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November 5, 2018

REMOVING FRAUDULENT ACTIVITY FROM YOUR CREDIT REPORT

According to Experian, one of the leading Credit Reporting Agencies (“CRA”) Minnesota consumers reported 4,324 cases of identity theft in 2017. That’s 78 complaints per 100,000. Although these statistics are troubling, this rate of identity theft ranks Minnesota 30th in the United States. Other states such as Michigan reported 15,027 complaints of identity theft. That is 151 per 100,000, nearly double that of Minnesota.

With identity theft being a widespread and growing problem, the Federal Trade Commission (“FTC”), the federal agency responsible for helping identity theft victims, lists several steps that an identity theft victim should immediately take:

- (1) Call the companies where the fraud occurred. This step is perhaps the most important because it is important to freeze those accounts to limit the damage. Additionally, a consumer should immediately change their passwords and pins. If your boat is sinking, you want to plug the hole before you start worrying about getting rid of the water.
- (2) Place a fraud alert with any of the CRA’s (Experian, Trans Union, and Equifax). According to the FTC, whichever CRA a consumer contacts, that CRA is required to contact the other two. All three CRAs should send a letter to the consumer, so if they fail to send a letter it is wise to contact that agency directly.
- (3) Report the identity theft to the FTC at IdentityTheft.gov and consider filing a police report. Based on the information the consumer enters, the FTC will create an identity theft report. If the consumer decides to go to the police they should make sure to bring a government issued ID, a copy of their FTC theft report, proof of address (mortgage, rental agreement, utility bill), and any proof of the theft. The consumer should make sure to obtain a copy of the police report because having a copy will assist in removing fraudulent accounts from one’s credit report.

Many consumers find that reporting the crime is less problematic than repairing the damage, which can be a difficult, confusing, and frustrating process. With an identity theft report the consumer should contact the creditors where the fraud occurred and ask them to remove fraudulent charges and close fraudulent accounts.

But what about the large CRA's that produce the consumer's credit report? A consumer has the right to remove this fraudulent information from their credit report, a procedure referred to as "blocking".

What is Blocking?

The Fair Credit Reporting Act (FCRA) provides that CRAs have a duty to block consumer information resulting from identity theft. Blocking is the equivalent of removing a fraudulent charge or account from a credit report so that companies inquiring into a consumer's credit are unable to see them. This is primarily useful when a consumer has their identity stolen and had various fraudulent accounts opened in their name.

According to the FTC, if a consumer has an identity theft report, a CRA must honor their request to block information. An "identity theft report" is defined as a report that alleges identity theft, and is an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency. Although the FTC suggests that victims of identity theft file an identity theft report with the FTC, a police report would also likely suffice. To obtain a block on one or more accounts on a credit report the consumer must provide the CRA with: (1) appropriate proof of identity, (2) a copy of the identity theft report, (3) identification of the fraudulent information the consumer seeks to have blocked, and (4) a statement by the consumer that the fraudulent information is not related to any transaction by the consumer. Once all these four requirements have been met, the CRA must remove the identified information within four days.

After receiving the information listed above the CRA must notify the creditor reporting the fraudulent activity that the information may be a result of identity theft, and the effective dates of the block.

There are a few exceptions under which a CRA can decline to block or rescind a previously placed block. These exceptions can apply when information was blocked in error, the consumer made a false representation to the CRA that the information was not a result of their actions, or if the consumer materially benefitted from the blocking of their information. If the CRA believes that one of these exceptions has been met they must give the consumer written notice within five days after the block

is removed and a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.

Disputing Fraudulent Activity on a Real Credit Account

It is important to understand the distinction between blocking fraudulent accounts and disputing errors on a legitimate credit account. As previously mentioned, blocking essentially removes a credit account from a consumer's report. Disputing errors differs from blocking because it allows a consumer to keep a legitimate credit account while disputing certain fraudulent activity on that account.

According to the FTC, disputing errors does not require an identity theft report, but it also may take longer and there is no guarantee that the information will be removed. To dispute errors on a credit account you should contact and notify the CRA of your dispute. The CRA is then required to conduct a reasonable investigation and if the information is determined to be inaccurate the CRA will delete the information and inform the furnisher of the information that the disputed charge has been deleted.

Consumer Remedies

If the consumer follows all of the required steps and submits a valid blocking request, there are remedies available if the CRA fails to block the requested information. First the FTC has authority to bring actions against CRAs that violate the FCRA. Our research was unable to find specific enforcement actions by the FTC against a credit reporting agency for failure to comply with a consumer's blocking request. However, in *U.S. v. Infotrack Information Services, Inc.* (2014) the FTC alleged that a background screening CRA had failed to establish procedures to ensure that consumer information was accurate. The settlement included \$1 million in civil damages.

The relatively new (and embattled) Consumer Protection Financial Protection Bureau (CFPB) also has enforcement authority under the FCRA. However, a search of the CFPB's enforcement actions also showed no specific actions against a CRA for failing to comply with a consumer's valid blocking request.

A Minnesota consumer can also file a complaint with the Office of the Minnesota Attorney General. The website for the Minnesota Attorney General encourages consumers to inform its office if a credit bureau refuses to correct inaccurate, incomplete, or outdated information on the consumer's credit report.

In addition to filing complaints with the FTC, the CFPB, and the Minnesota Attorney General, a consumer may be able to sue a CRA if the CRA fails to block information in violation of federal law. In *Drew v. Equifax Info. Servs.*, the plaintiff (Drew) sued Equifax for "willful" violations of the FCRA including an alleged violation of the

“blocking” provision. The jury awarded plaintiff \$6,326.69 in economic damages, \$315,000 in noneconomic compensatory damages, and \$700,000 in punitive damages. Civil liability for willful noncompliance under federal law can result in: (1) payment to the consumer between \$100-\$1,000 or actual damages, (2) punitive damages, and (3) attorney’s fees. Civil liability for negligent noncompliance can include actual damages and attorneys’ fees.