

# Recession Woes: Breached Contracts And Soaring Accounts Receivables

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If you are a sole proprietorship or small business, then in the past six months, you have seen your income decline and accounts receivables and breached contracts skyrocket. Although your volume of business may be steady or even increasing, you may be struggling to collect from clients or clients may ask to extend further lines of credit, often unsecured. So how do you decide when and how to collect from clients? Especially in the current economic climate, these decisions can be difficult. You must take into consideration business, personal and legal ramifications.

Taking steps to collect from clients can be perilous if you are unaware of the myriad consumer protection laws on both the New Jersey State and Federal level. Specifically, the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C.A. 1692, et. seq., is a federal law that governs consumer credit protection and debt collection practices. The New Jersey Consumer Fraud Act ("NJCFA"), N.J.S.A. 56:8-1, et. seq., provides an extremely broad definition of a "consumer" transaction and defines specific means in which you can pursue debtors.

Although the FDCPA and NJCFA apply primarily to "consumer" transactions, it is vital to determine the legal distinction between a "consumer" and "retail" transaction, and evaluate from whom you seek to collect the debt. A commercial or "retail" debt is generally regarded as a debt for goods sold or services rendered in a business transaction. Conversely, "consumer" debts are generally incurred for personal, household or family purposes. Although this may seem to be an easily understood distinction to the layperson, with regard to the law, the definition of "consumer" can be unclear, and mischaracterization of the debtor from whom your business is collecting can expose you or your business to liability. For example, the FDCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." This broad definition makes it extremely difficult to determine whether your debt is "consumer" or "retail" oriented.

Fortunately, not every action to collect a debt or seek money from a client is governed by these statutes. You must meet the definition of a "debt collector" in order to be subject to the Act. Unfortunately, the legislature crafted almost as broad a definition for "debt collector" as they did for the term "consumer." Both the FDCPA and NJCFA regulate the manner and means in which a "debt collector" may collect from and communicate with debtors, or in your case, clients. Mistakes may be costly and the advice of legal counsel is crucial!

What do you do when your client or client has breached a contract?

First, you must determine if a legally binding contract was formed. Next, you must determine whether it has been breached. Interestingly, even if the client has not yet breached the contract but you anticipate that they will and they have advised you of such, you may still be able to pursue them for what's called an "anticipatory" breach.

How do you collect?

Once your client has breached the contract, your next questions are: What are my legal rights and how can I collect from my client? Your choices may include negotiating a resolution for this breach or filing suit to collect. Contact us, experienced business attorneys at Einhorn Barbarito, for legal assistance.

In order to maximize the effectiveness of your collection efforts and to understand your rights and obligations, contact Andrew S. Berns, Esq. at Einhorn, Barbarito, Frost & Botwinick, PC Our counsel will guide you through the statutory scheme and help you review contracts and pursue collection from clients in a cost-effective manner, for all types of businesses. Now is the time to shrink your accounts receivables and remedy breached contracts to ensure a more profitable year.