

APPENDIX



BRIGHT LINE OF DISTINCTION

Debt Collection

- Covered by **FDCPA**
- In Personam
- Violates Discharge Injunction



Lien Enforcement

- Not Covered by **FDCPA**
- In Rem or Quasi in Rem
- Does Not Violate Discharge Injunction



- Collection Efforts
- Demand for Payment
- Suit on Note
- Post-Foreclosure Deficiency Action
- Foreclosure with Demand for Payment
- Foreclosure with Combined Deficiency Judgment

- Non-judicial Foreclosure with No Demand for Payment*
- Judicial Foreclosure:
 - No Demand for Payment
 - No Combined Deficiency Action

*(i.e., Colorado and other non-judicial foreclosure states where state law does not allow a deficiency judgement as part of the foreclosure)

Conflicts between FDCPA and Colorado law

Example #1

FDCPA Prohibition: Creditor cannot communicate directly with debtor if: (a) debtor is represented by counsel; or (b) if debtor has requested that creditor cease communication. [15 U.S.C. § 1692c(a) & 15 U.S.C. § 1692c(c)].

vs.

Colorado Requirement: Required Notice to the Debtor: Provides the debtor with the telephone number of the Colorado foreclosure hotline, the direct telephone number of the holder's loss mitigation representative and a statement that it is illegal for a foreclosure consultant to charge an up front fee or deposit to the debtor for services related to the foreclosure. (Colo. Rev. Stat. § 38-38-102.5).

Conflicts between FDCPA and Colorado law

Example #2

FDCPA Prohibition: Creditor cannot communicate directly with debtor if: (a) debtor is represented by counsel; or (b) if debtor has requested that creditor cease communication. [15 U.S.C. § 1692c(a) & 15 U.S.C. § 1692c(c)].

vs.

Colorado Requirement: Required Notice to the Debtor: Provides the debtor with contact information for a designated single point of contact whose primary purpose is to provide loss mitigation information to the debtor and coordinate loss mitigation efforts between the debtor and the servicer. (Colo. Rev. Stat. § 38-38-103.1).

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Conflicts between FDCPA and Colorado law

Example #3

FDCPA Prohibition: The FDCPA bars communication with third parties by debt collectors “in connection with the collection of any debt.” 15 U.S.C. § 1692c(b).

vs.

Colorado Requirement: Required Public Notice: Notice of Election and Demand must be recorded in the real property records. It includes information necessary to identify the creditor and the debtor, the principal amount of the debt underlying the secured claim, and the nature of the default under the security instrument, and the Property to be foreclosed. [Colo. Rev. Stat. §§ 38-38-101(1) and (4) and § 38-38-102].

Conflicts between FDCPA and Colorado law

Example #4

FDCPA Prohibition: The FDCPA bars communication with third parties by debt collectors “in connection with the collection of any debt.” 15 U.S.C. § 1692c(b).

vs.

Colorado Requirement: Required Publication: Trustee must publish in a newspaper of general circulation a notice which includes information necessary to identify the creditor and the debtor, the principal amount of the debt underlying the secured claim, and the nature of the default under the security instrument, and the Property to be foreclosed. The Notice also includes the scheduled time date and location of the foreclosure sale. [Colo. Rev. Stat. §§ 38-38-103(1)(a) and (4)].

Conflicts between FDCPA and Colorado law

Example #5

FDCPA Prohibition: The FDCPA bars communication with third parties by debt collectors “in connection with the collection of any debt.” 15 U.S.C. § 1692c(b).

vs.

Colorado Requirement: Required Notice to Third Parties: Notice of Election and Demand plus a notice of the foreclosure sale date time and place must be sent to all interested parties. It includes information necessary to identify the creditor and the debtor, the principal amount of the debt underlying the secured claim, and the nature of the default under the security instrument, and the Property to be foreclosed. It also includes information regarding the right to cure or redeem and the process for doing so. [Colo. Rev. Stat. §§ 38-38-101(d) and 104].

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Conflicts between FDCPA and Colorado law

Example #6

FDCPA Prohibition: The FDCPA bars communication with third parties by debt collectors “in connection with the collection of any debt.” 15 U.S.C. § 1692c(b).

vs.

Colorado Requirement: Required Communication with Third Parties and the Debtor: The trustee provides cure and redemption figures to debtors as well as junior lienholders and publishes foreclosure bid information to the general public. (Colo. Rev. Stat. §§ 38-38-102 through 505).

Conflicts between FDCPA and Colorado law

Example #7

FDCPA Prohibition: The FDCPA bars communication with third parties by debt collectors “in connection with the collection of any debt.” 15 U.S.C. § 1692c(b).

vs.

Colorado Requirement: Required Public Notice: Notice of Rule 120 proceeding must be mailed to all interested parties and must contain a description of the deed of trust and the nature of default. [Colo. R. Civ. P. 120(a)(1)(B)(v) & Colo. R. Civ. P. 120(b)(1)].

Conflicts between FDCPA and Colorado law

Example #8

FDCPA Prohibition: The FDCPA bars communication with third parties by debt collectors “in connection with the collection of any debt.” 15 U.S.C. § 1692c(b).

vs.

Colorado Requirement: Required Public Notice: Notice of Rule 120 proceeding must be posted at the courthouse and must contain a description of the deed of trust and the nature of default. [Colo. R. Civ. P. 120(b)(4)(A)].

Conflicts between FDCPA and Colorado law

Example #9

FDCPA Prohibition: The FDCPA bars communication with third parties by debt collectors “in connection with the collection of any debt.” 15 U.S.C. § 1692c(b).

vs.

Colorado Requirement: Required Public Notice: Notice of Rule 120 proceeding must be posted on the property to be foreclosed and must contain a description of the deed of trust and the nature of default. [Colo. R. Civ. P. 120(b)(4)(C)].

Conflicts between FDCPA and Colorado law

Example #10

FDCPA Prohibition: Creditor cannot communicate directly with debtor if: (a) debtor is represented by counsel; or (b) if debtor has requested that creditor cease communication. [15 U.S.C. § 1692(c)(a)(2)].

vs.

Colorado Requirement: Required Public Notice: Notice of Rule 120 proceeding must be mailed to the Debtors and current owners of the property and must be posted on the property to be foreclosed and must contain a description of the deed of trust and the nature of default. [Colo. R. Civ. P. 120(b)(4)].

**Portions of the Fannie Mae/Freddie Mac
Uniform Colorado Deed of Trust**

Paragraph 8:

Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

* * *

Paragraph 11:

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument.
