

CONSUMER PROTECTION AND DEBTORS



The Debt Adjusting Act
and
The Consumer Economic Protection Act

North Carolina Association of District Court Judges Summer Conference

Holiday Inn Resort
Wrightsville Beach, North Carolina

June 19, 2013

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Overview – Attorney General’s Consumer Protection Division

► Enforcement Authority and Mission

The Division enforces the Attorney General’s statutory* and common law authority in the areas of consumer protection, antitrust, nonprofits, and utilities. By enforcing the law, the Division strives to protect North Carolina consumers from fraud, deception, price fixing, price gouging, restraint of trade, commercial invasions of privacy, and other unfair and deceptive trade practices.

*This statutory authority is conferred primarily by Chapters 114 and 75 of the North Carolina General Statutes.

Overview – Attorney General’s Consumer Protection Division (continued)

► Primary Responsibilities of the Division

- The primary responsibilities of the Division are:
 - Handling consumer complaints;
 - Investigating and prosecuting violations of the antitrust and consumer protection laws, most of which are brought pursuant to Chapter 75;
 - Educating North Carolinians about their rights as consumers;
 - Representing the consuming public before the North Carolina Utilities Commission; and
 - Providing information during policy debates on matters affecting North Carolina consumers, both at the state and federal levels.

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Overview – Attorney General’s Consumer Protection Division (continued)

► Primary Responsibilities of the Division (cont’d)

- The Division consists of 13 attorneys who specialize in different legal areas, approximately 13 consumer specialists, and support staff. On an annual basis, the Division handles approximately 20,000 written complaints from North Carolina consumers and businesses, and responds to approximately 100,000 phone inquiries from consumers, attorneys, businesses, and others requesting assistance or information about North Carolina’s antitrust and consumer protection laws.

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Debt Relief Services and NC’s Debt Adjusting Act

(1) Traditional Credit Counseling Services

- ✓ Usually locally based and have acronym CCCS (Consumer Credit Counseling Services)
- ✓ Certified by the National Foundation for Credit Counseling (NFCC) – for a list of certified agencies in NC, see www.nfcc.org
- ✓ Often affiliated with family service agencies and supported by United Way. In Raleigh – Triangle Family Services, www.tfsnc.org.
- ✓ Offer individual face to face credit counseling and budget assistance
- ✓ Offer debt management plans
- ✓ Charge nominal fees: typically no fees for credit counseling, and nominal fees to set up a debt management plan.

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(2) Profit Making "Nonprofit" National Debt Management Companies

- ✓ Advertise nationally, with bold representations that they can consolidate bills, reduce consumers' monthly payments and reduce interest rates on credit cards
- ✓ Offer minimal individual credit counseling or budgeting assistance
- ✓ Charge upfront fees, sometimes the consumer's first monthly payment
- ▶ Following scrutiny by the IRS, the Dept. of Justice's Executive Office of the US Trustee, and enhanced enforcement by the FTC and state Attorneys General, many of these companies have shut down.

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(3) Debt Settlement and Negotiation

- ✓ National advertising through TV, Internet, telemarketing, and direct mail solicitations
- ✓ Claim they can settle debts for 50 cents on the dollar or less, and that the consumer will not have to file for bankruptcy
- ✓ Some claim to be attorneys or to provide legal services, but rarely provide legal services, and consumers never talk with attorneys
- ✓ Monthly payments made to debt settlement company to accumulate in account for lump-sum settlements to creditors
- ✓ Charge steep advance fees - typically at least 10% and up to 40% of the consumer's unsecured debt

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Debt Settlement and Negotiation (continued)

- ✓ Because of front-loading of steep fees, debts are rarely settled and creditors are rarely paid
- ✓ Consumers' debts increase because creditors haven't been paid for duration of program, so interest and fees accumulate
- ✓ Few consumers complete the programs
- ✓ Consumers are at greater risk of being sued by their creditors

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(4) Mortgage Loan Modification or Foreclosure Assistance Services

- ✓ National advertising through TV, Internet, telemarketing, and direct mail solicitations
- ✓ Promise to obtain mortgage loan modifications for homeowners – namely, to contact the homeowner’s lender or servicer and to get a reduced interest rate and lower monthly payments, as well as a forbearance of any past due payments
- ✓ Some purport to be attorneys or are affiliated with attorneys– however, consumers rarely speak with an attorney, and rarely receive legal advice or representation
- ✓ Charge a substantial upfront fee – can range from \$500 to \$5,000 or greater; typically range from \$1,000 to \$2,500

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Mortgage Loan Modification or Foreclosure Assistance Services (continued)

- ✓ Companies provide minimal services – at best they forward consumers’ paperwork to their mortgage lenders or servicers, and do little else
- ✓ Consumers rarely receive loan modifications
- ✓ Consumers often resort to other options, such as bankruptcy or negotiating with their lenders or servicers on their own. Others lose their homes.

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**North Carolina’s Debt Adjusting Act
N.C. Gen. Stat. § 14-423, *et seq.***

- A criminal statute which makes debt adjusting a misdemeanor
- N. C. Gen. Stat. § 14.424. Originally enacted in 1963
- Defines “Debt adjusting” as acting as an intermediary between a debtor and his or her creditors for the purpose of settling the debtor’s debts. The basic definition in G.S. 14-423 is:

“...entering into or making of a contract, express or implied, with a particular debtor whereby the debtor

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Debt Adjusting (continued)

agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business and that person, for consideration, agrees to distribute, or distributes the same among certain specified creditors in accordance with a plan agreed on.”

The statute goes on to include acting “as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in any way altering the terms of payment of any debt of a debtor” and then distributing the debtor’s money to creditors.

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Debt Adjusting (continued)

■ Under the original definition, the debt adjuster had to handle the debtor’s funds before they were paid over to creditors. Debt settlers formerly avoided the statute by having a third party payment processor handle the funds.

■ In 2006, the statute was amended to plug this loophole. The statute now specifically covers debt settlement companies and foreclosure assistance or loan modification companies whether or not they handle the distribution of consumers’ funds to creditors – and prohibits them from charging any upfront fees. The amended section reads:

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Debt Adjusting (continued)

“Debt adjusting also includes the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor’s creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the debtor’s funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.”

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Debt Adjusting (continued)

- Attorney exemption - The 2006 amendment provides an exemption for an attorney licensed to practice in NC who is not employed by a debt adjuster. G.S. § 14-423(6)
- Remedies - The AG has authority to bring actions to enjoin illegal debt adjusting "as an unfair or deceptive trade practice," obtain restitution for consumers, and civil penalties. The AG may also seek the appointment of a receiver. G. S. §14-425.
- An aggrieved consumer should be able to bring an action for treble damages under G.S. §75-1.1, alleging that a violation of the Debt Adjusting Act is a *per se* unfair trade practice.

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Debt Adjusting (continued)

- North Carolina was the first state in the country to expressly prohibit the charging of advance fees by debt settlement providers.

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Federal Law Regulating Debt Settlement and Foreclosure Assistance

- Debt Settlement - Amendments to the federal Telemarketing Sales Rule ("TSR") now prohibit "debt relief services" providers from charging any upfront fees.
16 C.F.R. Part 310
- Effective date of the advance fee ban was October 27, 2010
- Mortgage Loan Modifications and Foreclosure Assistance - The Mortgage Assistance Relief Services Rule prohibits the charging of advance fees by any "mortgage assistance relief service" provider.
12 C.F.R. Part 1015
- Effective date of the advance fee ban was January 31, 2011

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North Carolina Enforcement

- Since 2006, the Attorney General has brought 7 enforcement actions against debt settlement companies, and 1 against a debt management company
- Since 2006, the Attorney General has brought 16 enforcement actions against mortgage loan modification or foreclosure assistance providers

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LAST DEBT SETTLEMENT CASE

WORLD LAW GROUP
Filed: May 22, 2013

State of North Carolina, ex rel. Roy Cooper, Attorney General and The North Carolina State Bar v. Swift Rock Financial, Inc. d/b/a World Law Debt, a/k/a World Law Group; Orion Processing, LLC, d/b/a World Law Processing; and Derin Scott . (Wake County 13 CVS 007161) Attached as Exhibit A

Claims: Violations of Debt Adjusting Act, G. S. §§ 84-4, 84-5, 84-37; and unfair and deceptive practices, G.S. § 75-1.1

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Final Notice
S. 046-496-9877

2301 E. Tenth St.
PO Box 8289
Wilmington, NC 27703-1283

CERTIFIED REDUCTION NOTICE
According to Sec 13 of 12th Cooper with the 2013 U.S. Federal Reserve Package, the certified notice will act as the new opportunity to file a Chapter 13 claim. This program benefits debtors for 360 D.F. Carrots. Notice Date: 11/18/2012 File NO: 001-1488388

Information provided is intended for:
Debtors
PO Box 8289
Durham, NC 27703-1283

You will receive notice:
1-(800)-496-9877 TOLL FREE
*The notice will be mailed to you within your business hours from 9AM to 5PM E.S.T. All Federal Holidays Observed.

You Must Respond To this Notice By December 17, 2012

1. **Why are you getting this notice?**

You are hereby notified that benefits will be made through the U.S. Federal Reserve Package, in the name of Obama. This notice will be mailed to you on 12/17/2012. If you receive this notice, you must respond to the notice. For questions regarding this notice, call 1-800-496-9877 or go to www.13.gov.

The information provided in this notice is intended for the use of attorneys of record. The only attorney of record is the attorney of record for the debtor. If you are not an attorney of record, you must respond to this notice. If you are an attorney of record, you must respond to this notice. If you are not an attorney of record, you must respond to this notice. If you are an attorney of record, you must respond to this notice.

Summary of Proposed Changes

2012 Est. Current Past Due Debt Balance	\$53,387
New Interest Rate	0%
Reduced New Payment	\$735
Proposed Term	360 Months
Reduced New Term	30 Months

2. **What steps should you take?**

Certificate of Proposed and Benefits:

- ✓ File for Chapter 13
- ✓ Interrupts Payment of Payments up to 60%
- ✓ No Co-Payments
- ✓ Reduce Overall Debt by up to 67%
- ✓ Avoid Credit Management Programs
- ✓ Elimination of Unsecured Debt in 30-36 months
- ✓ State Court from Chapter 13 of Section 1301

3. **What happens if you don't respond by** December 17, 2012

WE WOULD PREFER TO SEE YOU AT THE COURT. THIS IS YOUR FINAL NOTICE OF SECURITY FAILURE TO RESPOND TO THIS NOTICE AND YOUR LEGAL RIGHTS.

EXHIBIT

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NORTH CAROLINA LEGAL ADVOCATES
A PROFESSIONAL ORGANIZATION
State of North Carolina Licensed FIRM ID: 1-866-623-7436

373 ***** DIGNITY 373
3737373737 GP
High Point, NC 27260-5447
Richard@nclaw.com | rich@nclaw.com | Part-1

PRIVILEGED AND CONFIDENTIAL COMMUNICATION

File Number: 42913673 9/29/2013 Via Facsimile & U.S. Mail

Re: Notice of Redemption for File Number 42913673

This letter is to advise you that arrangements may be made with your creditors to eliminate overdue collection efforts, penalties and unnecessary interest charges. North Carolina Legal Advocates is a not-for-profit organization that is not affiliated with any government agency. North Carolina Legal Advocates does not discriminate on the basis of race, sex, religion, or national origin.

We are reaching out to you because your business credit report reflects that you owe a combined total of \$10,000 to several credit agencies. Unfortunately, your creditors report also shows that you are not fully up to date on your mortgage payments, but also that your accounts have accumulated an over \$100,000 in debt. Your credit rating is about 600, which is a very low credit rating. In the event of a foreclosure, your assets will be sold to pay the debt. It has been determined that you can resolve this distressed debt for \$8,077. For immediate assistance, call 1-866-623-7436.

Additionally, we are reaching out to you to help you avoid any penalties levied against your creditors, which could result in wage garnishment, levy of funds from your bank accounts or liens placed against your property or property. Our negotiating staff helps you fight to stop these actions. Call Now, Before Your Credit Rating Drops on 10/29/2013.

Additional benefits include no immediate reduction of payments for up to 60%, a Reduction of your Total Debt by 35% or More and Complete Elimination of your Credit Card Debt in 24 months or Less. Once and For All, Put a Stop To Collection Calls and Notices. Your Credit Rating Improves Dramatically. You avoid, and will receive, the full support of our organization to get this behind you for good. You Have Options, Call 1-866-623-7436 Now!

Hours are Monday thru Friday from 9 AM to 7 PM Local Time. Call 1-866-623-7436 for details.

EXHIBIT
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Raleigh Office 1-866-623-7436 1-888-988-6626 Fax

WORLD Law Debt 1-866-243-6933 Page 1 of 3

WORLD LAW
DEBT.COM

WELCOME TO WORLDLAWDEBT.COM

We solve debt issues. Pursuant to our debt relief services, we will help you resolve your debt issues. Our attorneys and legal staff will help you resolve your debt issues. Our attorneys and legal staff will help you resolve your debt issues. Our attorneys and legal staff will help you resolve your debt issues.

LEGAL NOTICE

Use the internet or a digital service. Legal advice and help 24 hours. Our 24-hour legal service is available 24 hours a day, 7 days a week.

Our attorneys use their legal background, not in force at every customer's and are virtual free. We resolve all credit issues and help you avoid a bankruptcy or other legal action. We resolve all credit issues and help you avoid a bankruptcy or other legal action. We resolve all credit issues and help you avoid a bankruptcy or other legal action.

Our attorneys and legal staff will help you resolve your debt issues. Our attorneys and legal staff will help you resolve your debt issues. Our attorneys and legal staff will help you resolve your debt issues. Our attorneys and legal staff will help you resolve your debt issues.

WORLD LAW DEBT CLIENT PRIVILEGES

World Law Debt offers you the following benefits:

- 24-hour legal service
- Priority over other debt collectors
- Fast debt relief
- Client wide access to our attorneys and legal staff

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Special Payment
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World Law Debt offers you the following benefits:

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- Fast debt relief
- Client wide access to our attorneys and legal staff

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More than 800 NC consumers have paid World Law at least \$4.1 million to settle their debts

- Of this amount, World Law has paid out less than 14%, or a little over \$500,000, to consumers' creditors, and has already retained more than \$2.6 million in consumers' funds for their own fees
- Consumers are led to believe that World Law is a law firm with attorneys and that they'll handle any lawsuits brought by consumers' creditors
- If consumers are sued, World Law e-mails consumers baseless and frivolous form pleadings to file *pro se*

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- Consumer debtors often do not understand the documents prepared by World Law, but are instructed by World Law to file them
- These pleadings include form "Answer to Complaint and Affidavit"; "Affidavit in Reply to Plaintiff's Motion for Summary Judgment"; and Responses to Discovery
- Assert patently baseless or frivolous defenses, such as that the consumer never took out the credit card at issue - even though the consumer retained World Law to settle the debt - and state that the plaintiff-creditor and its attorneys are "under investigation by state and federal authorities for robo-signing"

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- One NC law firm, Bernhardt & Strawser, has at least 115 cases currently pending in district courts in North Carolina where World Law has prepared pleadings for the debtor (Affidavit of Michael Stein, attached as Exhibit C, including examples of World Law form pleadings)
- Undoubtedly many more cases
- At least one district court has sanctioned a defendant-debtor because of World Law's activities (Order of Hon. Meredith A. Shuford, April 25, 2013, Cleveland County, attached as Exhibit B)

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Temporary Restraining Order – May 23, 2013 (Hon. Howard E. Manning, Jr.)

Preliminary Injunction Order – June 4, 2013 (Hon. G. Bryan Collins, Jr.) (Attached as Exhibit D)

Among other terms, the Preliminary Injunction Order enjoins the World Law defendants from:

- (1) Advertising, soliciting, or offering debt settlement or negotiation services to North Carolina consumers;
- (2) Entering into contracts with any North Carolina consumers for the performance of debt settlement services or any legal services;

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- (3) “Preparing or providing legal pleadings, including but not limited to answers, discovery responses, affidavits, or motions, to or for use by consumers in North Carolina, including instructions on filing any pleadings or other documents with a court or tribunal, or instructions to consumers on appearing before a court or other tribunal, including statements to make to such court or tribunal;”

- (4) “Communicating with any court, tribunal, or creditor as an attorney or other representative of the legal interests of a North Carolina consumer debtor whether identified as an attorney, a paralegal, or any other title or designation;”

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- (5) Collecting any fees directly or indirectly from any North Carolina consumers.

Notice – The Order also required World Law to notify every NC consumer that the World Law defendants will no longer provide any legal services, including pleadings or instructions for appearing in court, and that the customer should consult with a NC licensed attorney if they want legal services or advice concerning their legal rights and remedies with respect to any claims by creditors.

Second Preliminary Injunction Order issued June 4, 2013, against defendant Global Client Solutions, LLC, an unrelated payment processor, enjoining Global from disbursing any further payments received from NC consumer to World Law.

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CONSUMER ECONOMIC PROTECTION ACT OF 2009

Problems Addressed by 2009 Legislation

- Escalating numbers of cases filed by debt buyers:
 - Tens of thousands of cases filed each year. Unlike most collection agencies, lawsuits are the first collection option of debt buyers
 - Many debts are old and may have been previously paid, or not owed by the person being sued
 - Debt buyers may have minimal or no documentation of ownership or amount of underlying debt

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- Vast majority of cases resulted in default judgments
- Debt buyers aggressively collect on judgments

Legislative Strategy – Key Elements

- Target debt buyers, not all debt collectors
- Clarify that debt buyers are subject to debt collection law - require licensing/oversight by NC Department of Insurance
- Require actual documentation, not conclusory or “robo-signed” affidavits
 - Underlying debt
 - Chain of assignments

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Legislative Strategy – Key Elements

- Target debt buyers, not all debt collectors
- Clarify that debt buyers are subject to debt collection law - require licensing/oversight by NC Department of Insurance
- Require actual documentation, not conclusory or “robo-signed” affidavits
 - Underlying debt
 - Chain of assignments
- Protect debtors who do not know how to assert defenses or seek discovery
- Increase penalties for violation of law

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Drafting the Legislation

■ Amendments to NC Unfair Debt Collection Laws

- Chapter 58 (debt collection companies)
 - N.C. Gen. Stat. §58-70-1 *et seq.*
- Chapter 75 (creditors collecting own debts)
 - N.C. Gen. Stat. §75-50.1 *et seq.*

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Legislative Summary

- Provisions applying to all debt collectors:
 - Increased penalty from \$2,000 to \$4,000
- Licensure and compliance with law
 - N.C. Gen Stat. §58 -70-15(b)
- 30-day advance notice before filing suit
 - Copy of contract or other evidence of the debt
 - Itemization accounting of all amounts claimed

N.C. Gen. Stat. §58-70-115
- Evidence must be attached to complaint:
 - Copy of original contract (or if none existed, credit card statements)
 - Copies of all assignments in chain of title

N.C. Gen. Stat. §58-70-150

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■ Prior to default or summary judgment:

- Full proof of the debt must be provided to court
 - Original account number
 - Original creditor
 - Amount of original debt
 - Itemization of charges and fees
 - Original charge-off balance and explanation of how balance was calculated
 - Date of last payment
 - Amount of interest and basis for interest claimed
- N.C. Gen. Stat. §58-70-155**

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› **Debt Buyer Provisions (continued)**

- Can't file a lawsuit or otherwise collect on a debt without valid documentation of ownership or reasonable verification of the amount of debt.
N.C. Gen. Stat. §58-70-115(5)
- Prohibits any collection on time-barred debts.
N.C. Gen. Stat. §58-70-115(4)
- No attorney fee award without proof of signed contract and unbroken chain of assignment.
N.C. Gen. Stat. §6-21.2

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Effect of Legislation

- Took effect October 1, 2009
- Has markedly curtailed industry
"In actuality, it's impossible to comply with," said Pedro Zabala, a North Carolina lawyer, speaking of a law passed last fall that requires more documentation to file suit.
(from New York Times article, July 2010)
- Few cases have been filed since effective date but filings are now picking up.

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Consumer Protection and Debtors

**The Debt Adjusting Act
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