Dealing with Debt: The Rules of the Road

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Roadmap

- SCDCA Overview
- Options for Consumers
- SC Consumer Credit Counseling Act
- Credit Repair Sidebar
- Debt Collection
- CARD Act Sidebar
SCDCA Overview

- Consumer Services & Education
- Public Information
- Consumer Advocate
- Administration
- Legal Division
Figure 1: Credit Card Delinquency Rates, 1991–2009 (first quarter)

Source: GAO analysis of Federal Reserve data.
Options for Consumers

Self Help

- Make a Budget… and stick to it!

Budgeting Tips

- Write it Down
- Decide if Purchase = Need? Want?
- Borrow only what you can repay
- Read and understand the credit agreement
- Shop around for Credit
  - OPT OUT : 1-888-5-OPTOUT
  - Pay all debts on time- best before interest starts!
Options for Consumers cont…

- Keep in Contact with Your Creditors
- Negotiate
- Keep Good Records
- Dispute Own Credit Report (Stay Tuned)
Options for Consumers cont…

- **Hire Help**
  - Debt Management, Debt Consolidation, etc.
  - Credit Repair, etc.
  - Debt Settlement, Debt Negotiation, Foreclosure Assistance, etc.
SC Consumer Credit Counseling Act (SCCCCA)

- Effective → December 2, 2005
- Climate
- Why “Consumer Credit Counseling” Act
SCCCCA: Purpose

- Rights for Consumers when being contacted by or hiring a:
  - Debt Management Businesses
  - Credit Repair Businesses
  - Debt Settlement Businesses

- REGARDLESS of whether or not the business is located in South Carolina!!!
SCCCCA: Definitions

- “Receiving or offering to receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts”

- “Improving or offering to improve a consumer's credit record, history, or rating”

- “Negotiating or offering to negotiate to defer or reduce a consumer’s obligations with respect to credit extended by others”
SCCCCA: Definitions cont...

- Debt Management Businesses
  - What Do They Do?
    - Negotiate
    - Consolidate
    - Send Payments
  - Is This Right For Me?
    - Budget Analysis
  - Your Responsibilities
    - Checking Up
SCCCCA: Definitions cont…

Credit Repair Businesses

What Do They Do?

- Credit Report (Your help)
- Letters
  - Incorrect Info
    - No one can remove information that is accurate and timely
  - Credit Reporting Agencies
  - Creditors

{**More to come on Credit Repair later…**}
SCCCCA: Definitions cont...

- Debt Settlement/ Foreclosure Assistance
  - What Do They Do?
    - Negotiate
    - Send Payment?
    - Types of Settlement/ Negotiation
  - Problems
    - Saving Money
    - Time
    - Creditor Action
SCCCCA: Requirements

- Be Licensed by SCDCA!!!

http://www.scconsumer.gov/licensing/credit_counseling/licensed_counselors.pdf

- Application for Organization and Credit Counselors
- Bond – at least $25k
- Financial Education Session
- Budget Analysis/Contract
Credit Counseling Organizations MUST:

- Describe services
- Tell you how much their services cost
- Tell you how long it will take to get results
- Have a written contract & give you a copy
SCCCCA: Fees*

Initial Consultation Fee $50
Plan Enrollment Fee $30
Monthly Maintenance Fee $10 per ($50 max)
Reinstatement Fee $25

*Businesses can charge UP TO these amounts. All credit counseling businesses cannot charge every fee listed - it is dependant on the services provided.
SCCCCA: Consumer Rights

- **Cancel**
  - Anytime
  - 10 days notice
  - Refund

- **SUE**
  - 3 years
  - Knew/Should have known
In General

- Referral fees
  - Situation (3rd Party)
- Ask consumer to waive right
  - Ex: Right to sue
- Fraudulent, deceptive, or misleading acts (including advertising)
- Etc.
SCCCCA cont…

BEWARE ~ The Scams

We have the SECRET to lowering credit card debt!

Settle your debt for pennies on the dollar!

loweryourcreditcardpaymentguaranteed!
SCCCCA cont…

- **Common Scams**
  - Promises that can’t be delivered
  - Undisclosed fees
  - Undisclosed Consequences
  - Not Delivering Service

- **Don’t Trust a Company If They:**
  - Ask you to lie
  - Make Promises/ Guarantees
  - Have No Written Contract / Services in Writing
  - Ask for Up Front Payment
SCCCCA: Consumer Complaints

Complaint
- SCDCA
  - 1-800-922-1594
  - www.scconsumer.gov
    - “Complaint Services”
- Documents
- Process

Common Complaints
- Didn’t get what you paid for
  - Didn’t understand services
  - Said services not provided
- Creditors are contacting me
- Unlicensed Company
SCCCCA: Enforcement

- **Enforcement**
  - *Consumer Refunds*
    - Approx. $1,000,000 in refunds since 07/06
  - *Lawsuits*
    - Unlicensed companies (contracts & soliciting)
    - Licensed company in violation

- How does SCDCCA know?
Questions on SCCCCA?

It's QUESTION TIME!!

Up Next >
Credit Repair
Credit Repair

- Federal Law
  - Credit Repair Organizations Act

- Federal and State Law Working Together
  - Fair Credit Reporting Act
  - South Carolina Financial Identity Fraud & Identity Theft Protection Act
Credit Repair Organizations Act (CROA)

- Federal Law
  - Fair Credit Reporting Act → Right to dispute
  - CROA → Effective = 1997
  - Regulates businesses that:
    - Improve consumer’s credit record, history or rating OR
    - Provide advice or assistance with

- Main Enforcer = Federal Trade Commission (FTC)
CROA: Contract

- **Contract Must Contain**
  - **Disclosures**
    - Basics about disputing right
    - Free credit reports
  
  - **Other**
    - Written, dated & signed
    - Total fees
    - Description of services
    - Duration of contract
    - Cancellation statement
CROA: Prohibitions

- False or misleading statement to credit reporting agency, creditor or potential creditor
- New ID/ Alter ID
- Untrue or misleading representations about org.
- Fraud or Deception
- **Up Front Fees/ Payment in Advance!!**
  - No consideration
  - For any service contracted for
  - Until service is fully performed
CROA: Consumer Rights

- **Right to Cancel**
  - Before 12am on the 3rd business day after execution
  - Without penalty
  - Must be written
    - ‘Notice of Cancellation’
      - Must be included with contract
      - Consumer can submit this to cancel contract
    - Or any other written notice
CROA: Consumer Rights cont...

- Sue
- File Complaint
  - SCDCA
  - FTC
    - www.ftc.gov
    - 1-877-FTC-Help
State & Federal Laws Working Together

- Fair Credit Reporting Act (FCRA) = Federal

- Financial Identity Fraud and Identity Theft Protection Act (FIFITPA) = State
Fair Credit Reporting Act

- **Right to Dispute**
  - **Consumer Can Dispute:**
    - Inaccurate, incomplete or untimely items
    - To credit reporting agency “CRA” and/or
    - Furnisher (Creditor)

  - **Requirements:**
    - CRA - Notify furnisher within 5 days
    - CRA & Furnisher - Investigate (unless frivolous)
    - CRA & Furnisher - Note File= in dispute
    - If no resolution in 30 days, CRA must remove info

- **Resolution**
  - Notify consumer within 5 days
  - 100 word dispute
FCRA cont...

- **Reporting Periods**
  - *Bankruptcy*
    - 10 years
  - *Civil Lawsuit or Judgment*
    - 7 years or statute of limitations (longer)
  - *Paid Tax Lien*
    - 7 years
  - *Accounts Placed in Collection OR Charged Off*
    - 7 years (clock begins 180 days after delinquency)
  - *Other Adverse Info*
    - 7 years
Right to Dispute - How?

- Get free credit report—www.annualcreditreport.com
- Letters
  - To Whom?
    - To Credit Reporting Agency AND
    - Information Provider= Creditor
  - What Should Be Included?
    - what information is wrong
    - why it is wrong
    - ask that it should be removed
    - send copies of any papers you have that support your position.

Make copies of the letter and supporting papers for yourself & send certified mail “return receipt requested”.
Financial Identity Fraud and Identity Theft Protection Act (FIFITPA)

Became Effective December 31, 2008

- Credit Report Disputes
  - Mirrors Fair Credit Reporting Act
  - When inaccurate info on credit report:
    - Write CRA
      - What is wrong in filed
      - Recommend certified mail
    - CRA must confirm or deny inaccuracy within 30 days.
FIFITPA cont…

Credit Report Disputes cont…

- If CRA DENIES inaccuracy MUST:
  - Give basis;
  - Send copy of file, including which creditors were contacts;
  - Give evidence that info is accurate

- If CRA ADMITS inaccuracy MUST:
  - Contact creditors/requestors from the last six months
FIFITPA cont…

Credit Report Disputes cont…

- Private Cause of Action
- Department of Consumer Affairs to Enforce
  - Complaints
    - 1-800-922-1594
    - [www.scconsumer.gov](http://www.scconsumer.gov) “Complaint Services”
- Pattern or Practice
Questions on FCRA or FIFITPA?

It's QUESTION TIME!!

Up Next > Debt Collection
Debt Collection

- SC & Federal Law Application
- SC & Federal Debt Collection Basics
- Federal Requirements/ Protections
- Proposed Legislation 2010
- Other SC Debt Collection Laws
Debt Collection cont...

- **Application**
  - South Carolina
    - *Unconscionable Debt Collection Practices Act*
      - Creditors
      - 3rd Parties
      - Repossession Agents

- **Federal**
  - *Fair Debt Collection Practices Act*
    - 3rd parties
    - Creditors incognito
Debt Collection cont...

- State & Federal Law Basics
  - Communication
    - Via mail, fax, telephone, in person
    - Allowed between 8am and 9pm
    - Can contact 3rd parties
      - Your phone number
      - Your address
      - Where you work
    - Attorney
    - Cannot call repetitively in a 24-hour period
Debt Collection cont...

State & Federal Law Basics cont...

- Prohibitions
  - Harass
  - Obscene/ Profane Language
  - False threats
  - Misrepresent character, amount, or legal status of the debt
  - Communicate via postcard
  - Publish list of delinquent consumers
  - Depositing postdated check
  - ETC
Debt Collection cont…

State & Federal Law Basics cont…

Stopping Contacts At Work

- Letter (you or your employer)
  - Cease contact
- Limited Contact
  - Verify employment

TIP: Keep copy for yourself & send certified mail, return receipt requested!
Debt Collection cont...

- **Federal Requirements/ Protections (3rd party ONLY!)**
- **Stopping Contact**
  - At Home
    - Letter
    - Limited Contact
      - No further contact OR
      - Specific action will be taken

**TIP:** Keep copy for yourself & send certified mail, return receipt requested!
Debt Collection cont...

Federal Requirements/ Protections

Notice

• In 1st communication or within 5 days of

• Must Contain:
  • Amount of debt
  • Name of creditor
  • Statements:
    • 30 days to dispute or = assumed valid
    • Verification
    • Name of original creditor
Debt Collection cont...

- **Federal Requirements/ Protections cont…**
  - *Letter*
    - Within 30 day period
    - Send registered mail, return receipt requested and regular mail
    - State that debt or any part of debt is in dispute
      - Ie: Not yours, amount listed is wrong, etc
    - Be specific
    - Same process for original creditor info

- **Debt Collector Must:**
  - Stop attempting to collect
  - Must seek **verification**
    - Ie: contract, last billing statement, etc
Debt Collection cont…

- **Proposed Legislation 2010**
  - *Debt Collection Agency Licensing Act (H4228)*
  - *Personal Property Recovery Act (H4284)*
  - *Collateral Recovery Act (S1073)*

➤ Can be found at www.scstatehouse.gov
Debt Collection cont...

- **Other SC Laws**
  - **Garnishment**
    - Prohibited **UNLESS**:
      - $$ owed to government
      - $$ owed for child support
      - Garnishment order issued in another state where consumer was a resident
Debt Collection cont...

- Other SC Laws cont...
  - **Repossession**
    - **Right to Cure**
      - Missing req’d payment ONLY
      - Send after 10 days in default (11\textsuperscript{th} day)
      - 20 days from letter to “cure”
      - Effect- default never occurred
    - Number of notices:
      - Closed ended (auto) = 1
      - Open ended (credit card) 1 every 12 months
Questions on Debt Collection?

It's QUESTION TIME!!

Up Next ~ CARD Act Sidebar
Credit Card Act of 2009

Outline

- Legislative Background
- Consumer Protection
- Enhanced Disclosures
- Protection of Young Consumers
- Gift Cards
Legislative Background

- Names
  - *Credit Card Accountability and Responsibility and Disclosure Act of 2009*
  - *Credit Card Act of 2009*
  - *CARD*
  - *Credit Cardholders’ Bill of Rights*

- History
  - Signed into Law ~ May 22, 2009
    - Public Law No.: 111-24
Legislative Background cont...

- Effective Date(s)
  - 9 months of enactment (February 22, 2010)
  - 15 months of enactment (August 22, 2010)
  - 90 days of enactment (August 20, 2009)

- Governing Agency
  - Board of Governors of Federal Reserve

- Application
  - “any credit card account under an open end consumer credit plan”
Consumer Protection

- General Interest Rate, Fees & Charges Provisions
- Interest Rates
- Fees
- Payments
Consumer Protection

General

- General Interest Rate, Fees & Charges Provisions
  
  **Written Notice ~ Changes in Terms (Sec. 101)**
  
  - 45 days prior to:
    - Annual percentage rate ("APR") increase OR
    - Other significant changes (defined by Rule)
  
  - Right to Cancel
    - Before effective date of change
    - Cannot:
      - be considered “defaulting”
      - trigger payment acceleration
      - Charge penalty

**EFFECTIVE DATE: 90 DAYS AFTER ENACTMENT**
Consumer Protection~
General cont..

- General cont...
  
  - APR/ Fees/ Charges Increase
    - Cannot increase with respect to outstanding balances UNLESS:
      - Introductory Rate
      - Increase in Variable APR
      - End of Workout/Hardship Agreement
      - 60 Days Late
        - APR increase must end no later than 6 months after imposed IF on time payments

EFFECTIVE DATE: 9 Months
Consumer Protection ~ Interest Rates

- APR Increase (Credit risk, market, etc.)
  - If increase due to:
    - Must give consumer reason for increase
    - Same factors should be considered in reducing APR
  - Account review (January 1, 2009/ every 6 mths)
  - Must reduce APR

- Prohibitions:
  - Cannot increase APR/fees/charges in 1\textsuperscript{st} year
    - EXCEPT per:
      - Introductory rate, variable APR, Modification, 60 days late (from earlier)

  - Promotional APR
    - No increase in APR b4 6 months

EFFECTIVE DATE: 15 Months
EFFECTIVE DATE: 9 Months
Consumer Protection ~ Fees

- Fees (Sec. 102)
  - Over-the-Limit ~ (only applies where FEE involved)
    - OPT-In required
      - Express consent
        - *Must remind consumer of right to revoke when fee imposed*
  
- Fee Rules
  - Only allowed 1 per billing cycle AND
  - Only 1x during 2 subsequent billing cycles UNLESS:
    - Consumer increased credit line OR
    - Reduced outstanding balance to below credit line

EFFECTIVE DATE: 9 Months
Consumer Protection ~

Fees cont..

- **Fees cont...**
  - **Payment**
    - No fee based on payment method UNLESS involves expedited service
      - (telephone, online, etc)

- Reasonableness of Penalty Fees/Charges
  - Must be ~ (1) reasonable & (2) proportional

**EFFECTIVE DATE: 9 Months**

**EFFECTIVE DATE: 15 Months**
Consumer Protection ~ Payments

Payments (Sec. 104)

- Application of Payments
  - Payment due **by 5 pm** on due date
  - Due date must be same date each month (Sec. 106)
  - Amount received in excess of minimum payment:
    - 1\(^{st}\) to balance with highest interest rate
    - THEN order of decreasing interest rate
  - Deferred interest arrangement - Amount received in excess of minimum payment:
    - If during last 2 billing cycles of arrangement, to that

EFFECTIVE DATE: 9 Months
Consumer Protection ~ Payments cont...

- Payments cont…
  - **Fee Harvester Cards (Sec. 105)**
    - Prohibition Trigger → Consumer fee = >25% of credit limit
      - Consumer cannot pay fee with that card 1st year of use
  - **Periodic Statements (Sec. 106)**
    - Must have procedures/policies to ensure mailing or receipt 21 days prior to due date
      - If not, payment cannot be considered late

**EFFECTIVE DATE: 90 DAYS**

**EFFECTIVE DATE: 9 Months**
Enhanced Disclosures

Payoff Disclosure (Sec. 201)

- Minimum Payment Warning must be given
  - Must include the following:
    - If pay current minimum payment only:
      - # of months to payoff balance AND
      - Total costs (*interest and principal)
    - 36 month payoff info:
      - Monthly payment to payoff in 36 months
      - Total costs (*interest and principal)
  - *Interest Rate Calculation
    - Use rate in effect when given and until paid off
    - Same with indexing rate if variable (throughout)
Enhanced Disclosures cont…

- **Late Penalties (Sec. 202)**
  - *Periodic Statement Must Include:*
    - Payment date
    - Date a late fee will be imposed
    - Amount of late fee
    - If APR will increase if late, **Also:**
      - That fact AND
      - Penalty APR

EFFECTIVE DATE: 9 Months
Protection of Young Consumers

- Restrictions on Credit Cards (Sec. 301)
  - Cannot issue to person under age of 21 ("under-ager") UNLESS:
    - Have a cosigner who is:
      - 21 and
      - Able to repay debt and
      - Jointly liable OR
    - Under-ager has means of repaying

  - Cannot increase credit limit of under-ager with a cosigner UNLESS (Sec. 303):
    - Written consent from cosigner to:
      - Increase AND
      - Continued joint liability

EFFECTIVE DATE: 9 Months
Protection of Young Consumers cont…

- **Credit Cards and Colleges/Universities**
  - *Marketing* (Sec. 304)
    - Requires disclosure of marketing agreements by college/university
    - Prohibits use of student incentives to apply for card if marketing:
      - On campus,
      - Near campus, OR
      - At an event sponsored by or related to the institution

**EFFECTIVE DATE:** 9 Months
Protection of Young Consumers cont...

- Credit Cards and Colleges/Universities cont...
  - Credit Card Agreements
    - Creditor Annual Report to Board (College Affinity Cards)
      - Must include:
        - Terms & conditions of all business, marketing, card agreements to include:
          - Memorandum of understanding between the creditor and organization
          - Amount of payments from creditor to organization
          - No. of credit card accounts covered by the arrangement

MUST BE SUBMITTED WITHIN: 9 Months of Effective Date
Gift Cards

- Amending Electronic Funds Transfer Act (Sec. 401)

Types of Cards

- GENERAL-USE PREPAID CARDS
- Gift Certificate
- Store Gift Card
Gift Cards cont…

Restrictions

- **Fees**
  - May not impose a fee on the cards UNLESS:
    - No activity in a 12 month period AND
  
  - Met disclosure requirements (Clear & conspicuous):
    - The fee may be charged;
    - Amount of fee;
    - How often it may be assessed;
    - That a fee may be assessed for inactivity
  
  - Not more than 1 fee charged per month AND
  
  - Whatever else the Board sets by Rule

**EFFECTIVE DATE: 15 Months**

*Issuer must notify consumer of fees before purchase~
Gift Cards cont…

Restrictions

- **Card Expiration**
  - Cannot sell/issue card that expires UNLESS:
    - Exp. Date is 5 years or more down the road AND
    - Terms of expiration are clearly stated

- **Current SC Law:** *
  - Expiration = 1 year UNLESS in 10 pt font on front of card
  - Conditions/fees must be on certificate, cover or receipt
Resources

- CARD Act:

- CARD Act Fact Sheet
Resources cont...

- http://www.federalreserve.gov/
- http://www.ftc.gov
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