article 2315 and since prior decisions have awarded damages for actions that were deemed unreasonable or coercive,<sup>26</sup> any similar conduct should still be actionable regardless of compliance with the section.<sup>27</sup>

Section 3562 attempts to prevent use of unauthorized collection practices by providing a broad prohibition against certain contacts. The creditor's objectives are considered by allowing specified reasonable contacts with the debtor and others. Although lacking a civil remedy, the section does not limit the use of article 2315, and it is possible that a breach of the statute may be considered "fault," thus providing a judicial remedy for violation of the section. If so, section 3562 and the prior jurisprudence should be effective in diminishing unscrupulous practices while affording the creditor an opportunity to collect a debt owed.

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case would be an example of a contemporary court having to decide the effect of a breach of section 3562.

23. This view would be analogous to that adopted by Louisiana courts in the statutory negligence area. See *Hill v. Lundin & Assoc., Inc.*, 260 La. 542, 256 So. 2d 620 (1972); *Dixie Drive-It-Yourself Sys. v. American Bev. Co.*, 242 La. 471, 137 So. 2d 298 (1962). See also Robertson, *Reason Versus Rule in Louisiana Tort Law: Dialogues on Hill v. Lundin & Associates, Inc.*, 34 LA. L. REV. 1 (1973).

24. See text at note 17 *supra*.

25. Another argument against fault per se can be made on the grounds that where a creditor has received the notification from a debtor to cease further contacts as required by section 3562 and instead makes a fifth innocuous contact which is not unreasonable, it would seem inequitable to hold a creditor to automatic fault.

26. See text at note 19 *supra*.

27. In *Davis v. Lindsay Furniture Co.*, 138 So. 439 (La. App. 1st Cir. 1931), the defendant's agent went to the plaintiff's (debtor's) home to collect the balance due on a bill for merchandise purchased. The agent forcibly removed the merchandise and the court awarded damages to the plaintiff's wife for her subsequent humiliation and mental suffering. This decision illustrates a situation where there is not a violation of the Act since the contact was with a person present in the debtor's household. But since forcible removal of merchandise is unreasonable, such conduct should nevertheless be actionable.