

RESOLVING TO AVOID LEGAL ISSUES AND ENHANCE COLLECTIONS IN 2013

By: Bruce Akerly

If you are like me, you made several personal resolutions for the New Year. But did you also consider making resolutions related to your businesses? While every business is different and there are no guarantees that any action will result in any particular result, it goes without saying that inaction will certainly lead to consequences – pecuniary or otherwise - worthy of avoiding. As you head further into the New Year, consider adding all or some of these resolutions to your list.

#1 – Train, Train and Train

Need I say more? Perhaps the one thing you can do to enhance collection efforts and avoid legal issues in 2013 is to make sure all of your employees are adequately trained. **Resolve** to take advantage of available training through ACA and other sources to keep your employees on the cutting edge of technology.

#2 – Embrace Technology

Along these lines, given these fast-paced times, **resolve** to provide your business with the most up-to-date technology it needs to conduct its business in the most efficient and economical way possible. There are many resources available. Test them. Assess them. Find out what works. Revamp if necessary.

#3 – Create a Documentary or Electronic Paper Trail

In the legal world, everything turns on evidence. In business litigation, the best evidence is a document. When it comes to proving the terms of an agreement, documents speak louder than words. Therefore, **resolve** to document all agreements and understandings in the coming year. Send a confirmation fax or email. Print a hard copy and place it in a documentary or electronic file. Should a dispute arise concerning terms of an agreement, you can pull out the document to refresh everyone's recollection of the events and enhance your position.

#4 – Become Risk Averse

Managing risk is essential to avoiding risk. There are a number of ways this can be done. Training is one. Technology is another. Establish compliance programs and conduct risk assessments. Have you considered insurance? We insure our health, home, cars and teeth, so why not our businesses? Credit and other forms of liability/casualty insurance may be an affordable way to avoid losses which are occasioned by events outside our control. While this may not be an economical or feasible option for all business, you should resolve to consider this option in the coming year. **Resolve** to find ways to reduce risks at all levels of business.

#5 – Make Sure All Licenses and Permits are in Place

Unlike many other industries, operating in the credit and collection environment requires licensing and regulatory compliance at both the federal and state levels. A simple way to avoid legal problems and enhance collection efforts is to be sure all licenses are current and contain up-to-date information. **Resolve** to keep all licensing current.

#6 – Take Advantage of Non-Legal Credit Enhancing Tools.

It has been said that if you have suffered more than 10% bad debt losses in a given year you should consider investing in a source of information that will provide a greater degree of certainty that debts will be paid. Membership in ACA is a good start. When contemplating payment arrangements, consider obtaining trade references, personal guarantees, and pledges of personal collateral to secure anticipated debt servicing. **Resolve** to consider a variety of sources of avoiding potential debtors and other collection enhancement tools.

#7 – Update Internal Documentation

Building on the above, **resolve** to undertake a comprehensive review of all internal operating agreements and make revisions to comport with changes in operations made in the preceding year. This includes agreements relating to capital financing, insurance, employment agreements, and management contracts.

#8 – Extend Positive Strokes Whenever Possible

Eric Berne, in his best-selling book *Games People Play: The Psychology of Human Relationships*, describes three roles states: the Parent, the Adult, and the Child. Many negative behaviors can be traced to switching or confusing these roles. For example, a controlling, abusive boss (i.e., controlling "parent") often develops self-abased obedient, tantrum throwing, or other childlike responding employees. People like to be praised and encouraged. **Resolve** to find ways to praise the good efforts and successes of your employees. It makes sense that positive strokes will result in positive behavior and add value to your business.

#9 – Do Not Forget the Lessons of 2012

Someone once said: "Those who ignore history are doomed to repeat it." This may be good, it may be bad. The good you can live with but you certainly don't need the bad. Take stock in what worked in 2012 and enhance it to the better. **Resolve** to identify and fix problems and take steps to avoid a similar fate in 2013.

#10 – When all Else Fails, Seek Competent Legal Advice

No one ever says: "I hope I have to spend money on an attorney this year." However, you should feel comfortable saying, "I don't mind spending a few hundred bucks consulting an attorney to get it right and, hopefully, avoid spending thousands of dollars on legal fees to straighten out a mess that could have been avoided." **Resolve** to obtaining sound, competent legal advice on any matter you are not accustomed to dealing with **before** you act.

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