

Servicing Customers Affected by Natural Disasters: Tips for Unsecured and Personal Property Secured Creditors to Prepare for the Worst

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Over the past six months or so, creditors, servicers, and debt collectors alike have been forced to revisit disaster management policies in light of the unique and far-reaching impact of COVID-19: it is at once a nationwide health crisis, economic crisis, and childcare crisis. As the U.S. slowly emerges from quarantine, the familiar but independent threat of natural disasters has eclipsed the novel threat of the pandemic in several regions of the country. Devoting resources to dealing with the myriad evolving issues related to the COVID-19 pandemic has understandably led many companies to set aside traditional policy and procedure maintenance including, most likely, the natural disaster planning that typically occurs prior to and during wildfire season (in the American West) or hurricane season (in the Southeast and along the Gulf Coasts).

This article provides an overview of risks and considerations that should typically go into an unsecured or personal property secured creditor's natural disaster planning. The good news is that, for many creditors, the risks and considerations that arise in debt servicing when a natural disaster happens will be familiar and fresh thanks to the planning and reacting they had to do for the COVID-19 pandemic. But, some of these issues are unique to the increasingly more common and more severe regional natural disasters that result in widespread destruction of property and displacement of people.

Which Customers Are Impacted?

In a natural disaster scenario, the first step is to determine which customers are impacted. Regional creditors will likely be on notice of a disaster that will affect their customers. Larger creditors that handle accounts nationwide or in larger or more disparate regions will likely need to review customer mailing addresses, and possibly also telephone area codes, to determine which of their customers are impacted. FEMA provides a useful tool on its website that shows county and parish-level (Louisiana) information on disaster declarations, as well as an option to search, based on zip code, for disaster declarations. Given the speed at which news and information travel in the 24-hour news cycle, the fact of a natural disaster is usually widely known before it begins, and in some cases (e.g., tornado, earthquake), very soon after. As a result, rather than simply waiting for a customer to notify a creditor of the occurrence of a disaster, creditors should consider having a process in place for monitoring natural disasters,

making quick determinations about which customers are impacted, and flagging their accounts for special handling.

Suppressing Collection Communications

At a minimum, it is a common courtesy to suppress all collection communications to customers affected by a natural disaster and who are behind on payments for at least some short period of time following the end of the disaster. Many customers in the affected area are likely in survival mode. Making credit account payments is at best an afterthought in those circumstances.

In addition, many state and local agencies provide disaster information to residents via automated voice message or text message. As a result, phone lines need to remain open for making and receiving emergency calls and text messages. In fact, for this very reason, some jurisdictions expressly prohibit non-emergency calls (such as servicing or debt collection calls) when a disaster declaration is in place. And, in the context of the COVID-19 pandemic, some state legislatures and regulators have passed laws or implemented regulations expressly prohibiting certain collection and recovery activity during a declared disaster and in some cases for some period of time after.

Further, a number of states limit a creditor's ability to communicate with a customer in the context of collections at a time or place that the creditor knows or should know is inconvenient. The time during and immediately following a natural disaster is, at least arguably, an inconvenient time for a customer affected by that disaster to receive collection communications.

As a result, it is not only prudent, but potentially also a legal requirement, to suppress collection communications for at least some period of time after the storm passes or the fire burns out. When developing or enhancing a natural disaster response plan, creditors ought to take into account state law requirements and consider the length of time for suppressing communications, which could vary depending on the scope and severity of the disaster and the communication method (e.g., it may be more appropriate to start by sending emails, and then later transition telephone communications). And for customers affected long-term by such disasters it is important to have some kind of hardship program pursuant to which those customers can request assistance in the form of reduced or suspended interest, fees and/or payments.

Regulator Guidance

Following a disaster declaration, regulators may issue guidance to licensed non-bank entities operating in their states, urging them to work with customers to extend payment due dates, waive fees, and offer other accommodations. Federal regulators issue such guidance and recommendations regularly following natural disasters. State regulators in states that frequently experience natural disasters that destroy property and displace residents from their homes may have standing guidance to this effect. Usually these proclamations do not require creditors or debt collectors to take specific action, but a regulator or attorney general could certainly allege that it was an unfair or abusive practice, under the circumstances, to not be more accommodating of customers known

to be affected by the disaster during and after it. As a result, creditors may include in a disaster management plan a process for regularly checking regulator websites for guidance in the days leading up to and following the disaster.

Accommodations

Whether or not regulators direct creditors to make servicing or collection accommodations, it is a good customer service practice to do so in the event of a natural disaster. When considering potential accommodation options, creditors should consult with state law to determine what documentation is required, including whether the customer must sign any payment deferral or contract modification documents. Some regulators may be lenient about enforcing documentation requirements under the circumstances, recognizing that it is more important to accommodate customers. Creditors should also consult state law for limits on fees, extending the term of credit transactions (which could potentially jeopardize a security interest), and any disclosure requirements. In states where natural disasters requiring customer assistance occur frequently, creditors may set up standing disaster accommodation programs that comply with state law and that they can pull off the shelf to offer to affected customers.

Destroyed Collateral

Customers will likely stop making loan payments once the collateral is destroyed. And it is unlikely a creditor will repossess destroyed collateral just for the salvage value that in most cases will not cover the recovery cost. As a result, any communications with a customer after the creditor has knowledge that the collateral has been destroyed (and following a period of suppression) should not threaten repossession as a consequence for non-payment. This may require a revision to typical form collection communications. These communications should have the objective of understanding the condition of the collateral and the customer's intent (including whether she plans to make an insurance claim). Creditors may consider developing disaster-specific communications to pull off the shelf and use when the collateral has been destroyed.

The customer will likely make an insurance claim, for which the creditor will likely be the loss payee. But the creditor must decide, if it is not made whole by the customer's insurer, whether to pursue the remaining balance. While this is a business decision, certain customer relations factors ought to weigh in favor of waiving the deficiency: Is the customer permanently displaced from her home? Has she lost her job as a result of the disaster? Was she injured in the disaster or is she caring for a family member who was injured or displaced?

Credit Reporting

A creditor that furnishes information to a consumer reporting agency will have to consider how to report the status of the account to the consumer reporting agencies. Special codes are available for indicating that an account is impacted by a natural disaster. In addition, modifications to the customer's payment schedule will also affect the creditor's reporting of the account. Given the highly technical nature of credit reporting and the particular codes available for reporting in a disaster, when developing a

disaster management plan, creditors ought to consider prioritizing policies and procedures for credit reporting during a natural disaster (both to report the disaster and to report account accommodations resulting from the disaster). It will be difficult to manage this process on an ad hoc basis once the disaster is underway.

Conclusion

It can be difficult to prioritize planning for the worst possible scenario. But, the consequences of failing to plan are potentially enormous. A creditor that fails to act appropriately in the face of a disaster could encounter harsh regulatory scrutiny and irreparable damage to its reputation. With even just a framework in place that identifies potential risks and pitfalls, or a high-level outline of steps to take, a creditor can mitigate its risk. Over time, as a creditor or servicer encounters more disaster events, it is best to revisit the policy to make additions and enhancements based on experience.

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