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Client Alert: Getting Paid in Florida: Payment Terms, Interest, Attorneys' Fees, and Collection Leverage

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Introduction: Unpaid Invoices and the Collection Problem

Every business owner in Florida has faced the same frustration: you delivered the goods or completed the work, you sent the invoice, and now you are chasing payment. The instinct is to view this as a collections problem and something to deal with after the fact. But in most cases, the real problem started much earlier, at the contract and invoice stage.

Vague payment terms, missing interest clauses, and the absence of a fee-shifting provision are the three most common drafting gaps that turn a straightforward debt into an expensive dispute. When a contract says nothing about when payment is due, or what happens if it is late, the creditor (i.e., business owner chasing payment) has fewer tools and less leverage to collect efficiently. Many collection disputes that end up in litigation could have been resolved (or avoided entirely) with better upfront drafting.

This article walks through the key contract provisions and legal mechanisms that Florida business owners should understand to protect their right to get paid.

Payment Terms and Invoice Timing

Clear payment terms are the foundation of every enforceable collection effort. Best practices include:

- **Defined payment due dates.** Use specific net terms (i.e., Net 15, Net 30, Net 45) tied to the invoice date or delivery date. Avoid vague language like "payment due upon receipt" without further definition.
- **Invoice delivery method and timing.** Specify how invoices will be delivered (i.e., email to a designated

address, mailed to a specified office) and when they will be issued (e.g., upon delivery, monthly on the first business day). This eliminates disputes about whether an invoice was properly sent.
- **Dispute windows**. Include a contractual provision stating that an invoice is deemed accepted if not disputed in writing within a defined period (e.g., 10 or 15 business days). This prevents a debtor from raising objections months later as a delay tactic.
- **Consequences for late or disputed invoices**. State explicitly what happens if payment is not received by the due date, including the accrual of interest and the right to suspend performance or pursue collection, including attorneys' fees.

These provisions do not need to be complex, but they must be unambiguous. The goal is to leave no room for a debtor to argue they did not know what was owed, when it was due, or what would happen if they failed to pay.

Late Payment Interest

Florida law permits contracting parties to agree on a specific interest rate that will apply to overdue amounts. If your contract includes a clearly stated default interest rate (i.e., 1.5 percent per month (18 percent per annum) on amounts past due) that rate generally governs, subject to Florida's usury limits.

Florida's usury statutes, Fla. Stat. § 687.01 *et seq.*, cap the permissible interest rate and impose penalties for exceeding it. Business owners should be aware of these limits when drafting interest provisions as an unenforceable rate can undermine the entire clause.

When a contract is silent on interest, the creditor is generally limited to the statutory rate of interest established under Florida law. Fla. Stat. § 55.03 sets the rate applicable to judgments. Prejudgment interest (interest accruing before a judgment is entered) may be harder to recover if the contract does not expressly provide for it. In short, a contract with a stated interest rate starts the financial clock ticking on the debtor from the moment payment is late. A contract without one may leave the creditor waiting until judgment to begin accruing meaningful interest, a significant difference in leverage and recovery.

Takeaway: Always include a default interest rate in your contracts and confirm with counsel that the rate is within permissible limits.

Attorneys' Fees in Florida

The American Rule

Florida follows the American Rule, which provides that each party to a lawsuit generally bears its own attorneys' fees, regardless of who wins. This means that, even if you prevail in a collection action, you will not recover your legal costs unless a contract or statute specifically provides for fee-shifting. For a business collecting on a $25,000 invoice, the inability to recover fees can make litigation economically impractical, which is exactly the leverage a non-paying debtor exploits.

Drafting an Effective Prevailing-Party Fee Clause

The solution is a well-drafted prevailing party attorneys' fee provision in your contracts. An effective clause should:

- Clearly state that the prevailing party in any dispute arising out of or related to the agreement is entitled to recover reasonable attorneys' fees and costs from the non-prevailing party.

- Define “prevailing party” broadly enough to cover partial victories and settlement outcomes where appropriate.
- Expressly cover fees and costs incurred on appeal and in bankruptcy proceedings, not just at the trial court level.

A fee clause changes the calculus for both sides. A debtor who knows they will owe the creditor’s legal fees if they lose has a powerful incentive to pay or settle early.

The Trap of One-Sided Fee Clauses: Florida Statute § 57.105(7)

Here is the critical, counterintuitive drafting trap that many business owners do not know about: if your contract contains a unilateral attorneys’ fee clause (i.e., one that allows only you (the drafter) to recover fees but not the other party) Fla. Stat. § 57.105(7) converts that clause into a reciprocal one.

This means that a provision you drafted to protect yourself can be used against you. If you sue on the contract and lose, the other side can recover their attorneys’ fees from you under the very clause you wrote to be one-sided. The statute was designed to prevent unfair fee provisions, but its practical effect is to penalize sloppy or overreaching drafting.

Takeaway: Never use a unilateral fee clause. Always draft fee provisions as mutual and reciprocal from the start. If you must use a form contract that contains a one-sided clause, understand that Florida law will treat it as two-sided regardless.

Offers of Judgment and Proposals for Settlement

Florida provides a powerful but underutilized tool for creditors pursuing collections: the offer of judgment, governed by Fla. Stat. § 768.79 and Florida Rule of Civil Procedure 1.442.

Once litigation has commenced, either party may serve a formal, written proposal for settlement on the other side. If the proposal is rejected and the outcome at trial is sufficiently more favorable to the party who made the offer, the offeror may be entitled to recover attorneys’ fees and costs incurred from the date of the offer forward.

For a creditor in a collection dispute, this creates significant strategic leverage. A well-timed, reasonable settlement proposal puts the debtor on notice that if the debtor rejects this offer and the creditor obtains a judgment at least 25 percent greater than the proposal (for claims over a certain threshold), the debtor may be responsible not only for the debt and interest but also for the creditor’s post-offer attorneys’ fees.

This mechanism encourages early resolution and discourages debtors from dragging out litigation hoping the creditor will give up. It is a tool every Florida business owner pursuing a collection claim should discuss with their attorney early in the litigation process.

Cure Periods and Default Provisions

A contractual notice-and-cure provision requires that, before a non-breaching party can terminate a contract, accelerate amounts due, or initiate litigation, it must first provide written notice of the default and allow the breaching party a defined period of time to cure.

Why does this help the creditor? It may seem counterintuitive to give the debtor more time, but notice-and-cure clauses serve several important purposes:

- They protect the creditor against claims of wrongful termination or premature breach. If a debtor is not given proper notice and an opportunity to cure, they may counterclaim that the creditor, not the debtor, is the breaching party.
- They create a clear, documented paper trail. Each notice sent and each cure period that expires without payment strengthens the creditor's litigation position.
- They demonstrate good faith and reasonableness, which courts consider when awarding fees, interest, and damages.

A typical cure provision might require 10 or 15 days' written notice before the creditor may exercise remedies. The cure period should be reasonable but not so long that it allows indefinite delay.

Documentation Practices

No contract provision or legal strategy can substitute for good records. Florida business owners should maintain the following documentation as a matter of routine:

- **Signed agreements, purchase orders, and statements of work**. These establish the existence and terms of the obligation.
- **Delivery or acceptance confirmations**. Proof that goods were delivered or services were performed defeats a debtor's claim that they owe nothing.
- **All payment related communications**. Emails, text messages, and letters discussing payment, promises to pay, disputes, and excuses should all be preserved. These communications are often the most persuasive evidence in a collection case.
- **Invoices, aging reports, and statements of account**. Maintain a clean, organized accounts receivable record that shows when each invoice was issued, when it became overdue, and what balance remains outstanding.
- **Notice and cure correspondence**. If your contract requires notice before exercising remedies, keep copies of every notice sent, the method of delivery, and proof of receipt.

These records prove liability, damages, and the timeliness of the creditor's collection efforts. In litigation, the party with better records almost always has the advantage.

Conclusion: A Practical Checklist for Business Owners

Getting paid is not just about chasing debtors after the fact. It is about building the right framework before a dispute arises. Here is a practical checklist to bring to your next meeting with counsel:

1. **Invoice timing, delivery method, and dispute window language**. Make sure your contracts specify when invoices are issued, how they are delivered, and when they are deemed accepted.
2. **A default interest rate clause**. Include a specific, enforceable rate that begins accruing immediately upon default.
3. **Notice-and-cure provisions**. Require written notice and a defined cure period before exercising remedies. This protects you, not the debtor.
4. **A carefully drafted prevailing party attorneys' fee clause**. Make it mutual and reciprocal. A one-sided fee provision is rendered a two-sided provision under Florida law.
5. **Documentation and recordkeeping habits**. Maintain signed agreements, communications, invoices, and aging reports as a matter of course.
6. **Awareness of offer of judgment strategy**. Once litigation begins, discuss with your attorney whether and when to serve a formal proposal for settlement to maximize collection leverage.

These six points will not prevent every collection dispute, but they will ensure that, when a dispute arises, you have the contractual tools and evidentiary record to resolve it efficiently and favorably.

If you have questions or would like more information, please contact Elizabeth Brusa.

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