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Debt Collecting...Leave It To The Experts

By Katherine C. Wagner

As economic times toughen, many consumers are finding it increasingly difficult to make payments on their debts. North Carolina's current unemployment rate of 10.8% is the highest on record and puts this state in competition for the top rate in the country, behind only Michigan (12.6%), Oregon (12.1%), South Carolina (11.4%), and California (11.2%).¹ The problems caused by unemployment are trickling into all parts of the economy – Bank of America recently reported that despite its recent posting of solid profits, loan problems were persisting and even getting worse.²

On the other end of the credit crunch, as budgets tighten for companies holding consumer debt, the customers' inability to pay poses a larger problem than it may have in the past. For example, UNC Health Care, suffering from growing losses for uncompensated care, put a plan into effect on April 20, 2009 requiring co-payments from patients qualifying for charity care and requiring deposits from uninsured patients.³

Under the new plan, the hospital system is requiring indigent patients to pay between \$20 and \$100 for services.⁴ Fees vary depending on the type of service and whether the patient is uninsured or qualifies for charity care.⁵ The payments will be required at the time of the patient's visit.⁶ "We have a tidal wave of indigent patients coming to us these days as a result of the economic turmoil and rising unemployment rate in North Carolina," says CEO Bill Roper. "It's unsustainable. We can't continue in this mode for long."⁷

Unfortunately, as creditors get desperate to collect what they are owed, they may be increasing their risk of liability for unfair debt collection practices. For instance, in Houston, Texas, statistics show lawsuits filed against debt collectors are up 60 percent the first quarter of this year compared with the same time last year.⁸ In Montana, a consumer recently received a \$311,000 judgment after a federal judge determined his credit card

Primary Practice Areas

Medical Malpractice &
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Education

Wake Forest University (B.A.,
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company violated consumer protection laws in collecting on a \$3,800 bill.⁹ In New Jersey, the legislature is responding by considering a bill that would require debt collectors to provide debtors with a copy of the Fair Debt Collection Practices Act.¹⁰ The bill also significantly raises the amount that wronged consumers can recover to \$10,000 per violation.¹¹ Here in North Carolina, the House is currently considering a bill sponsored by Representatives Deborah Ross (D-Wake) and Larry Hall (D-Durham) to expand the rights of mortgage debtors and constrain debt collection means.¹²

Laws governing debt collection were instituted in the late 1970s when The Fair Debt Collection Practices Act was signed into law by President Carter. The purpose of the Act was “to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses.”¹³ The Act does not apply to banks, finance companies, department stores, thrift institutions or in-house collectors.¹⁴

However, the North Carolina Debt Collection Act, which was enacted in 1979, does not limit the prohibition on unfair practices to those collecting debts on behalf of others. Under North Carolina law, any person or entity engaged, either directly or indirectly, in debt collection from a consumer is prohibited from taking part in unfair debt collection practices.¹⁵

In general, both the federal and state laws have intricate provisions regarding the notice that must be given to consumers regarding their alleged debt, along with rules regarding the appropriate ways to communicate with debtors. The laws also prohibit activity such as:

- Communicating information about the debt to third parties;
- Continuing to contact debtors at work after being asked to stop;
- Calling during prohibited hours;
- Calling an excessive number of times;
- Making threats; and
- Using profanity or otherwise harassing the alleged debtor.¹⁶

Under the North Carolina Debt Collection Act, in addition to liability for actual damages, each violation can subject the debt collector to penalties up to \$2,000, plus the debtor’s attorneys’ fees.¹⁷ In addition to allowing for actual damages, the federal law provides for up to \$1,000 per violation, plus the debtors’ attorneys’ fees and court costs.¹⁸

In sum, debt collection can be a very complicated procedure, and doing it incorrectly could expose a company or individual to liability for actual damages and additional civil penalties. In collecting on debts, unless you have extensive experience or a specialized group of in-house experts, your interests are best served by seeking professional assistance from debt collection agencies or attorneys specializing in the field of debt collection.

BECAUSE WORKING WITH YOUR LAWYER SHOULDN'T BE A TRIAL

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¹ Heather Boushey and Nayla Kazzi, *Increased Job Losses in Nearly Every State*, Center for American Progress, Apr. 20, 2009.

² Dave Kansas, *Banks Bring Bad Tidings Once Again*, The Wall Street Journal, Apr. 20, 2009.

³ James Gallagher, *UNC Health Care to start asking for payments from uninsured*, Triangle Business Journal, Apr. 14, 2009.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Mary Flood, *Some debtors getting payback*, Houston Chron., Apr. 15, 2009.

⁹ Associated Press, *Debt Collection Lawsuit*, Apr. 19, 2009.

¹⁰ *NJ Bill Would Require Collectors to Send Copies of FDCPA to Debtors* (Apr. 20, 2009) <www.insidearm.com>.

¹¹ *Id.*

¹² Gary D. Robertson and Emery P. Dalesio, *Tuesday at the North Carolina General Assembly*, Salisbury Post, Apr. 1, 2009.

¹³ 15 U.S.C. § 1692(e).

¹⁴ 15 U.S.C. § 1692a(6).

¹⁵ N.C. Gen. Stat. § 75-50.

¹⁶ 15 U.S.C. § 1692 et. seq.; N.C. Gen. Stat. § 75-51.

¹⁷ N.C. Gen. Stat. § 75-56.

¹⁸ 15 U.S.C. § 1692k(a)(2)(A).