This workshop was held at the 2017 Equal Justice Conference in Pittsburgh, Pennsylvania

Title:
Moving from Defense to Offense on Legal Aid Debt Collection Cases

Presenters:
Simon Sandoval-Moshenberg, Legal Aid Justice Center, Falls Church, VA
Alysson Snow, Legal Aid Society of San Diego, Inc, San Diego, CA

This panel will discuss strategies for turning routine debt collection defense cases (or even advice-only cases) into a damages recovery for your client and attorney’s fees for your program. We will discuss ways to train staff to spot and set up claims arising out of debt collection litigation, and when to consider bringing a class action versus an individual case versus a counterclaim in the state-court debt collection matter. The panel will focus on debt collection arising out of credit card debt, medical debt, and landlord-tenant or post-foreclosure debt. We will also discuss special constitutional issues around the collection of debts owed to government entities (such as court debt, criminal justice system “user fees,” or unpaid personal property taxes) and highlight litigation strategies that have been successful around the country.
1. When did you purchase the vehicle?
   Click here to enter a date.

2. From whom? Click here to enter text.

3. Why did you choose that particular dealer? Click here to enter text.
   a. Advertisements? □
   b. Referral? □
   c. Online Ad? □
   d. Call? □
   e. Mail? □

4. How did you pay for your vehicle? Click here to enter text.
   a. Trade in? □
      i. Is the trade in accurately reflected? Click here to enter text.
      ii. Year/make/model/mileage of trade in Click here to enter text.
   b. Down payment? □
      i. Is the down payment accurately reflected? Click here to enter text.
   c. Was there a deferred down payment? Choose an item.
   d. Who is the finance company? Click here to enter text.
   e. Did the dealer assist you in obtaining financing? Click here to enter text.

5. Was it a buy here-pay here dealership? Choose an item.
   a. Did they put a tracking device on your car? Choose an item.
   b. Did you agree to the tracking device? Choose an item.
   c. Did they put an ignition interlock system? Choose an item.
   d. Did they require payments to be made there at the dealership? Click here to enter text.

6. So you have a copy of the retail installment sales contract? Click here to enter text.
   a. Any hold check agreements? Click here to enter text.
   b. Other agreements not within the RISC? Click here to enter text.

7. Are you current on your payments for the vehicle? Click here to enter text.

8. Does your contract have proper disclosures? Click here to enter text.
   a. Down payment □
b. Deferred down payment ☐
c. Finance charges ☐
d. Vehicle license fees ☐
e. Vehicle registration fees ☐ Click here to enter text.
f. Other official fees ☐ Click here to enter text.
g. Apr calculation-W/in range of error allowed by Reg Z. Click here to enter text.
h. Accessories☐ Click here to enter text.
i. Warranty/service contract☐

9. Does your contract have an arbitration clause? Choose an item.
10. Is the vehicle certified? Choose an item.
11. Any representations regarding the mechanical quality of the vehicle? Click here to enter text.
12. What did you ask the dealer about the vehicle? Click here to enter text.
13. Any subsequent mechanical problems with the vehicle? Click here to enter text.
   a. Do you have repair records or invoices? Choose an item.
   b. Have you had a mechanic look at the car? Choose an item.
14. Look in the glove box for owner’s manual and prior service records? Can you provide them to
    me? Click here to enter text.
15. What is the interest rate on the contract? Click here to enter text.
16. Does your contract have the proper date? Choose an item.
17. Were you asked to return to sign the contract? Choose an item.
18. When? Click here to enter a date.
19. What were the terms of the new contract?
    Click here to enter text.
20. Have you made all payments on the vehicle? Choose an item.
    a. When did you stop paying? Click here to enter a date.
    b. Why? Click here to enter text.
    c. Did you make any payments after this time? Choose an item.
    a. Do you have any post repossession notices (Notice of intent to dispose) (Notice of Right to Redeem) (Explanation of deficiency)? Click here to enter text.
    b. Do the notices have accurate amounts on them for all charges? Choose an item.
    c. Was the vehicle sold in a commercially reasonable manner? Choose an item.
d. What was the odometer reading on the vehicle when it was repossessed? Click here to enter text.

22. What language was the deal primarily negotiated in? Choose an item.
   a. Did you receive a copy of the contract in the language it was negotiated in? Choose an item.
   b. Did you get a car fax report? Choose an item.
DEFENSE TO OFFENSE

- Alysson Snow, Legal Aid Society of San Diego, Inc.
- Simon Sandoval-Moshenberg, Legal Aid Justice Center, Falls Church, VA
- Alex Gulotta, Executive Director, Bar Area Legal Aid, Oakland, CA
CURRENT DEFENSIVE STRATEGY: DEBT DEFENSE CASES

- Lack of Standing/Failure of Assignment
- Violations of the Federal Truth In Lending Act and Regulation Z (Set Off)
- Failure to Produce Copy of Contract
- Amounts Are Wrong
- Failure to prove market value (cases sounding in quantum meruit)
- Recoupment
- Statute of limitations
- Unconscionability
Affirmative Defenses

Case Title:

Case No.:

AFFIRMATIVE DEFENSES

Defendant alleges the following as separate and affirmative defenses, re-alleging and
incorporating by reference into each such defense the allegations in the attached Answer/General
Denial.

Without waiving Defendant’s foregoing answers and defenses, Defendant as and for the
affirmative defenses to the Complaint. alleges the following:
PLAYING DEFENSE ALL DAY LONG

A good way not to win.
TURN OVER: MOVING TO THE OFFENSE
GETTING OFFENSIVE: POTENTIAL AFFIRMATIVE CLAIMS

- Federal Fair Debt Collection Practices Act ("FDCPA") & state analogues;
- Telephone Communications Protections Act;
- Fair Credit Reporting Act (FCRA);
- Civil Rights Claims;
- Elder Abuse; and,
- UDAAP
IDENTIFYING OFFENSIVE CLAIMS  The Life Cycle of Debt
LIFE CYCLE OF DEBT

Early Stages:
- Loan Origination
- Contract Formation
- Loan Servicing
- Default in Payments
- Charge Off
- Acceleration

- TILA
- Contract

- Interest
- Fees

- Charge Off
- Acceleration

Default

Loan Origination

Servicing
LOAN ORIGINATION
&
CONTRACT FORMATION
In this Promissory Note and Security Agreement ("Agreement"), Borrower and Co-Borrower are referred to as "you" and "your" and Lender is referred to as "we," "us," and "our." The Federal Truth in Lending Act Disclosures are part of this Agreement. On the date shown opposite signature(s) below, we have leased you money and you have granted to us a security interest in your motor vehicle described below ("Vehicle") as collateral to secure repayment. Unless the following box is checked, this loan is made primarily for personal, family or household purposes.

<table>
<thead>
<tr>
<th>Business or Commercial Purposes</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vehicle Description</th>
<th>Year: 2002</th>
<th>Make: Toyota</th>
<th>Model: Sequoia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Odometer: 171035</td>
<td>VIN#: 5TDDZ18A72S103090</td>
<td>Color: BROWN</td>
<td>License No.: 6NZ4262</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ANNUAL PERCENTAGE RATE</th>
<th>FINANCE CHARGE</th>
<th>AMOUNT FINANCED</th>
<th>TOTAL OF PAYMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>104.44%</td>
<td>$8,540.80</td>
<td>$3,719.00</td>
<td>$12,259.80</td>
</tr>
</tbody>
</table>

The amount you will have paid after you have made all payments as scheduled.

Your payment schedule will be:

<table>
<thead>
<tr>
<th>Number of Payments</th>
<th>Amount of Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td>$340.55</td>
</tr>
</tbody>
</table>

Monthly, beginning 01/18/2015

Security: You are giving a security interest in the Vehicle described above.

Late Charge: If any payment is not made within 10 days after it is due you will be charged a late charge as follows: ☐ $10.00

Prepayment: If you pay off early, you will not have to pay a penalty. See your contract documents for any additional information about nonpayment, default, and any required repayment in full before the scheduled date, and prepayment refunds.

The Lender may retain a portion of these amounts.
For value received you promise to pay us the Total Loan Amount ("Principal") shown above (the Amount Financed plus any Prepaid Finance Charge) plus interest at the rate of 152.00% per year on the unpaid principal balance until paid in full. You agree to make payments each month as described in the Payment Schedule above. You agree to pay all other amounts which may become due under this Agreement. You will send your payments to LoanMart File 1373 PO Box 260210 Enchon, CA 91426. If more than one of you signs this Agreement, each of you will be individually and jointly liable to us for repayment.

Simple Interest & Your Payment: This is a simple interest loan. Finance charges will accrue on the unpaid Principal balance on a daily basis. Payments we receive will be applied first to fees, such as late charges, then to accrued and unpaid finance charges, then to unpaid Principal, then to other amounts you owe us. If you make more than one payment that is due, you will still owe the payments due as scheduled (advance payments are not applied to early payments).
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>L</td>
<td>Service Contract (to whom paid)</td>
<td>$1,395.00</td>
</tr>
<tr>
<td>M</td>
<td>Service Contract (to whom paid)</td>
<td>$N/A</td>
</tr>
<tr>
<td>N</td>
<td>Service Contract (to whom paid)</td>
<td>$N/A</td>
</tr>
<tr>
<td>O</td>
<td>Service Contract (to whom paid)</td>
<td>$N/A</td>
</tr>
<tr>
<td>P</td>
<td>Service Contract (to whom paid)</td>
<td>$N/A</td>
</tr>
<tr>
<td>Q</td>
<td>Prior Credit or Lease Balance paid by Seller to</td>
<td>$N/A</td>
</tr>
<tr>
<td>R</td>
<td>Gap Contract (to whom paid)</td>
<td>$650.00</td>
</tr>
<tr>
<td>S</td>
<td>Used Vehicle Contract Cancellation Option Agreement</td>
<td>$N/A</td>
</tr>
<tr>
<td>T</td>
<td>Other (to whom paid)</td>
<td>$N/A</td>
</tr>
<tr>
<td></td>
<td><strong>Total Cash Price</strong></td>
<td><strong>$12,613.05</strong></td>
</tr>
<tr>
<td>2.</td>
<td>Amounts Paid to Public Officials</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Vehicle License Fees</td>
<td>$109.00</td>
</tr>
<tr>
<td></td>
<td>Registration/Transfer/Titling Fees</td>
<td>$80.00</td>
</tr>
<tr>
<td></td>
<td>California Tire Fees</td>
<td>$N/A</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>$N/A</td>
</tr>
<tr>
<td></td>
<td><strong>Total Official Fees</strong></td>
<td><strong>$189.00</strong></td>
</tr>
<tr>
<td>3.</td>
<td>Amount Paid to Insurance Companies</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Total premiums from Statement of Insurance column a + b)</td>
<td>$0.00</td>
</tr>
<tr>
<td></td>
<td>State Emissions Certification Fee</td>
<td>$8.25</td>
</tr>
<tr>
<td></td>
<td><strong>Subtotal (1 through 4)</strong></td>
<td><strong>$12,810.30</strong></td>
</tr>
<tr>
<td>4.</td>
<td>Total Downpayment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Agreed Trade-In Value</td>
<td>$N/A</td>
</tr>
<tr>
<td></td>
<td>Make</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Model</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yr</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Odom</td>
<td></td>
</tr>
<tr>
<td></td>
<td>VIN</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Less Prior Credit or Lease Balance</td>
<td>$N/A</td>
</tr>
<tr>
<td></td>
<td>Net Trade-In (Above B)</td>
<td>$N/A</td>
</tr>
<tr>
<td></td>
<td>Name of autobroker receiving fee, applicable:</td>
<td>N/A</td>
</tr>
</tbody>
</table>
1. When did you purchase the vehicle? 
   Click here to enter a date.
2. From whom? Click here to enter text.
3. Why did you choose that particular dealer? Click here to enter text.
   a. Advertisements? ☐
   b. Referral? ☐
   c. Online Ad? ☐
   d. Call? ☐
   e. Mail? ☐
4. How did you pay for your vehicle? Click here to enter text.
   a. Trade in? ☐
      i. Is the trade in accurately reflected? Click here to enter text.
      ii. Year/make/model/mileage of trade in Click here to enter text.
   b. Down payment? ☐
      i. Is the down payment accurately reflected? Click here to enter text.
   c. Was there a deferred down payment? Choose an item.
   d. Who is the finance company? Click here to enter text.
   e. Did the dealer assist you in obtaining financing? Click here to enter text.
5. Was it a buy here-pay here dealership? Choose an item.
   a. Did they put a tracking device on your car? Choose an item.
   b. Did you agree to the tracking device? Choose an item.
   c. Did they put an ignition interlock system? Choose an item.
   d. Did they require payments to be made there at the dealership? Click here to enter text.
6. So you have a copy of the retail installment sales contract? Click here to enter text.
   a. Any hold check agreements? Click here to enter text.
   b. Other agreements not within the RISC? Click here to enter text.
Drive, No. 21, Lakeside, CA 92040

To whom it may concern:

This letter is to advise you that I am disputing the accuracy of the information provided in the dunning letter regarding the account numbers listed above, dated December 19, 2015. I do not owe $1,276.24 or any other sum. I have previously disputed this debt and asked verification, on or around December 8, 2015. Another letter was sent earlier this month. Despite the demand that no further contact be made, you referred this to collection without notifying the collection agency of the dispute and continuing to seek amounts to which you are not entitled.

My family had to move out do to the unsafe and unhealthy conditions in the unit and in the complex. Despite written notification of the hazardous and harmful conditions to myself and my baby, you failed to correct any of the violations. We were forced to move out. The charges related to the repairs are improper. The charges are for purported repairs for normal wear and tear. You cannot charge me for those.

This letter is to also inform you that I am represented by legal counsel, Alysson Snow, of the Legal Aid Society of San Diego, Inc., 110 S. Euclid Ave., San Diego, CA 92114.

Please do not contact me. As you are aware, pursuant to the Federal Fair Debt Collection Practices Act and California Fair Debt Collection Practices laws, upon receipt of this letter you must immediately stop all communications with me. You may contact me only to advise that further collection efforts are being terminated or to notify me that you intend to pursue a lawsuit against me.

Sincerely,
DEFAULT, CHARGE OFF, ACCELERATION

Conditions Precedent
DEBT COLLECTION QUESTIONARE

Answer all questions below to the best of your knowledge.
If you do not know the answer to a question, then leave it blank.
“Debt Collector” means anyone who is trying to collect money on behalf of someone else.

YES □   NO □  Has a debt collector communicated with anyone other than you regarding any money they claim you owe to them?  **If yes, answer the following sub-questions.**

YES □   NO □  Did the collector identify themselves and state that they were confirming information regarding your location?

YES □   NO □  Did the collector inform the person to whom they were speaking that you allegedly owed any debt?

YES □   NO □  Did the collector contact this person more than once?
Answer all questions below to the best of your knowledge. If you do not know the answer to a question, then leave it blank. 

“Debt Collector” means anyone who is trying to collect money on behalf of someone else.

**YES**  **NO**

Has a debt collector communicated with anyone other than you regarding any money they claim you owe to them? If yes, answer the following sub-questions.

**YES**  **NO**

Did the collector identify themselves and state that they were confirming information regarding your location?

Did the collector inform the person to whom they were speaking that you allegedly owed any debt?

Did the collector contact this person more than once?

**YES**  **NO**

Has a debt collector ever communicated with you via postcard?

**YES**  **NO**

Has any envelope you have received from a debt collector contained words or symbols that indicate the letter is from a debt collector? (This question refers to the envelope only, not the actual letter).

Did you ever inform any debt collector that you were represented by an attorney? If yes, answer the following sub-question.

**YES**  **NO**

Did the collector contact you again after you informed them that you were represented by an attorney?

**YES**  **NO**

Has a debt collector ever communicated with you before 8am or after 9pm? If yes, answer the following sub-question.

Did you tell the debt collector it was OK to contact you at that time?

**YES**  **NO**

Has a debt collector ever contacted you at work? If yes, answer the following sub-questions.

Did you tell the collector it was OK to contact you at work?

**YES**  **NO**

Have you ever informed the debt collector in writing that you refuse to pay a debt, or that you wished the debt collector to cease further communication with you, AND did that collector contact you after receiving that writing? If yes, answer the following sub-question.

**YES**  **NO**

Did the collector contact you, your spouse, parent (if you are a minor),
CREDIT REPORTING
Inaccurate Credit Reporting
Failure to Report Disputes
If you would like to initiate your dispute by phone you may contact our dispute center at 866-229-7861. Or you may dispute via US mail by writing to:

Equifax Information Services, LLC
PO Box 740258
Atlanta, GA 30374

Credit Summary
Your Equifax Credit Summary highlights the information in your credit file that is most important in determining your credit standing by distilling key credit information into one easy-to-read summary.

Accounts
Lenders usually take a positive view of individuals with a range of credit accounts - car loan, credit cards, mortgage, etc. - that have a record of timely payments. However, a high debt to credit ratio on certain types of revolving (credit card) accounts and installment loans will typically have a negative impact.

<table>
<thead>
<tr>
<th>Open Accounts</th>
<th>Total Number</th>
<th>Balance</th>
<th>Available</th>
<th>Credit Limit</th>
<th>Debt to Credit Ratio</th>
<th>Monthly Payment Amount</th>
<th>Accounts with a Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mortgage</td>
<td>0</td>
<td>$0</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>$0</td>
<td>0</td>
</tr>
<tr>
<td>Installment</td>
<td>1</td>
<td>$6,882</td>
<td>$3,875</td>
<td>$10,737</td>
<td>64%</td>
<td>$163</td>
<td>1</td>
</tr>
<tr>
<td>Revolving</td>
<td>2</td>
<td>$558</td>
<td>$5,242</td>
<td>$5,800</td>
<td>10%</td>
<td>$19</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>0</td>
<td>$0</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>$0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>3</td>
<td>$7,420</td>
<td>$9,117</td>
<td>$16,537</td>
<td>45%</td>
<td>$182</td>
<td>2</td>
</tr>
</tbody>
</table>

Debt by Account Type

Debt to Credit Ratio by Account Type
LITIGATION
Counterclaims
Separate FDCPA, FCRA, TCPA
AGGRESSIVE DISCOVERY PLAN

SCREEN FOR AFFIRMATIVE CLAIMS IN DISCOVERY

1. Create an aggressive discovery plan.
2. Propound written discovery with answer.
3. Serve deposition subpoena on original creditor.
4. Move to compel further responses to discovery.
5. Depose the person most qualified for the debt collector.
WINNING! TRIAL STRATEGIES

- Wild, Wild West: Courts often handle these cases like they are in the Wild, Wild West. So, when you walk up to the table, you better draw first.

- Bring a Court Reporter: People follow the rules better when they believe there will be some kind of accountability.

- Stress Burden of Proof: Courts often assume the creditor is owed the debt rather than putting the creditor through the paces of proving the debt is owed.

- Tell a Compelling Story: Make the story about the debt collector’s bad acts. Find a way to distinguish your client’s case.

- Evidence Objections: Motions in Limine. Know your objections. For persons most qualified, demand to voir dire the witness regarding their qualifications.
PARTNERING
Co-Counsel
Pro Bono
Community Partnerships
QUESTIONS?

- Alysson Snow:  alyssons@lassd.org
- Simon Sandoval-Moshenberg:  simon@justice4all.org
- Alex Gulotta:  agulotta@baylegal.org
DEBT COLLECTION QUESTIONNAIRE

Answer all questions below to the best of your knowledge. If you do not know the answer to a question, then leave it blank. “Debt Collector” means anyone who is trying to collect money on behalf of someone else.

YES NO
☐ ☐ Has a debt collector communicated with anyone other than you regarding any money they claim you owe to them? If yes, answer the following sub-questions.

YES NO
☐ ☐ Did the collector identify themselves and state that they were confirming information regarding your location?

☐ ☐ Did the collector inform the person to whom they were speaking that you allegedly owed any debt?

☐ ☐ Did the collector contact this person more than once?

☐ ☐ Has a debt collector ever communicated with you via postcard?

☐ ☐ Has any envelope you have received from a debt collector contained words or symbols that indicate the letter is from a debt collector? (This question refers to the envelope only, not the actual letter).

☐ ☐ Did you ever inform any debt collector that you were represented by an attorney? If yes, answer the following sub-question.

YES NO
☐ ☐ Did the collector contact you again after you informed them that you were represented by an attorney?

☐ ☐ Has a debt collector ever communicated with you before 8am or after 9pm? If yes, answer the following sub-question.

YES NO
☐ ☐ Did you tell the debt collector it was OK to contact you at that time?

☐ ☐ Has a debt collector ever contacted you at work? If yes, answer the following sub-questions.

YES NO
☐ ☐ Did you tell the collector it was OK to contact you at work?

☐ ☐ Have you ever informed the debt collector in writing that you refuse to pay a debt, or that you wished the debt collector to cease further communication with you, AND did that collector contact you after receiving that writing? If yes, answer the following sub-question.

YES NO
☐ ☐ Did the collector contact you, your spouse, parent (if you are a minor), guardian, executor or administrator for any purpose other than . . .
1. To advise you that they are no longer going to try to collect the debt?
2. To notify you that they intend to attempt to recover the debt in another way?

YES NO
☐ ☐ Has a debt collector ever threatened to use violence or other criminal means to harm you, your reputation, or your property?
☐ ☐ Has a debt collector used obscene, profane, or abusive language towards you? (This includes language used in writings such as letters or emails).
☐ ☐ Has a debt collector ever published your name on a list of consumers who refuse to pay debts?
☐ ☐ Has a debt collector ever advertised for someone to “buy” your debt from them?
☐ ☐ Has a debt collector ever harassed, annoyed or abused you by calling you repeatedly or continuously?
☐ ☐ Has a debt collector ever called you and not told you who they were?

YES NO
☐ ☐ Has a debt collector ever claimed to you that they were affiliated with, bonded by, or vouched for by the United States or any State? (This includes using any badge, uniform or facsimile that would indicate such a fact).

Has a debt collector ever lied to you about anything of the following?

YES NO
☐ ☐ The character, amount, or legal status of any debt or that your debt could increase if the company had to pay an attorney to recover the debt.
☐ ☐ That the person you were talking to was an attorney.
☐ ☐ That if you don’t pay your debt, you will be arrested, or that they will take away, garnish, attach or sell your property or wages.
☐ ☐ That the debt collector would take illegal action to collect the debt.
☐ ☐ That if the collector sold, transferred or referred your debt, you would lose the right to defend against having to pay the debt, or that the collector would have the right to do any of the other things mentioned in this questionnaire.
☐ ☐ That you committed a crime because you didn’t pay your debt.
☐ ☐ That your account has been turned over to someone who purchased it for full value.
☐ ☐ That documents they sent or gave to you were legal process, e.g. a court summons.
☐ ☐ That documents you received from the court did not require further action on your part, or that those documents were not actually from the court.
☐ ☐ That the person you talked to worked for a credit bureau or other consumer reporting agency, or that your information would be given to a consumer reporting agency.
Has a collector ever told or threatened to tell any other person something about you that is untrue? (This includes telling someone that you don’t dispute a debt they claim you owe to them).

Has a collector ever sent you a document that was made to look like a court or government document when in fact it was not a court or government document?

Has a collector ever lied to you or to anyone you know in an attempt to get information about you? (If a debt collector did not tell you they were a debt collector, check the “yes” box).

Has a debt collector ever lied to you about the name of their company?

Has a debt collector ever tried to collect a debt that you know they cannot collect by law?

Has a debt collector ever deposited a check that you wrote to them more than five days after the date that you wrote on the check? If yes, answer the following sub-question.

Did the debt collector notify you in writing that they were going to deposit that check?

Did a debt collector ever tell you that you would be criminally prosecuted if you did not write them a postdated check?

Has a debt collector ever deposited a postdated check before the date that you wrote on the check?

Have you ever had to pay a telephone company, mail service or other communication service because a debt collector sent you a message or told you in a phone call that you had to pay for? (E.g. a collect call).

Has a debt collector ever taken or threatened to take property away from you without a court hearing? If yes, answer the following sub-questions.

At the time they threatened to take the property away, did they own that property?

Did the collector actually intend to take the property away?

What was the property they attempted to take away?

Has a debt collector ever sent you an envelope or telegram that had anything other than your address and the collectors address on the outside of it?
When a debt collector communicates with you, they are required to give you certain information. If a debt collector failed to provide you with any of the following information within five days of the first time they contacted you regarding the debt, then check the “yes” box.

YES  NO
☐  ☐ The amount of the debt.
☐  ☐ The name of the business to whom you owe the debt.
☐  ☐ A statement that says, “If you don’t dispute the debt within thirty days, the debt collector will assume that you agree that you owe the money.”
☐  ☐ A statement that says, “If you tell the debt collector within thirty days that you dispute any or all of the debt, then the debt collector will verify that you actually owe the debt and will mail you a copy of the judgment against you.”
☐  ☐ If you requested it, then a statement that says, “the debt collector will provide you with the name and address of the person to whom you originally owed the money.”

Answer this question ONLY IF you DID tell the debt collector within thirty days of the first time they contacted you that you disagreed that you owed any money, that you wanted the name and address of the person to whom they claim you originally owed the money, or that you wanted to verify that you actually owed the debt.

YES  NO
☐  ☐ Between the time when you asked for this information and the time that the debt collector gave it to you, did the debt collector try to collect any money from you?

YES  NO
☐  ☐ If you had multiple debts and paid some amount of money to a debt collector with regard to those debts, did the debt collector do either of the following?
   1. Apply the payment to a debt that you did not believe you owed.
   2. Apply the payment in a way that was inconsistent with your instructions?
☐  ☐ Has a debt collector ever sent you a form that made it seem like another company or person was also attempting to collect debt from you, when in fact that person or company was not attempting to collect the debt from you?
☐  ☐ If you have filed bankruptcy and had a debt discharged, answer this question: Has a debt collector ever told you to fill out a form stating that you owed that discharged debt to them?
☐  ☐ Has a debt collector ever tried to charge you for the money they had to spend to talk to you about or to collect your debt from you?
☐  ☐ Has a debt collector ever tried to sue you in a court that is not where you lived or signed the original contract?
☐  ☐ Did you ever tell a debt collector you believed your identity had been stolen? If so, then did you provide the debt collection agency with all the required papers? If yes, then did the debt collectors continue to call you after you provided them with all the papers they needed to verify identity theft?
HOMEOWNER’S BILL OF RIGHTS QUESTIONNAIRE

Answer all questions below to the best of your knowledge. If you do not know the answer to a question, then leave it blank.

Limitations

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Single Point of Contact

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**Prohibition on Dual Tracking**

**YES**  **NO**  

Has the client submitted a complete loan modification application? This means all documents required by the servicer have been submitted within the reasonable times specified by the mortgage servicer. If yes, continue.

**YES**  **NO**  

If no, has the borrower submitted a complete application for another foreclosure prevention alternative offered by the mortgage servicer? A foreclosure prevention alternative is a “first lien loan modification or another available loss mitigation option.” If yes, continue.

**YES**  **NO**  

Is the completed first lien loan modification application (or complete application for another foreclosure prevention alternative) pending? If yes, continue.

**YES**  **NO**  

If no, is the borrower in compliance with an approved loan modification agreement? If yes, continue.

**YES**  **NO**  

Has the servicer already reviewed a borrower for a first lien loan modification or provided an opportunity for the borrower to be evaluated for such a modification? If no, continue.

**YES**  **NO**  

If yes, has there been a material change in the borrower’s financial circumstances?

**YES**  **NO**  

If yes, has that material change been documented by the borrower and submitted to the mortgage servicer?

**YES**  **NO**  

Has the servicer recorded a notice of default, recorded a notice of sale, or conducted a trustee’s sale?

**Protections During the Loan Modification Application Process**

**YES**  **NO**  

Did the mortgage servicer foreclose on more than 175 residential real properties, containing no more than 4 dwelling units, in the last year? If yes, continue.

**YES**  **NO**  

Has the borrower submitted a loan modification application or sought to be considered for another foreclosure prevention alternative? If yes, continue.

**YES**  **NO**  

During a period where a complete first lien loan modification application was under consideration, a denial was being appealed, the borrower was making timely modification payments, or a foreclosure prevention alternative was being evaluated or exercised, did the mortgage servicer collect any late fees?

**YES**  **NO**  

Did the mortgage servicer charge an application, processing, or other fee for a first lien loan modification or other foreclosure prevention alternative?

**YES**  **NO**  

For every document submitted by a borrower in connection with a first lien modification application (or submission of a complete application), did the mortgage servicer provide written acknowledgement of receipt within 5 business days? If yes, answer the following sub-questions:
YES  NO

☐  ☐ Did the written acknowledgement include a description of the loan modification process, including an estimate of when a decision on the loan modification will be made and the length of time the borrower will have to consider an offer of a loan modification or other foreclosure prevention alternative?

☐  ☐ Did the written acknowledgement include deadlines, including deadlines to submit missing documentation?

☐  ☐ Did the written acknowledgement include any expiration dates for submitted documents?

☐  ☐ Did the written acknowledgement include any deficiency in the borrower’s loan modification application?

**Protections When a Loan Modification Application is Denied**

YES  NO

☐  ☐ Was the application for a loan modification denied? If yes, continue.

☐  ☐ Did the mortgage servicer foreclose on more than 175 residential real properties, containing no more than 4 dwelling units, in the last year? If yes, continue.

☐  ☐ Did the mortgage servicer record a notice of default or, if a notice of default has already been recorded, record a notice of sale or conduct a trustee’s sale before the later of 31 days after the borrower received the denial notice or 15 days after the conclusion of the appeal process?

☐  ☐ Did the borrower receive a written denial notice with the reason for the denial? If yes, answer the following sub-questions.

YES  NO

☐  ☐ Did the notice include the deadline and instructions for appeal?

☐  ☐ If the denial was based on investor disallowance, did the notice include the specific reasons for the investor disallowance?

☐  ☐ If the denial is the result of a net present value calculation, did the denial notice include the monthly gross income and property value used to calculate the net present value and a statement that the borrower may obtain all of the inputs used in the net present value calculation upon written request?

☐  ☐ If applicable, did the notice include a finding that the borrower was previously offered a first lien loan modification and failed to successfully make payments under the terms of the modified loan?

☐  ☐ If applicable, did the notice include a description of other foreclosure prevention alternatives for which the borrower may be eligible, and a list of the steps the borrower must take in order to be considered for those options?
**Pre-Notice of Default Outreach, All Servicers**

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*Has the mortgage servicer recorded a notice of default? If yes, continue.*

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*Was the borrower contacted by the servicer before the notice of default was recorded?*

If the borrower **WAS contacted before the notice of default was recorded**, answer the following sub-questions:

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*Did the contact occur at least 30 days before the notice of deficiency was recorded?*

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*Was the contact in person or by telephone? If yes, answer the below sub-questions.*

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*Did the mortgage servicer advise the borrower that he or she has the right to request a subsequent meeting that would occur within 14 days?*

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*If the borrower scheduled a meeting, did the meeting occur within 14 days?*

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*Was the borrower provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency?*

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*In the initial contact or subsequent meeting, did the servicer assess the borrower’s financial situation and discuss options for the borrower to avoid foreclosure?*

If the borrower **WAS NOT contacted before the notice of default was recorded**, answer the following sub-questions:

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*Does the servicer have the borrower’s most recent contact information?*

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*Was the borrower available by phone?*

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*Does the borrower receive mail?*
Pre-Notice of Default Outreach, Large Servicers Only

YES  NO
☐  ☐  

Did the mortgage servicer foreclose on more than 175 residential real properties, containing no more than 4 dwelling units, in the last year? If yes, continue.

☐  ☐  

Has the mortgage servicer recorded a notice of default? If yes, continue.

☐  ☐  

Did the mortgage servicer foreclose on more than 175 residential real properties, containing no more than 4 dwelling units, in the last year? If yes, continue.

☐  ☐  

Has the mortgage servicer recorded a notice of default? If yes, continue.

☐  ☐  

Did the borrow receive a pre-foreclosure notice informing the borrower of his/her right to request copies of documents proving the mortgage servicer’s right to foreclose? The notice should state that the borrow may request the following: (i) A copy of the borrower’s promissory note or other evidence of indebtedness, (ii) A copy of the borrower’s deed of trust or mortgage, (iii) A copy of any assignment, if applicable, of the borrower’s mortgage or deed of trust required to demonstrate the right of the mortgage servicer to foreclose, and (iv) A copy of the borrower’s payment history since the borrower was last less than 60 days past due.

☐  ☐  

Did the borrower receive a pre-foreclosure notice informing the borrower that the borrower may be entitled to protections under the Servicemembers’ Civil Relief Act (“SCRA”)?

Post Notice of Default Outreach, notice when no modification is requested

YES  NO
☐  ☐  

Has the servicer recorded a notice of default? If yes, continue.

☐  ☐  

Has the borrower previously exhausted the first lien loan modification process offered by or through his/her mortgage servicer? If no, continue.

☐  ☐  

Did the mortgage servicer foreclose on more than 175 residential real properties, containing no more than 4 dwelling units, in the last year? If yes, continue.

☐  ☐  

Within five business days after recording a notice of default, did the mortgage servicer send a written communication to the borrower? If yes, answer the following sub-questions.

YES  NO
☐  ☐  

Did the written notice inform the borrower that the borrower may be evaluated for foreclosure prevention alternatives?

☐  ☐  

Did the written notice inform the borrower whether the borrower is required to submit an application to be considered for a foreclosure prevention alternative?

☐  ☐  

Did the written notice inform the borrower of the means and process by which a borrower may obtain an application for a foreclosure prevention alternative?
Other Notice Requirements

YES   NO

☐   ☐ Has a Trustee Sale been postponed? If yes, continue.
☐   ☐ Has the sale been postponed for more than 10 business days? If yes, continue.
☐   ☐ Has the lender given the borrower written notice of the new sale date and time?
MORTGAGE FORECLOSURE CONSULTANT QUESTIONNAIRE

Answer all questions below to the best of your knowledge. If you do not know the answer to a question, then leave it blank.

YES  NO

☐ ☐ Has the borrower used the services of a mortgage foreclosure consultant? If yes, continue.

☐ ☐ Does the mortgage foreclosure consultant have a Certificate of Registration from the California Department of Justice?

☐ ☐ Did the mortgage foreclosure consultant provide a written contract? If yes, answer the following sub-questions.

YES  NO

☐ ☐ Did the contract state the exact nature of the foreclosure consultant's services and the total amount and terms of compensation?

☐ ☐ Was the contract written in the same language as used by the foreclosure consultant to describe his or her services or negotiate the contract?

☐ ☐ If English was the language principally used by the foreclosure consultant to describe the foreclosure consultant's services or to negotiate the contract, did the foreclosure consultant notify the client orally and in writing before the client signed the contract that the client had the right to ask for a completed copy of the contract in Spanish, Chinese, Tagalog, Vietnamese, or Korean?

☐ ☐ Was the contract dated and signed by the owner?

☐ ☐ Did the contract contain, in immediate proximity to the space reserved for the owner's signature, a conspicuous statement in at least 10-point boldface type stating, "You, the owner, may cancel this transaction at any time prior to midnight of the fifth business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."
YES  NO

☐  ☐ Did the contract contain the following notice, printed in at least 14-point boldface type and completed with the name of the foreclosure consultant, immediately above the notice of the right to cancel?

"NOTICE REQUIRED BY CALIFORNIA LAW

___(Name)_______or anyone working for him or her CANNOT: 1) Take any money from you or ask you for money until _____.(Name)______________has completely finished doing everything he or she said he or she would do; and (2) Ask you to sign or have you sign any lien, deed of trust, or deed."

☐  ☐ Did the contract contain on the first page each of the following: (1) The name, mailing address, electronic mail address, and facsimile number of the foreclosure consultant to which the notice of cancellation is to be mailed, and (2) The date the owner signed the contract?

☐  ☐ Did the contract contain blank lines or spaces when it was presented for the client’s signature?

☐  ☐ Did the mortgage foreclosure consultant pressure the client to sign the contract?

☐  ☐ Was the contract accompanied by a completed “Notice of Cancellation”? If yes, answer the following sub-questions.

YES  NO

☐  ☐ Was the notice of cancellation easily detachable?

☐  ☐ Was the notice of cancellation in at least a 10 point font?

☐  ☐ Was the notice of cancellation written in the same language as used in the contract?

☐  ☐ Did the notice of cancellation include the below statement?

"NOTICE OF CANCELLATION

__(Enter date of transaction) ______(date)____

You may cancel this transaction, without any penalty or obligation, within five business days from the above date. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram, to .(Name of foreclosure consultant) .at .(Address of foreclosure consultant’s place of business).

You may also cancel by sending a facsimile (fax) of a signed and dated copy of this cancellation notice, or any other written
notice, to the following number: ______(Facsimile telephone number of foreclosure consultant’s place of business).

You may also cancel by sending an e-mail canceling this transaction to the following e-mail address: ______(E-mail address of foreclosure consultant’s business).

I hereby cancel this transaction

______ (Date)___________________________________________.

______ (Owner’s signature)___________________________

YES    NO

☐ ☐ Did the mortgage consultant demand or receive any compensation before fully performing every service the mortgage consultant was contracted to perform or represented he/she would perform?

☐ ☐ Did the mortgage consultant demand or receive any fee, interest, or any other compensation that exceeded 10% percent per year of the amount of any loan which the foreclosure consultant may make to the owner?

☐ ☐ Did the mortgage consultant take any wage assignment, any lien on real or personal property, or other security to secure payment?

☐ ☐ Did the mortgage consultant receive anything from a third party in connection with services rendered to the client?

YES    NO    If yes, was the consideration fully disclosed to the client?

☐ ☐

☐ ☐ Did the mortgage consultant acquire any interest in a residence in foreclosure from the client?

☐ ☐ Did the mortgage consultant take power of attorney from the client?

☐ ☐ Did the mortgage consultant enter into an agreement to assist the client in arranging, or arrange for the client, the release of surplus funds after the trustee's sale?

☐ ☐ Did the mortgage consultant advise the client to deal only with the consultant and stop paying their mortgage company or stop talking to their mortgage company?

☐ ☐ Did the mortgage consultant make promises or guarantees to the client about the results of the mortgage consultant’s services?