

The Consumer Protection Laws Important to District Court: A Broad Overview

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Topic Overview

- Who is a “consumer”?
- Common consumer protection scenarios:
 - Unfair/deceptive acts/practices
 - Unfair debt collection practices
 - Contract for deed
 - Option to purchase with lease agreement
 - Auto loan deficiency and repossession

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Who is a “consumer”?

- No statutory consensus.
- Broadly, consumer statutes cover express and/or implied contract transactions.
- Most restrict “consumer” to mean an “individual” (e.g., N.C.G.S. § 75-61, Identity Theft Protection Act); or
- More specifically, one engaging in a transaction for “personal, family, or household purposes” (e.g., N.C.G.S. § 25-1-201(b)(11), Uniform Commercial Code).

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Who is a “consumer”?

- Contractual or implied contractual debtor.
- Co-signor/joint account holder.
- Identity theft victim.
- Spouse of contractual debtor.*
- Authorized user on an account.*



*Depending on the facts of the case.

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Who is a “consumer”?

- Can assert all standard procedural defenses and contract defenses.
- Approach with caution:
 - Charge-offs.
 - Lack of credit reporting.
 - 1099-C issuance.



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Unfair/Deceptive Acts (N.C.G.S. § 75-1.1)

- Prohibits “Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce. N.C.G.S. § 75-1.1(a).
- Exempts “learned professionals.”
 - E.g., Attorneys.
 - E.g., Architects.
 - E.g., Healthcare providers.

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Unfair/Deceptive Acts

- To prevail on a claim under the UDTPA, a plaintiff must prove that “(1) defendant committed an unfair or deceptive act or practice, (2) the action in question was in or affecting commerce, and (3) the act proximately caused injury to the plaintiff.” *Dalton v. Camp*, 353 N.C. 647, 656 (2001).
- 4-year SOL. N.C.G.S. § 75-16.2.

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Unfair/Deceptive Acts

- Injuries may be economic or non-economic.
- Plaintiffs need not meet the “severe” emotional distress tort standard to recover for emotional distress; need only show they suffered “injury.” See *Williams v. HomeEq Servicing Corp.*, 184 N.C. App. 413, 420, 423-24.
- Amount of damages awarded in a verdict in favor of the plaintiff is automatically trebled. N.C.G.S. § 75-16.

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Unfair/Deceptive Acts

- “Reasonable” attorney’s fee at judge’s discretion for
 - Willful conduct by defendant with unwarranted refusal to resolve OR
 - Plaintiff knowingly filed frivolous/malicious suit (“clawback” provision).

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Unfair Debt Collection (N.C.G.S. § 75-50, *et seq.*)

- N.C.G.S. § 75-50, *et seq.*
Governs debt collection conduct of original creditors and any persons or entities that are NOT with respect to the debt in question a collection agency or a debt buyer



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Unfair Debt Collection (N.C.G.S. § 58-70-90, *et seq.*)

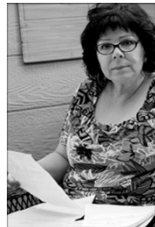
- N.C.G.S. § 58-70-90, *et seq.* Governs actions of collection agencies and debt buyers.
- Protects individuals, entities and groups.
- Business debts included.



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Unfair Debt Collection (N.C.G.S. § 75-50, *et seq.*/58-70-90, *et seq.*)

- Prohibit false threats/coercion.
- Prohibit deceptive or misleading representations about the character, status, or amount of a debt, or about the collector's identity, rights, or intentions.



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Unfair Debt Collection
(N.C.G.S. § 75-50, *et seq.*/58-70-90, *et seq.*)



- Prohibit telephone harassment:
 - Profane/obscene speech, repetitive or harassing phone calls, and phone calls to place of employment
- Prohibit publicizing information about debts to third parties.

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Unfair Debt Collection
(N.C.G.S. § 75-50, *et seq.*/58-70-90, *et seq.*)

- Prohibit “unconscionable” collection means, including
 - Seeking affirmations of discharge debts or waivers of statutes of limitation without proper disclosure of the effects of such affirmation or waiver;
 - Collection of fees or charges to which there is no legal entitlement;
 - Contacting a consumer after notification of attorney representation; and
 - Filing suit in an improper venue.

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Unfair Debt Collection
(N.C.G.S. § 75-50, *et seq.*/58-70-90, *et seq.*)

- UDTPA SOL, attorney’s fee provision.
- Statutory damages of \$500-\$4,000 *per violation.*
- Actual damages NOT trebled.
- Allow for punitive damages.



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Contracts for Deed (N.C.G.S. Chapter 47H)



- a/k/a “land installment contract.”
- Contract allows for buyer to pay purchase price in 5 or more payments; seller retains title as security.
- Exempt: homeowner selling primary residence.

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Contracts for Deed (N.C.G.S. Chapter 47H)

- Applies to:
 - Real property within NC upon which there is or will be located home(s) for 1-4 families to be occupied by the purchaser as their principal dwelling; and
 - Manufactured homes within NC with purchase prices of \$5,000.00 or more,
 - Either of which are or will be occupied by the purchaser as their principal dwelling.

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Contracts for Deed (N.C.G.S. Chapter 47H)

- Contract must comply with statutory requirements.
- Most liens prohibited.
- Lien disclosure required.
- Recordation required.
- Late fees no greater than 4%, no earlier than 15 days.



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**Contracts for Deed
(N.C.G.S. Chapter 47H)**

- Seller’s remedies: NO summary ejectment.
- To enforce upon default, must serve notice of forfeiture and allow 30 days for purchaser’s right to cure. Service must occur by hand delivery or as legal process.
- If parties do not sign mutual termination, seller must sue to end purchaser’s rights to property and to extinguish purchaser’s right of equitable redemption.

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**Contracts for Deed
(N.C.G.S. Chapter 47H)**

- **Purchaser’s remedies:** Can seek damages, rescission of contract, or declaratory or equitable relief.
- Statutory remedies are NOT exclusive.

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**Contracts for Deed
(N.C.G.S. Chapter 47H)**

- If the seller fails to disclose existing liens prior to purchase, encumbers the property without the purchaser’s permission post-purchase, or defaults on an obligation secured by the real property, the purchaser may rescind & recover all amounts previously paid.
- The seller is entitled to an offset from this recovery of amounts equal to the fair rental value of the property for the duration of the purchaser’s possession, as well as amounts to compensate for damage to the property.
 - N.C.G.S. § 47H-6(c).

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Option + Lease Contracts (N.C.G.S. Chapter 47G)



- a/k/a “rent to own.”
- Residential lease plus option to buy single-family residential real property.
- Landlord + tenant where tenant can buy up until a set deadline.
- Exempt: homeowner selling primary residence.

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Option + Lease Contracts (N.C.G.S. Chapter 47G)

- Option contract must comply with statutory requirements.
- Recordation required.
- Right to cure: Once per 12/mo.
- Residential lease contract terms & obligations governed by Chapter 42 (Landlord/Tenant).



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Option + Lease Contracts (N.C.G.S. Chapter 47G)

- Seller’s remedies:
 - Summary ejectment allowed for breach of lease terms per Ch. 42.
 - Forfeiture of option allowed per breach of obligation in contract for which forfeiture is expressly allowed.
- To enforce forfeiture upon default, must serve notice of default and intent to forfeit and allow the purchaser’s right to cure until the earlier of 30 days or a judgment in summary ejectment brought under Ch. 42. Service must occur by hand delivery or as legal process.

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Option + Lease Contracts (N.C.G.S. Chapter 47G)

- Purchaser’s remedies: Can seek damages, rescission of contract, or declaratory or equitable relief.
- Statutory remedies are NOT exclusive.

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Option + Lease Contracts (N.C.G.S. Chapter 47G)

- If seller defaults on mortgage/lien on property: Purchaser can exercise option may rescind & recover all amounts previously paid.
- The seller is entitled to an offset from this recovery of amounts equal to the fair rental value of the property for the duration of the purchaser’s possession, as well as amounts to compensate for damage to the property

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Deficiency/Repossession Cases

- UCC Counterclaims
- Truth in Lending Act Counterclaims
- N.C. Retail Installment Sales Act Counterclaims
- State Tort Counterclaims
- Third Party Defendants
- Surety Bond



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Deficiency/Repossession: Default

- Repossession of collateral in a secured transaction: N.C.G.S. Ch. 25, Art. 9.
- Default on terms of security agreement triggers repossession. (Typical triggers: failure to pay, failure to insure, filing bankruptcy, incurring service & storage lien on vehicle).
- Security agreement **MUST** identify collateral. Is VIN number/make/model correct?

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Deficiency/Repossession: Default

- If there is no valid security agreement, or the consumer was not in default, then the repossession was invalid.
- Consumer may have UCC counterclaim and/or counterclaim for conversion.
- **UCC Non-compliance relief:** Actual damages, statutory damages not less than time-price differential plus 10% cash price of car.

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Deficiency/Repossession: Breach of the Peace

- Lender may repo vehicle without “breach of the peace.” N.C.G.S. § 25-9-609(b)(2).
- Breach of peace most likely to have occurred if actions of creditor incited or were likely to incite violence.
- **Factors:** Time/place of repo, whether debtor consented, type of premises entered, reactions of third parties, and creditor's use of deception. *Giles v. First Virginia Credit Servs., Inc.*, 149 N.C. App. 89, 560 S.E.2d 557 (2002).

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Deficiency/Repossession: Pre-Sale

- Lender must send statutory notice to consumer regarding sale type and timing prior to sale. N.C.G.S. § 25-9-611 through N.C.G.S. § 25-9-614.
- Every aspect of the sale must meet standard of commercial reasonableness N.C.G.S. § 25-9-610(b) and N.C.G.S. § 25-9-627.
- If sale is commercially unreasonable, rebuttable presumption is that fair market value of vehicle is equal to and satisfies any alleged debts claimed by lender *Nationsbank of N.C. v. Am. Doubloon Corp.*, 125 N.C. App. 494, 498 (1997).

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Deficiency/Repossession: Post-Sale

- Lender must send sale accounting to consumer, along with any proceeds left for consumer after loan payoff and repo/sale costs. N.C.G.S. § 25-9-616.
- If sale proceeds do not pay off the loan and repo/sale costs, lender can sue consumer for a deficiency judgment. N.C.G.S. § 25-9-626.
- Deficiency lawsuit proceeds on a breach of contract theory; three year statute of limitations (ten if under seal) *N.C. Nat'l Bank v. Holshouser*, 38 N.C. App. 165 (1978).

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UCC + UDTPA + RISA . . .



- UCC remedies are not exclusive. Consumer may make claim for treble damages under UDTPA and/or statutory damages for unfair debt collection.
- Some UCC violations may also indicate violations of RISA (N.C.G.S. Ch. 25).

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... + TILA + Torts + Third Parties

- TILA claims may be pled in recoupment after 1-year SOL.
- In addition to conversion, assault, battery, false imprisonment, NIED, IIED.
- 3d party defendants: Repo company, dealer, surety.



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