

FSMA LEGAL BRIEF

*A Legal Newsletter for Members from FSMA
General Counsel Maloney & Knox, PLLC*

Collecting Past-Due Commissions

(May 2020)



We are frequently contacted by Sales & Marketing Agencies (“Agencies”) for assistance in collecting receivables from Supplier/Manufacturers. Oftentimes it takes a Legal Demand Notice or the filing of a demand for arbitration or a lawsuit in order to coerce parties into paying sums that they are legally responsible to pay Agencies.

Fortunately for Agencies, there are numerous state laws which provide for the payment of termination commissions are to be paid within certain time frames or the nonpaying Supplier/Manufacturer is responsible for attorneys’ fees, court costs, and damages equal to double or triple the actual commissions owed. We have attached hereto a Post-Termination Commission Chart to identify those states with specific laws governing payment of termination commissions. As an FSMA member benefit, we assist Agencies in these collections and our fee may be payable on a contingency basis.

The key to prompt collections is to put the non-party on notice as soon as possible. Of course, a written contract specifying the terms and conditions of the brokerage engagement is always the most effective way of proceeding in the event that an Agency has to litigate.

If there is a bona fide dispute, one of the easiest ways to resolve the matter without the expense of litigation is the Legal Demand Notice and then arbitration. A standard Arbitration Clause may be found in paragraph 15 of the [FSMA Recommended Contract Between Clients and Agencies](#). However, based on our experience we have been able to resolve all the Agency claims after we have filed our Legal Demand Notices and negotiate with the Supplier/Manufacturer.

FSMA Legal Counsel Member Benefit:

As part of membership benefits, all FSMA Members are entitled to an initial free counsel on legal issues affecting their business by FSMA's General Counsel, Barry Maloney, Esq. Thereafter, services are supplied to members at a 20% discount.

Barry has represented sales and marketing agencies and manufacturers on a myriad of legal issues for more than 30 years and is the author of several legal manuals on agency law, legal briefs for trade association newsletters, and has represented sales & marketing agencies on mergers and acquisitions and collection of unpaid commissions. In addition to being an attorney, Barry is a Certified Public Accountant, and formerly was Senior Branch Counsel to the Division of Corporate Finance of the Securities and Exchange Commission in Washington, DC.

Attorney Contact Information:

To reach the FSMA General Counsel, please use the following contact information:

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**FSMA
STATE LAWS GOVERNING
POST-TERMINATION COMMISSION PAYMENTS***

State	Written Contract Required ⁽¹⁾	Days Due ⁽²⁾	Exemplary Damages ⁽³⁾		
			3x	2x	Atty Fees+Costs
Alabama	X	30	X		X
Arizona	X	30	N/A	N/A	X
Arkansas	X	30	X		X
California	X	contract	X		X
Colorado	X	contract	X		X
Connecticut	No	30		X	X
Georgia	X	30		X	X
Illinois	No	13	X		X
Indiana	X	14	X		X
Iowa	No	12	N/A	N/A	X
Kansas	No	30	N/A	N/A	N/A
Kentucky	X	30		X	X
Louisiana	No	30	X		X
Maine	No	30	X		X
Maryland	No	45	X		X
Massachusetts	Sometimes	7&14	N/A	N/A	N/A
Michigan	No	45		X	X
Minnesota	No	3		X	X
Mississippi	X	21	X		X
Missouri	No	30		X	X
Nebraska	No	14		X	N/A
New Hampshire	X	45	Note	Note	X
New Jersey	No	7/30	N/A	N/A	X
New York	X	5		X	X
North Carolina	No	45		X	X
Ohio	No	13	X		X
Oklahoma	No	14	N/A	N/A	X
Oregon	X	14	X		X
Pennsylvania	X	14		X	X
South Carolina	X	contract	X		X
Tennessee	No	14	X		X
Texas	X	30	X		X
Utah	X	14/30	X		X
Virginia	X	30	N/A	N/A	N/A
Washington	No	30	N/A	N/A	X
Wisconsin	No	practice		X	X

- 1) There are exceptions.
- 2) If contract is written, commissions are due as provided therein; otherwise, the days are as listed.
- 3) Generally, states that provide for double commissions also permit the recovery of commissions. Some states require 10 days' notice before exemplary damages can be awarded. Where no exemplary damages are specified, at a minimum, the commissions are recoverable. Minnesota provides for payment of commissions plus 1/15 of commission for each day of non-payment up to 15 days. Missouri allows for commissions due plus one month's average commissions. New Hampshire does not specify the amount of exemplary damages.