

Community

BANK Counselors

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[Can Depository Banks Have Liability to PACA Claimants?](#)

The Perishable Agricultural Commodities Act (“PACA”) is a federal statute regulating the purchase and sale of agricultural commodities, such as fruits and vegetables. 7 U.S.C. § 499(a)-(s). PACA provides protection to producers and growers of perishable goods who transfer such perishables to brokers, dealers, and merchants, who in turn sell the food to purchasers. Essentially, PACA provides that all inventory and proceeds held by a broker that are related to perishable commodities are held in trust by the broker. The PACA trust is for the benefit of all producers that have sold products to such broker. PACA trust funds can be commingled and producers are generally entitled to a pro rata distribution of trust funds without the need for tracing. Producers, as the beneficiaries of a PACA trust, are entitled to a priority position over secured creditors of the broker.

[Collection Fees Based on Percentage of Debt Violates FDCPA](#)

For convenience, when collecting a debt, lenders may be tempted to simply add a percentage of the outstanding balance as the collection costs, rather than determining the actual costs of collection. The Eleventh Circuit, in the recent case of *Bradley v. Franklin Collection Service, Inc.*, determined that, even in situations where the debtor has agreed to pay all costs of collection, this practice violates the Fair Debt Collection Practices Act (“FDCPA”).

[Reliance on Reg. Z Model Forms May Be Misplaced](#)

Lenders beware! A federal district court recently held that despite a lender’s use of a model form, the disclosure provided by the lender did not adequately notify the borrower of his rescission rights under the Truth in Lending Act (“TILA”) and Regulation Z. In the case of *Simmons v. CitiMortgage Inc.* the United States District Court for the District of Utah the borrowers successfully sued the lender to enforce their rescission rights.

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