



Pennsylvania Creditors Bar Association

THE LATEST NEWS AND UPDATES REGARDING CREDIT AND COLLECTION
AND THE FINANCIAL SERVICES INDUSTRIES



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WELCOME / A MESSAGE FROM THE PRESIDENT

Brit J. Suttell, Barron & Newburger, P.C., PACBA President



Greetings Members!

It finally feels like we are coming out of the pandemic! I hope everyone is looking forward to summer and is able to return to their “normal” vacations and activities. This Spring has been overshadowed by the case of *Hunstein v. Preferred Collection & Mgmt. Servs.*, No. 19-14434, _____

F.3d _____, 2021 U.S. App. LEXIS 11648, 2021 WL 1556060 (11th Cir. 2021), which held that use of letter vendors by a debt collector violates the FDCPA’s prohibition on third-party disclosures. In a real show of industry camaraderie, almost 20 amicus curiae briefs have been filed in support of Preferred’s Petition for Rehearing *En Banc*. Those 20 briefs represent the interest of over 60 different *amici*. PACBA joined in with 18 other state creditors’ bar associations to file a brief as well. It is this type of advocacy that continue to make membership in PACBA important as PACBA continues to advocate for attorney’s involved in creditors’ rights law.



PACBA 2021 MEMBER SURVEY

The PACBA Board is dedicated to meeting our members' needs during this incredibly challenging COVID period. Recently, the board sent out a survey to our membership to get their feedback on how they feel about virtual events and holding the Annual Meeting in-person. Additionally, we wanted gauge their thoughts and suggestions for virtual programming.

Thank you to all those that completed the survey and providing us with your feedback!

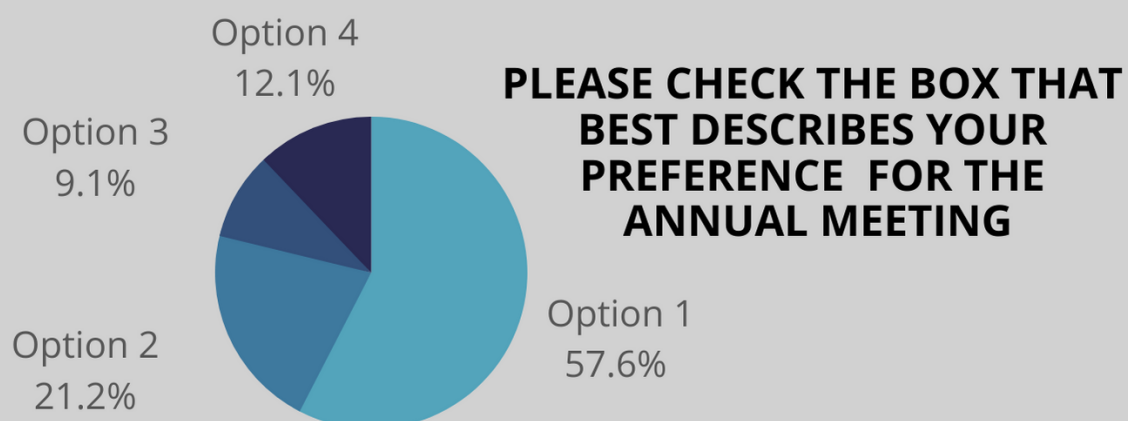
WHAT WE LEARNED FROM OUR SURVEY



Ultimately the good news here is that a healthy number of people feel comfortable traveling this year to the Desmond Hotel Malvern for an IN-PERSON Annual Meeting!

SAVE THE DATE FOR PACBA's OCTOBER 2021 SEMINAR and ANNUAL MEETING - Friday, October 8, 2021

PACBA's education committee under the leadership of Board member, [Matt Urban](#), are working to deliver an engaging conference program for 2021. We expect to release details along with the registration shortly. Mark your calendars and stay tuned!

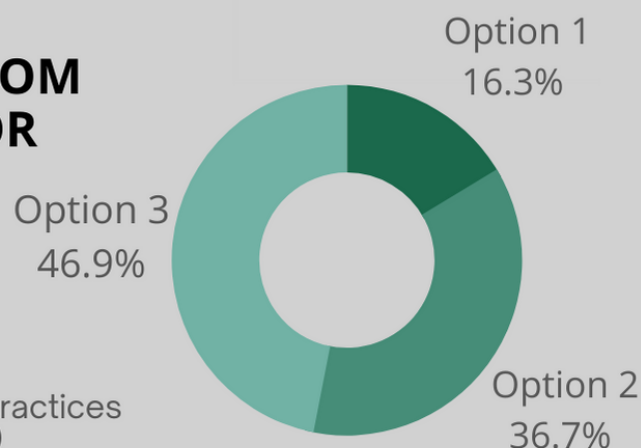


- OPTION 1** I would prefer to attend the annual meeting in person at the Desmond in October so I can network and see colleagues.
- OPTION 2** I would attend the annual meeting in person if I understand what precautions will be in place to ensure safety.
- OPTION 3** If given the option of attending in person or virtually, I would opt for virtual attendance due to comfort levels with social distancing.
- OPTION 4** I would ONLY attend the conference virtually. I would not attend in person.

PACBA 2021 MEMBER SURVEY

continued ...

WHAT VIRTUAL OFFERINGS FROM PACBA WOULD ADD VALUE FOR YOU OVER THE NEXT FEW MONTHS?

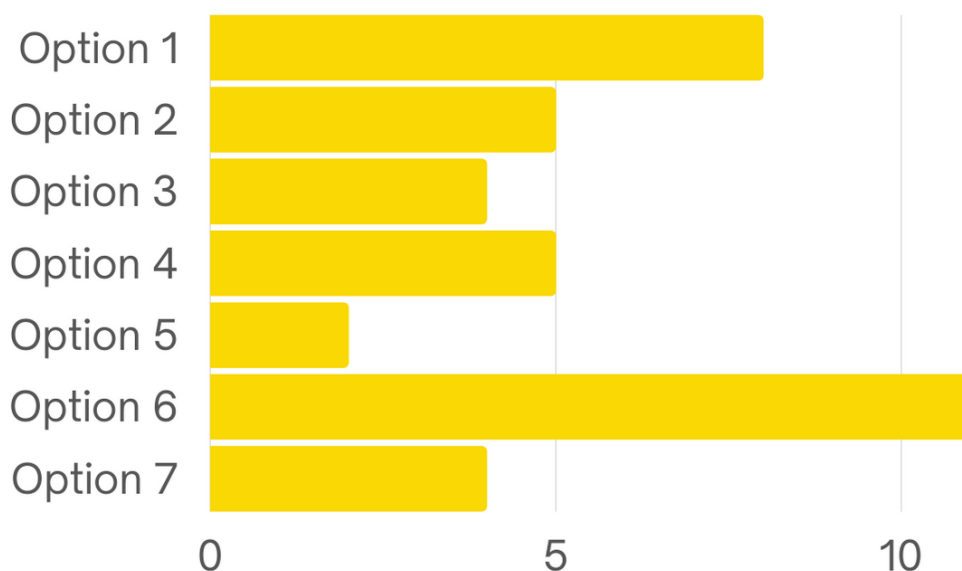


OPTION 1 Virtual networking to share best practices
(i.e. returning to the office, diversity training, etc)

OPTION 2 Educational topics for 30 mini round table discussions

OPTION 3 Longer educational topics with MCLE credit offered

CHECK ALL ITEMS OF INTEREST



OPTION 1 Presenting at the Annual Meeting in October

OPTION 2 Facilitating a virtual networking discussion

OPTION 3 Presenting a short, 30-minute discussion topic

OPTION 4 Submitting an article for the PACBA Newsletter

OPTION 5 Joining the membership committee

OPTION 6 Joining the education committee

OPTION 7 Joining the legislation committee



ATTACK BACK: CIVIL DIVISION OF THE ALLEGHENY COUNTY COURT OF COMMON PLEAS VIRTUAL ARBITRATION HEARING PROTOCOLS *By: Robert N. Polas Jr., Esq.*

The Civil Division of the Allegheny County Court of Common Pleas resumed limited in-person arbitration hearings on April 5, 2021. In an effort to reduce in-person proceedings while still encouraging the timely disposition of Arbitration cases during the COVID-19 pandemic, the Civil Division Arbitration Department created procedures for Remote Arbitration Hearings. Parties with in-person hearings scheduled during this period may request either a Fully Virtual/Remote or Partial Virtual/Remote hearing using Advanced Communication Technology.

All counsel or self-represented parties file their request after the Allegheny County Department of Court Records issues a Hearing date and time for an in-person arbitration hearing. All parties must try to seek consent of all parties to have their compulsory arbitration case heard virtually. If all parties do not agree, the moving

party must make a formal request for a partial remote hearing indicating which party will appear remotely. The request for a virtual hearing must be done at least fourteen (14) days before the hearing date by completing and sending a [Virtual Arbitration Hearing Request Form](#) via e-mail to civilarbact@alleghenycourts.us.

You must indicate on the form if you are requesting a full or partial remote hearing. All counsel and self-represented parties must be included on this e-mail. If all parties are not copied on the request, the Court will not set up a Virtual Arbitration Hearing, and the case will remain scheduled for an in-person arbitration hearing. Further, when emailing the court, you must include the docket number, case caption, and date of arbitration hearing in both the subject line and the e-mail request. *Example: AR-21-001234, Creditor vs. Ward, 07-11-21.*

*The request
for a virtual
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least fourteen
(14) days
before the
hearing date*

...

Upon receipt of the request for a Virtual Arbitration Hearing, the Court shall provide a Microsoft Teams invitation to all parties. This notice will be sent to the email address each party provides in their initial hearing request and will include a hyperlink to connect to the Virtual Arbitration Hearing. If both Parties agree, they will receive a separate invitation that includes a link to the SharePoint Submission Folder where all documents and witness list a party plans to use at the Virtual Arbitration Hearing must be submitted. All documents or witness lists must be submitted no later than 12 noon on the last business day before the hearing. Partial hearings are not given a SharePoint file and all documents must be submitted in a timely fashion through the Department of Court Records and between the parties.

A conflict check email will be sent to all parties and Arbitration Panel members in advance of the hearing. Parties must promptly reply to report any conflicts to accommodate an alternate Arbitration Panel or hearing date. All participants have the responsibility to assure all audio/visual equipment is fully functional. All attorneys, parties, and witnesses for the scheduled Virtual Arbitration Hearing shall join the Virtual Arbitration Hearing at least thirty (30) minutes before the scheduled start time. Once a Virtual Arbitration Hearing begins it will proceed to conclusion and will not be adjourned or suspended except in extreme circumstances. Counsel and self-represented parties must provide their telephone, cellphone and email addresses of each of their witnesses, attorneys, and parties participating in the Virtual Arbitration Hearing.



Each party is responsible for submitting all their documents to the SharePoint file. If a party intends to submit a document to the Arbitration Panel during the Virtual Arbitration Hearing that is already listed on the docket for the case, the party must still submit that document to the Court's SharePoint file. This includes documents subject to Pa.R.C.P. 1305(b). All exhibits **MUST** be labeled at the top by naming each file with the party name and exhibit number or letter. Plaintiff shall number exhibits sequentially. Defendant shall label exhibits with letters. In addition to the individual exhibits, counsel, and self-represented parties shall submit with the exhibits an exhibit list, identifying each numbered or lettered exhibit and a brief description.

For years, creditor rights attorneys handling collection matters have struggled with witness availability and appearances at contested cases due to travel and availability constraints. Most creditor clients are located outside of Pennsylvania, and not all creditor rights attorneys are domiciled in or near Allegheny County. The expense of travel is often out-weighted by the value of the contested case making travel not feasible for some and putting creditor clients at a disadvantage. Without a witness, Defense counsel's relentless quest to underscore the evidentiary weight of Pa.R.C.P. 1305 can prevent admission of the creditor's documentary evidence to the arbitration panel. As a result, in most cases Plaintiff's counsel lacks the ability to effectively argue the creditor client's case. Unfortunately, sometimes Plaintiff's local appearance counsel lacks the specific case knowledge needed to prevail at a contested arbitration hearing. Virtual Arbitration Hearing Protocols in Allegheny County were created out of necessity due to COVID-19 but now allows us to level the playing field.

If the creditors' bar does not utilize these tools, the Court may take this golden opportunity away from us. Now is the time to review your upcoming calendars to plan ahead for any contested cases you or your firm may have in Allegheny County. You no longer have to be bullied by Defense counsel at hearings because you or your witness are not available. Be on the attack; follow these protocols, personally appear and request the opportunity to allow your virtual witness to appear electronically on behalf of your creditor clients.



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CFPB PROPOSES DELAY TO UPCOMING IMPLEMENTATION DATE OF REGULATION F AMENDMENTS TO THE FDCPA

By: Kenneth S. Shapiro, Esq., Shapiro Law Office, PC



The Consumer Financial Protection Bureau (“CFPB”) recently proposed delaying the implementation date of the final debt collection rule (Regulation F) from November 30, 2021 for sixty days (i.e. to January 29, 2022). It issued a Notice of Proposed Rulemaking (“NPRM”) of the two-part final rule issued under the FDCPA that was published in the Federal Register on April 19th. The proposed delay would allow stakeholders in the accounts receivable management industry as well as those representing consumer interests affected by the pandemic additional time to review and implement Reg. F.

Comments were due on or before May 19, 2021. On May 19th, the Mortgage Bankers Association (“MBA”) filed its comment letter calling on the regulator to delay the rule’s implementation for six months. Their comment letter claimed that by pushing the effective date of the rule six months out (i.e. May, 2022), servicers would be able to “focus their resources on assisting homeowners through the COVID-19 pandemic and provide the needed time to review and implement the FDCPA final rules”

Along with the comment from the MBA was a consolidated comment letter from more than two dozen consumer organization, including the National Association of Consumer Advocates, calling on the CFPB to use the 60 days to rewrite the rule entirely. It is crucial for members of the creditors’ bar to understand that consumer advocates are calling on the CFPB to use the 60-day delay to “significantly strengthen consumer protection” in the rule. This includes lowering the call frequency caps to three per week, requiring consumers to opt-in to receiving text messages and e-mails, and prohibiting the collection of time-barred debt. “While delaying the effective date would also postpone the implementation of some aspects of the rules that would provide greater protection to consumers, we believe that a delay that enables the CFPB to improve the consumer protections will provide long-term benefits to consumers that outweigh the temporary delay,” the groups wrote in their comment. In addition, the consumer groups do not support an early implementation date for any of the safe harbors in the regulations. They believe that the regulations should be revised significantly, which may change or eliminate current safe harbors.

Stay tuned for further developments.





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NAVIGATING THE NEW REQUIREMENT TO FILE A COMPLAINT IN THE PHILADELPHIA MUNICIPAL COURT

By: Carrie Gerding, Esq.

It is difficult to ascertain exactly what the Court is now looking for in an original filing in the Philadelphia Municipal Court. It seems as we are just in the journey to await our next instruction. It was approximately a month ago when a collection matter case was brought to the attention of Judge Wolf and the chaos began. The judge was particularly not satisfied with the Bill of Sale being the only document provided to show the Chain of Title for the defendant's account. The Judge simply stated that he needed a document that has both the Original Creditor and the Defendant's name on it with the assignment information.

The Commissioners who run Courtroom 5 are left to convey the judge's requirements but are in the same position as they wait for instruction. The Commissioners were simply provided with examples and vague instruction as to what they can accept to grant a Default Judgment in Court Room 5 (the bulk filing room that collection cases are filed). So, what we can deduce from the back and forth and examples and little information is that we are not very likely to get a direct order on this subject, but we do have what we need to move forward on most cases.

Evaluating the new document that is now required, a document with both the Original Creditor/Seller and Defendant's name on it. The Commissioner showed me an account document that has the transferred account information with a note at the bottom stating that the Defendant's account was transferred in a specific pool that matched the information on the Bill of Sale. I also discussed the Sales Notification Letter that we have on file which was written directly to the Defendant. This too was acceptable by the commissioner. Additionally, we may need to explore an affidavit from the seller with the Defendant's name and transfer information if no other document is on the account file.

The Commissioner in open Court stated that they will grant a Default Judgment on a Complaint with the following: A statement (reflecting the amount in the Complaint), the Bill of Sale and this document being discussed.

Now what is left to handle are the Complaints already filed with this retroactive requirement and how to get additional documents filed. All documents that will be added to a Complaint must be sent to the Defendant at least 10 days prior to the hearing date to grant the Default Judgment pursuant to *First Judicial District of Pennsylvania*

... we are not very likely to get a direct order on this subject, but we do have what we need to move forward on most cases.



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COURT & LEGAL UPDATES

If you have pertinent updates, such as court information, standing orders, please send details to the Pennsylvania Creditors Bar Association office. Email Tricia at PACBA@Corpevent.com

You may also share your updates with other members via the PACBA ListServe: pacba_members@googlegroups.com.

The PACBA ListServ is one of the great benefits of membership allowing PACBA members to network, collaborate, and to share best practices in the field.



continued ...

Municipal Court Civil Division Rule 121. . The next step is to get the document on the docket, which has caused the issue. Originally, the filing attorneys were provided with 2 emails of employees in "Second Filing" but once the documents were sent to these individuals they were confused and failed to accept the documents. Thereafter, a Commissioner took it upon himself to provide his email and stated that he would scan to the file. That was a working solution, but the commissioner became overwhelmed and while I believe he is still working the email, he is not providing or volunteering this solution. I myself have brought the document to Court and the sitting Commissioner on that day did take the documents to scan to the file. It has been suggested to courier or FedEx the documents to the Second Filing division to scan to the docketss. While there is no clear-cut solution, we can all work with some of these suggestions to stop the circling of these Claims and have a Default Judgment granted.

An additional note, as stated above, the Commissioners sit in room 5 and the other filing rooms are Courtroom 2 or 6. The Judge's are clearly not all on the same page with the issue because other Judges in room 2 or 6 will grant a Default Judgement with only the Bill of Sale and statement attached. Maybe and a long shot but if the issue persists as to how to scan the additional document to those cases already filed then we may be able to transfer them to 2 or 6 for the Default Judgment. The problem is that the Judges aren't generally in favor of their docket being clogged up with bulk filing cases such as collections.

It has to say the least been a frustrating month to navigate in the Philadelphia Municipal Court. However, it appears that enough of a directive has been provided to file Complaints with the proposed documents and expect that a Default Judgment will be granted. As for the circling cases on a loop of continuances awaiting the scanning of additional documents, it seems we are left to trial and error at the mercy of the Court's employees. We must continue to share the additional information as it comes from the Court.





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GET INVOLVED! JOIN THE PACBA BOARD NOMINATION PROCESS

The nominating committee shall present a proposed slate of directors and officers to members of the Association at the annual meeting.

If you are interested in joining the board or would like to nominate a fellow member, please complete the nomination form and submit it to the committee for consideration **by August 15, 2021**.



BOARD ROLE DESCRIPTIONS

The affairs of the association shall be managed by or under the direction of its **BOARD OF DIRECTORS**. The number of directors shall be nine. Each director shall hold office until the next meeting for the election of directors following his or her election and until his or her successor shall have been elected and qualified. The board of directors meets once a month via conference call to discuss association business. If needed, additional meetings and board votes are conducted as directed by the board President.

The **OFFICERS** of the association shall be the executive vice-president, one or more vice-presidents (the number thereof

to be determined by the Board of Directors), a treasurer, a secretary, and such other officers as may be elected or appointed by the Board of Directors; Officers whose authority and duties are not prescribed in these By-Laws have the authority to perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices may be held by the same person.

The **PRESIDENT** is the principal executive officer of the Association and is subject to the Bylaws. The President supervises the management of the Association affairs and presides at all meetings of the Association and the Board of Directors. The President performs all other duties ordinarily incident to such office.

Bylaws can be found at:
<https://pacbar.org/resources/Documents/By-laws.pdf>

BOARD ROLE DESCRIPTIONS

continued ...

The **EXECUTIVE VICE PRESIDENT** performs the duties of the President during the absence or disability of the President. The VP assists the President in the performance of the President's duties and performs other duties as may be assigned by the President or Board of Directors.

The **SECRETARY** keeps minutes of all the meetings of the Association and Board of Directors. The Secretary is the custodian of all such minutes, all minutes of committee meetings, and other records, documents and property of the Association and maintains a complete roll of members. The Secretary is responsible for the production/ dissemination of the PACBA Newsletter and has the option of appointing a sub-committee to assist in this duty.

The **SECRETARY** is responsible for sending notices of all Association and Board of Directors meetings and shall perform such other duties ordinarily incident to the Secretary's office or as may be assigned by the President.

The **TREASURER** has custody of all monies of the Association and collects and, subject to the direction of the Board of Directors, disburse all funds of the Association. The Treasurer shall:

- (a) Maintain accurate accounts of all financial transactions;
- (b) Maintain the Association's checking account records, including reconciling all monthly account statements;
- (c) Prepare for each Board of Directors meeting a monthly summary of all payments and receipts to the Association;
- (d) Prepare, at a minimum quarterly cumulative statements that summarize the amount and nature of the Association's payments and receipts.

The **TREASURER** submits at each annual meeting of the Association a suitably classified, written annual report of the Association's financial position including (1) all receipts and disbursements occurring during such period and (2) all obligations outstanding at the end of the period, with any comments as to current and prospective future financial position that the Treasurer may deem informative. The Treasurer shall make such additional Interim financial reports as the President or Board of Directors shall direct.

**CLICK HERE FOR
NOMINATION FORM**



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INTERESTED IN JOINING A PACBA COMMITTEE?

Join a committee to share your experiences and expertise, connect with fellow members and collaborate with your peers on programs and initiatives to advance our profession - all while developing skills that will benefit you both personally and professionally. If you are interested, please contact the listed committee chair.

*You must be a PACBA member
to join a committee.*



PACBA MEMBER COMMITTEES

ADMINISTRATION COMMITTEE

CONTACT [KEN SHAPIRO](#)

The Administration Committee, under the direction of the Secretary of the Association, is the custodian of record of all minutes, records, documents, and property of the Association. The Committee maintains the active roll of members, and is responsible for filing any required reports with regulatory authorities on behalf of the membership.

LEGISLATIVE COMMITTEE CONTACT [ROB POLAS](#)

The legislative committee monitors legislative changes and proposals. It suggests and drafts legislation or rules for the advancement of creditors' rights. The committee also assists other organizations /legislators that sponsor or promote creditors' rights or rule changes.

COURTS COMMITTEE

CONTACT [PACBA OFFICE](#)

The courts committee acts as the liaison with courts and court clerks throughout the state and monitors court rules changes.

EDUCATION COMMITTEE

CONTACT [MATT URBAN](#)

The education committee works to educate attorneys and judges of recent changes in the creditors' rights laws.

MEMBERSHIP COMMITTEE

CONTACT [KIM SCIAN](#)

The membership committee generates new membership and oversees current membership issues. It publicizes Pennsylvania Creditors Bar Association activities, announcements, and seminars, both to members and non-members.





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PACBA BOARD

OFFICERS

<i>President</i>	Brit Suttell, Barron & Newburger, P.C., britjsuttell@bn-lawyers.com
<i>Secretary</i>	Kenneth Shapiro, Shapiro Law Office, P.C., kshapiro@shapirolawpc.com
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<i>VP of Membership</i>	Kim Scian, Apothaker Scian P.C., kscian@apothaker.com
<i>VP of Education</i>	Matthew Urban, Weltman, Weinberg & Reis Co., LPA, murban@weltman.com
<i>VP of Legislation</i>	Robert Polas, Portfolio Recovery Associates, LLC, rnpolas@portfoliorecovery.com

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INTERESTED IN GETTING MORE INVOLVED?

If you are looking to grow your professional network, we invite you to get involved in PACBA. Opportunities include running for the board, participating in committee work, contributing to the newsletter or presenting at the Annual Meeting.

Please contact Association Manager, Tricia Fusilero, to learn more.
PACBA@CorpEvent.com or call 312-540-9300