

Identity Theft & Debt Collection: Consumer Rights & Issues



Marti Phillips, Esq.
Director, Identity Theft Unit
South Carolina Department of Consumer Affairs

This presentation is not meant to serve as a substitute for reading the various laws discussed, seeking legal counsel or otherwise requesting Department guidance and/or interpretations on the laws it administers and enforces. The presentation merely serves as an introduction and overview.

Roadmap

- SCDCA Overview
- Identity Theft Update
- Debt Collection: State & Federal Laws
- Credit Counseling in SC
- Resources



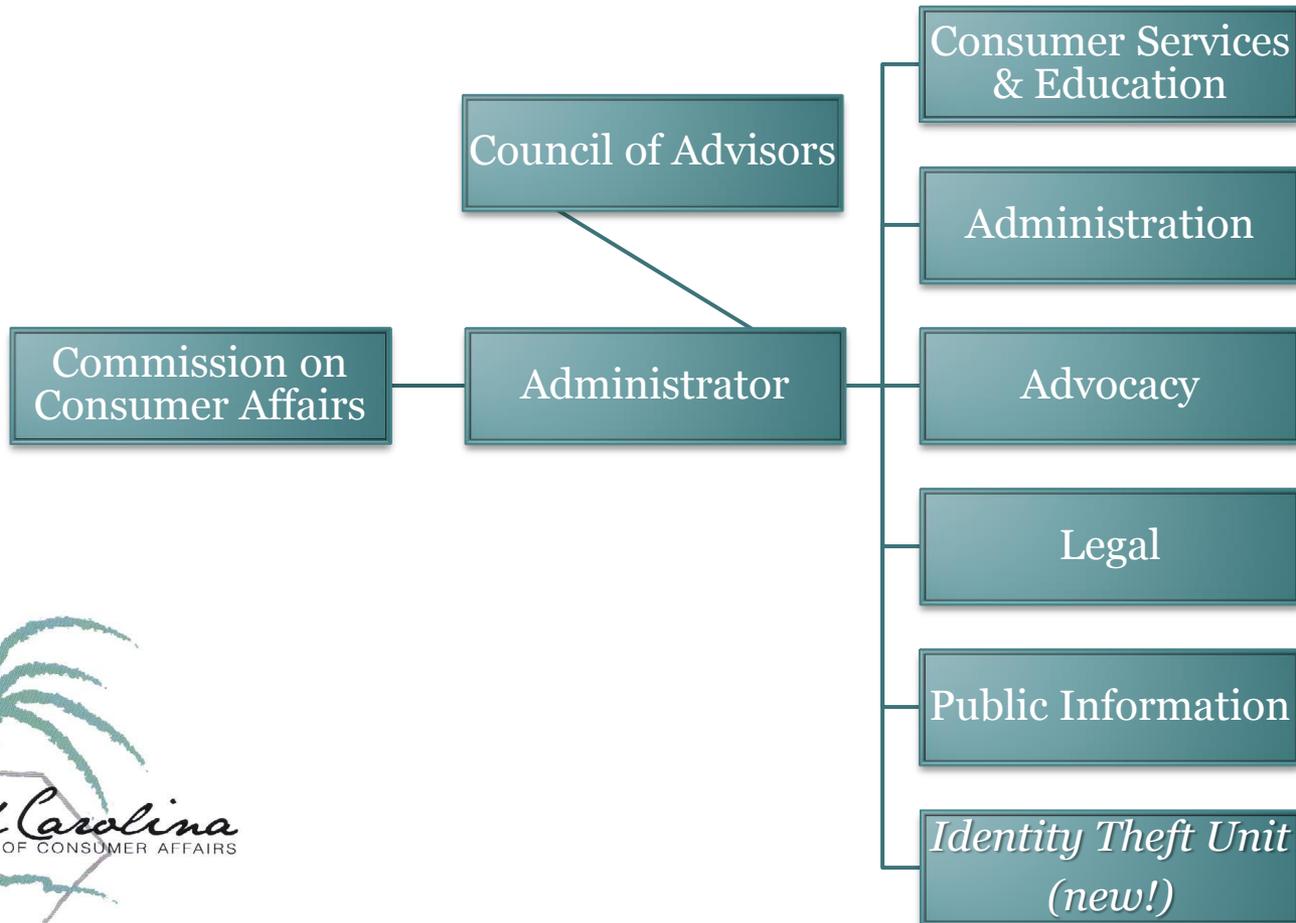


SCDCA Overview



- Licenses several types of businesses - such as pawn shops, mortgage brokers, **consumer credit counselors**, physical fitness facilities, athlete agents
- Handles complaints for family, household or personal goods or services
 - More than 4,000 consumer complaints processed in 2014
 - Online Complaint System
 - Top 3: Debt Collection, Utilities, Vehicles

SCDCA Organizational Structure



What is Identity Theft?



Identity Theft

- Identity Theft is the unlawful use of personal information of someone else to pose as that person in order to:
 - fraudulently obtain goods or services in the other person's name (the id theft victim) from private and/or public institutions

OR

- conceal their own true identity from authorities or others who perform background checks.

What *is* Identity Theft? Cont..

§ 16-13-510 (*eff. April 23, 2013*)

Financial Identity Fraud = when a person without the authorization/permission of another individual with the intent of unlawfully:

- Appropriating the financial resources of the other individual to the person's own use (or a third party);
- Devising a scheme or artifice to defraud;

What *is* Identity Theft? Cont..

Financial Identity Fraud cont...

- Obtaining money/property or services by means of false pretense; or
- To access/attempt to access financial resources of the other individual through the use of identifying information.

What *is* Identity Theft? Cont..

“Financial Resources” Includes:

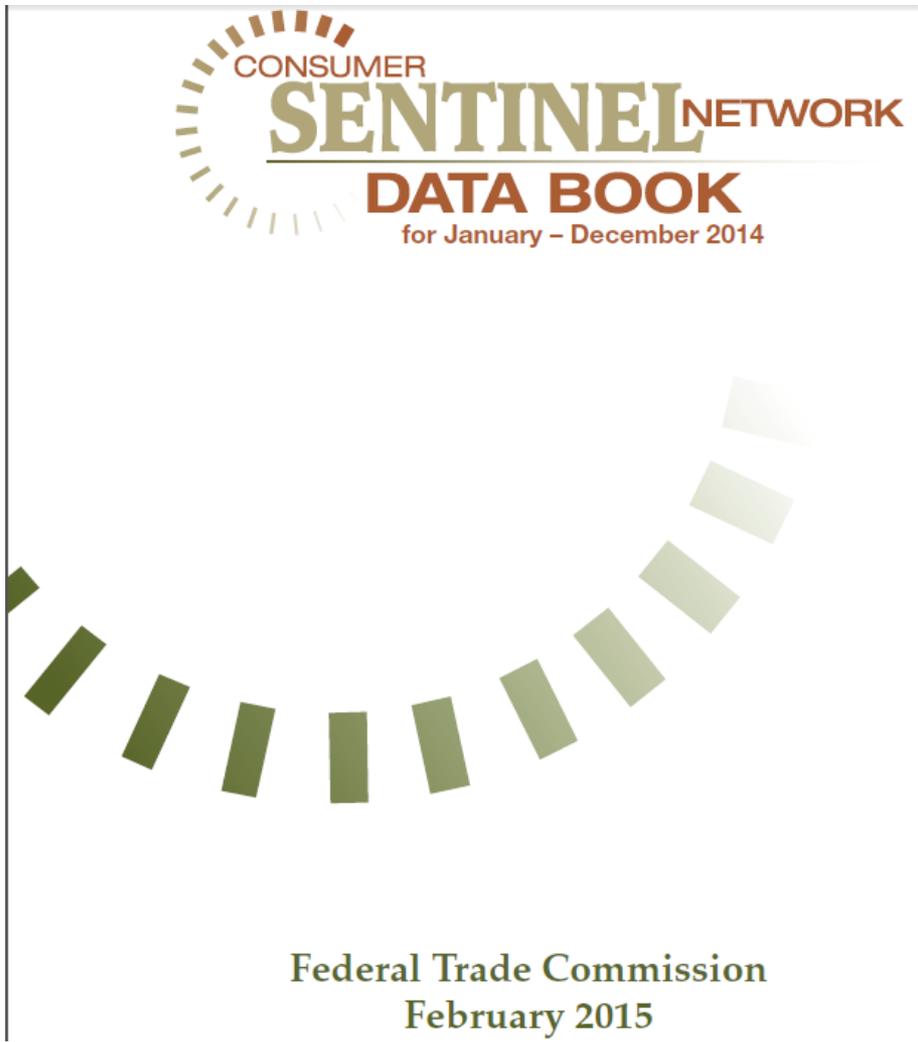
- Existing money/financial wealth in checking/savings/line of credit;
- Pension plan, retirement fund, annuity, other fund which makes monthly or periodic payments; and
- Est. of line of credit or an amount of debt whether by loan, credit card, or otherwise obtaining goods, services, or money

Types of Identity Theft

- Medical
- Employment
- ***Tax-related***
- Fraudulent Utility Accounts
- Criminal
- Business-related (used to perpetuate scams)
- ***CHILD!***



2014 Consumer Sentinel Data Book



<https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2014/sentinel-cy2014.pdf>

What is the Consumer Sentinel Network?

- CSN was started in 1997 to collect fraud and ID theft complaints.
- A secure online database of millions of consumer complaints available only to law enforcement.
 - Complaints filed with FTC and state law enforcement agencies (***and SCDCA***)
 - Some non-governmental organizations (BBBs)
 - Federal agencies (CFPB, FBI, USPIS)

Consumer Sentinel: ID Theft Complaints – How Victims’ Information is Misused

Calendar Years 2012 – 2014
(National)

Government Documents or Benefits Fraud

	Percentages	Percentages	Percentages
Theft Subtype	CY-2012	CY-2013	CY-2014
Tax- or Wage-Related Fraud	43.4%	30.0%	32.8%
Government Benefits Applied For \ Received	1.6%	2.4%	4.1%
Other Government Documents Issued \ Forged	0.8%	1.0%	1.3%
Driver's License Issued \ Forged	0.6%	0.6%	0.5%
Total	46.4%	34.0%	38.7%

Credit Card Fraud

	Percentages	Percentages	Percentages
Theft Subtype	CY-2012	CY-2013	CY-2014
New Accounts	8.9%	11.2%	12.5%
Existing Account	4.7%	5.7%	4.9%
Total	13.6%	16.9%	17.4%

Phone or Utilities Fraud

	Percentages	Percentages	Percentages
Theft Subtype	CY-2012	CY-2013	CY-2014
Utilities - New Accounts	6.2%	8.9%	7.6%
Wireless - New Accounts	2.5%	3.5%	3.5%
Unauthorized Charges to Existing Accounts	0.4%	0.6%	0.7%
Telephone - New Accounts	0.6%	0.6%	0.7%
Total	9.7%	13.6%	12.5%

Bank Fraud

Theft Subtype	Percentages		
	CY-2012	CY-2013	CY-2014
Electronic Fund Transfer	3.0%	3.7%	3.3%
New Accounts	1.9%	2.2%	2.8%
Existing Accounts	1.5%	1.8%	1.5%
Other Deposit Accounts ²	-	-	0.6%
Total	6.4%	7.7%	8.2%

Employment-Related Fraud

Theft Subtype	Percentages		
	CY-2012	CY-2013	CY-2014
Employment-Related Fraud	5.4%	5.6%	4.8%

Loan Fraud

Theft Subtype	Percentages		
	CY-2012	CY-2013	CY-2014
Business \ Personal \ Student Loan	1.3%	2.1%	2.6%
Auto Loan \ Lease	0.6%	1.1%	1.1%
Real Estate Loan	0.5%	0.8%	0.7%
Total	2.4%	1.9%	4.4%

Other Identity Theft

Theft Subtype	Percentages		
	CY-2012	CY-2013	CY-2014
Uncertain	6.1%	8.5%	11.2%
Miscellaneous	7.6%	8.7%	3.3%
Data Breach	1.1%	1.3%	2.1%
Internet \ Email	1.2%	1.7%	1.5%
Medical	0.7%	1.0%	1.0%
Evading the Law	0.8%	1.0%	0.9%
Apartment or House Rented	0.4%	0.5%	0.6%
Insurance	0.2%	0.3%	0.4%
Prepaid Debit Cards ³	-	-	0.3%
Bankruptcy	0.1%	0.1%	0.2%
Securities \ Other Investments	0.1%	0.2%	0.1%
Property Rental Fraud	0.1%	0.1%	0.1%
Child Support	0.1%	0.1%	0.1%
Magazines	0.1%	0.1%	<0.1%
Total	18.6%	23.6%	21.8%

Attempted Identity Theft

Theft Subtype	Percentages		
	CY-2012	CY-2013	CY-2014
Attempted Identity Theft	6.6%	7.2%	4.8%

Consumer Sentinel - SC

SC Stats: ID Theft Complaints:

- **2014 – 20th**
- **2013 – 17th**
- **2012 – 17th**
- **2011 – 20th**
- **2010- 29th**
- **2009- 28th**
- **2008- 29th**
- **2007- 30th**
- **2006- 32nd**
- **2005- 36th**



How SC Victims' Information is Misused - Top 3*

- **35% Government Documents/Benefits Fraud**
 - Unlawful use or counterfeit of gov't issued documents
- **14% Phone or Utilities Fraud**
 - Obtaining these services with false info
- **14% Credit Card Fraud**
 - Opening a line of credit with false info



* From FTC Consumer Sentinel Feb. 2015 Report (CY 2014)

4 Steps *Most* ID Theft Victims Need to Take:

1. Contact Consumer Reporting Agencies

- ✓ Fraud Alert
- ✓ Security Freeze
- ✓ Review your reports



2. Contact Companies (or Agencies) with affected accounts

3. File a Complaint with the FTC – it will generate an “**ID Theft Affidavit**” for victim’s use

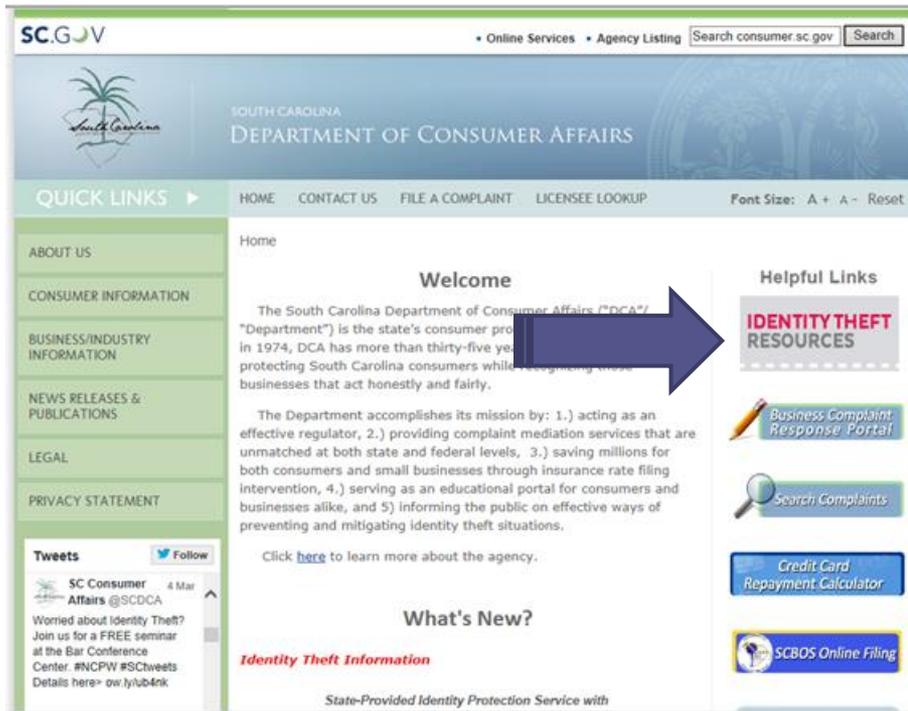
4. File a Police Report (maybe) – combined with FTC ID Theft Affidavit = “**Identity Theft Report**”

Identity Theft Report



Also: SCDCA Identity Theft Unit

www.consumer.sc.gov



Identity Theft Intake Form



SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS
 2221 Devine St. ♦ STE. 200 ♦ PO Box 5757 ♦ Columbia, SC 29250
www.consumer.sc.gov ♦ 800-922-1594



IDENTITY THEFT INTAKE FORM

Please complete this form to the best of your ability if you have reason to believe you are an identity theft victim. If you are not a victim but would like identity theft information, please contact us at the number above or visit our website.

Tell Us About Yourself: Mr. Mrs. Ms.

Name: _____

Mailing Address: _____ City: _____

State: _____ Zip Code _____ Daytime Telephone Number: () _____

Age Range: 18-25 26-35 36-45 46-55 56-65 66-75 76+

Preferred Method of Contact: Mail Telephone E-mail: _____

Identity Theft Background Questions

How did you learn you were a victim of identity theft? Credit Report Collection Notice IRS Letter
 Bank Notice Other: _____

Have you received a Security Breach notice? Yes No
 If so, please list the name of the company(ies): _____

What personal information was included in the breach (e.g. SSN, bank account number, etc.)? Please list:

Credit Report Information

Have you reviewed your credit report(s) within the last year? Yes No
 If yes, which credit reports did you review?
 TransUnion Date: _____ Equifax Date: _____ Experian Date: _____

Have you placed a Fraud Alert on your credit report(s) within the last 90 days? Yes No

Which agency did you contact to place the Fraud Alert? TransUnion Equifax Experian

Have you placed a Security Freeze on your credit report(s)? Yes No
 Which agency(ies) did you contact to place your Security Freeze?
 TransUnion Date: _____ Equifax Date: _____ Experian Date: _____

ID Theft Guide

ID Theft "Toolkit"



Step By Step: What To Do After a Security Breach

#1: Place a fraud alert on your credit reports.

It's **FREE**, stays in place for 90-days and requires potential creditors to take steps to verify that the applicant is in fact you.

You **only** have to contact 1 of the 3 credit reporting agencies (CRA) to place the alert. Once you place the alert, you will receive notice that you can get 1 **FREE** copy of your credit report from **each** of the CRAs. It is a great idea to request all three reports and make sure that everything on them is accurate.

Equifax: 800-685-1111
TransUnion: 800-680-7289
Experian: 888-397-3742

#2: Consider placing a security freeze on your credit reports.

It's **FREE** and will prevent

potential creditors and other third parties from accessing your credit report for new products or services, unless you temporarily lift the freeze. You **must** call each of the CRAs to do this. It is **FREE** to place, thaw and lift the freeze for SC residents. Once you place the freeze, you will receive a personal identification number (PIN) you can use to thaw or lift the freeze. Make sure to keep it in a safe place. For more information on the freeze, including *how to place, thaw and lift one*, see page 3.

#3: Monitor your financial and personal statements closely.

Ensure that your bills and statements are arriving on time and are completely accurate. Remember, identity thieves can use your social

security number the same way you do. Including to receive:

- Government benefits
- Driver's License/ID
- Tax refund
- Medical benefits

So, monitor medical and benefits statements and always be on alert for any suspicious or unexpected letters or phone calls!

#4: Interested in a monitoring service?

Think you might need some help keeping track of everything? Monitoring services typically offer to do what you can freely do yourself (see steps 1-3 above). Just remember to research the company to ensure they are (1) TRUSTWORTHY, RELIABLE and LEGIT and (2) their services fit your needs.

WHAT'S INSIDE:

Learn What Tools are at YOUR Disposal

page 2

How to Place, Thaw & Lift a Security Freeze

page 3

Are YOU a Victim of Identity Theft?

page 5



This Toolkit is meant to serve as a guide to consumers who are victims of identity theft. The steps enclosed are general and apply to most identity theft situations. You may need to take additional steps to resolve your specific issue(s).

PAGE 2-3
STOPPING THE DAMAGE

PAGE 2-4
REPAIRING THE DAMAGE

PAGE 5
DAMAGE CONTROL



INCOME TAX FRAUD

If you think someone has misused your Social Security number to get a job or tax refund – or the IRS sends you a notice indicating a problem – contact the IRS and/or the SC Department of Revenue immediately.

HOW TO REPORT INCOME TAX FRAUD

STEP BY STEP:	NOTES:
<input type="checkbox"/> For federal tax fraud, contact the Internal Revenue Service (IRS).	<input type="checkbox"/> Report the fraud and ask for IRS ID Theft Affidavit Form 14039. <input type="checkbox"/> Send the IRS Identity Theft Affidavit Form 14039, proof of your identity, such as a copy of your Social Security card, driver's license or passport and a copy of your police report, if you filed one. <i>IRS Identity Protection Specialized Unit</i> 1-800-908-4490 www.irs.gov/identitytheft
<input type="checkbox"/> Request a FREE federal tax return transcript and/or a tax account transcript.	<input type="checkbox"/> Review these documents for red flags such as wages you didn't earn. 1-800-908-9946 www.irs.gov Under "Tools" click "Order a Return or Account Transcript."
<input type="checkbox"/> Contact the IRS Taxpayer Advocate office in SC.	<input type="checkbox"/> This office will help you navigate through the process of resolving issues with your tax records. 1-800-908-9946 www.irs.gov Click "Help & Resources" then click "Contact Your Taxpayer Advocate," pick "SC"
<input type="checkbox"/> For state tax fraud, contact the SC Department of Revenue. Remember: See step 2 above about getting your federal return/account transcripts. You should check them for signs of fraud also.	<input type="checkbox"/> Complete tax fraud form CID-27: Tax Violation Complaint Form. 803-898-5953 www.sctax.org/tax-information/reporttaxfraud SC Department of Revenue Attn: Tax Fraud Division Market Pointe Service Center 300-B Outlet Pointe Blvd PO Box 21587 Columbia, SC 29221

Request Business Records Related to Theft (FCRA 609e)

- Victim is entitled to copies of transaction records related to theft of identity, such as applications for credit
- Victim can also authorize law enforcement to receive records directly, without need for subpoena
- Request must be in writing to address specified by the company – contact business first to get address
 - [Sample Letters](#)

After the Four Steps: Correcting the Credit Report

- Fastest and most comprehensive result with “blocking” - a new consumer right under **FCRA § 605B**
 - Permanently removes the identity theft-related information from credit reports
- Alternative: Standard dispute procedures under **FCRA § 611**
 - Corrects credit report – preserves and corrects valuable existing accounts

Credit Reporting Agencies' Blocking Obligations - §605B

- Right to permanently suppress identity theft-related information from appearing in credit report.
 - New accounts
 - Inquiries
 - Inaccurate personal information
- CRAs must remove information with 4 business days after accepting Identity Theft Report
- CRAs must notify furnishers that information it furnished resulted from identity theft

Furnishers' (Creditors and Debt Collectors) Blocking Obligations

- When furnishers receive § 605B notice of the block from CRAs:
 - Furnishers may not re-furnish that information to any CRA, and
 - Furnishers may not sell, transfer, or place for collection the identity theft-related debt

Credit Reporting Agencies' Dispute Obligations - FCRA §611

When a consumer notifies CRA of dispute:

- CRA must send dispute to furnisher of disputed information
- Furnisher must investigate dispute and report back to CRA within 30 days
- CRA must notify consumer of results of investigation
- If no corrections to credit report, consumer has a right to include a dispute statement
 - 100 words, but CRA can replace with code number

Financial Identity Fraud and Identity Theft Protection Act (FIFITPA)

- **Bills ~ Comprehensive Result = S. 453, Act 190-2008**
 - Adds Chapter 20, Title 37; Amends Title 30, Chapter 2; Title 1, Chapter 11; Title 16, Chapters 11 & 13; Title 39, Chapter 1
 - *Effective dates ~ December 31, 2008 & July 1, 2009*
 - SCDCA = main regulator
- **2013 Amendments: H. 3248**
 - *Definition of PII, etc*
- **2014 Amendments: S. 148 & 2014 Budget Proviso 117.117 (FY15)**
 - *Protected Consumers and State Agency Data Breach Notification*



Financial Identity Fraud and Identity Theft Protection Act (FIFITPA)

- The Act provides several **protections for consumers** in the areas of security freezes (*including protected consumer freeze*), credit reports, records disposal, security breaches and more.
- The Act also places **requirements on businesses and public bodies** with regard to the collection, maintenance and disposal of consumers' personal information.

FIFITPA cont...

- ***Notable Provisions***

- Definitions of Personal Identifying Information
- Records Disposal
- Security Breaches
- Social Security Numbers
- Other

Financial Identity Fraud and Identity Theft Protection Act (FIFITPA)

- Right to Dispute- *FIFITPA Mirrors FCRA Dispute Provisions*
 - Fair Credit Reporting Act
 - ***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

Financial Identity Fraud and Identity Theft Protection Act (FIFITPA)

- Right to Dispute~ **FIFITPA Additions**
 - **If CRA DENIES inaccuracy MUST:**
 - Give basis;
 - Send copy of file, including which creditors were contacted;
 - Give sufficient evidence that info is accurate
 - §37-20-170
 - **If CRA ADMITS inaccuracy MUST:**
 - Correct & contact creditors/requestors from the last six months

New SC Legislation: S.148

- Credit Report & Security Freezes for Protected Consumers (**“Protected Consumer Freeze”**)
- Amends FIFITPA to add a class of protected consumers & provide method of creating credit record for purpose of freezing (preemptive)
- “Protected Consumer”
 - Individual under age 16
 - Incapacitated person w/a guardian or conservator
- **Signed by Gov. on April 7, 2014 ~ Effective Jan. 1, 2015**

Protected Consumer Freeze –

HOW?

- **Contact each of the CRAs:**
 - **TransUnion & Equifax = must complete by mail**
 - **Experian = May submit electronically at experian.com/upload**
- **Required Documentation must be provided for both:**
 - **Parent/guardian submitting the request**
 - **Protected consumer**
- **Process varies a bit among CRAs (certified copies, etc.)**

Are People Getting It?

Protecting Your Identity

--- MAKE IT PART OF YOUR ROUTINE! ---



Worst Passwords of 2014

- SplashData, a company that provides password management apps, released its annual list of the 25 most common passwords found on the Internet.
- Compiled from the more than 3.3 million leaked passwords (mostly from users in North America and Western Europe) during 2014.

Source:

<http://splashdata.com/press/worst-passwords-of-2014.htm>



WORST

PASSWORDS OF 2014



- 1** 123456
- 2** password
- 3** 12345
- 4** 12345678
- 5** qwerty
- 6** 123456789
- 7** 1234
- 8** baseball
- 9** dragon
- 10** football

Worst Passwords cont...

- Passwords made up of common baby names, swear words, famous athletes and movies also recurred throughout the top 100.
 - #25: trustno1
- SplashData reported the number of people using these passwords is down from previous year:
 - Only 2.2 percent of the 3.3. million passwords gathered were on the list – down from prior years

Keep an “open mind” about scammers/identity thieves!

- Phone calls
- Direct mailer
- Text messages
- Email
- Fake Website
- In-person!

SCHEMING
CRAFTY
AGGRESSIVE
MALICIOUS
DON'T LET THEM CON YOU

*No matter the method, the ultimate goal of a scam is to separate you from **your money** and/or to compromise your **personal information!***

Scams



Data
Breaches



Identity
Theft

True Statements:

- ***But they had a Docket Number!***
(debt collection scam)
- ***He had a clipboard.***
(in-home solicitation scam)
- ***They gave me a claim number.***
(lottery scam)
- ***I knew better/I probably shouldn't have...***
- ***I don't care about identity theft, I have bad credit anyway.***

The Attorney General Office Located at:- 1000 Assembly St, Columbia, SC 29201, United States

Attorney Retainer Agreement

PERSONAL AND CONFIDENTIAL PROTECTED UNDER ATTORNEY-CLIENT PRIVILEGE

The purpose of this Attorney Retainer Agreement (“Agreement”) is to set forth our understanding and agreement, pursuant to which our law firm, THE BENNETT LAW FIRM (“Firm”), has agreed to represent _____, (“Client” or “you”) in the following referenced matter(s): _____ (“Matter”). We have, of course, discussed this Matter with you, but it is prudent that our understandings be documented to prevent any confusion or misunderstanding in the future. **We have also recommended that you hire separate counsel to advise you concerning the terms of this Attorney Retainer engagement, and especially the provision concerning arbitration.**

I.

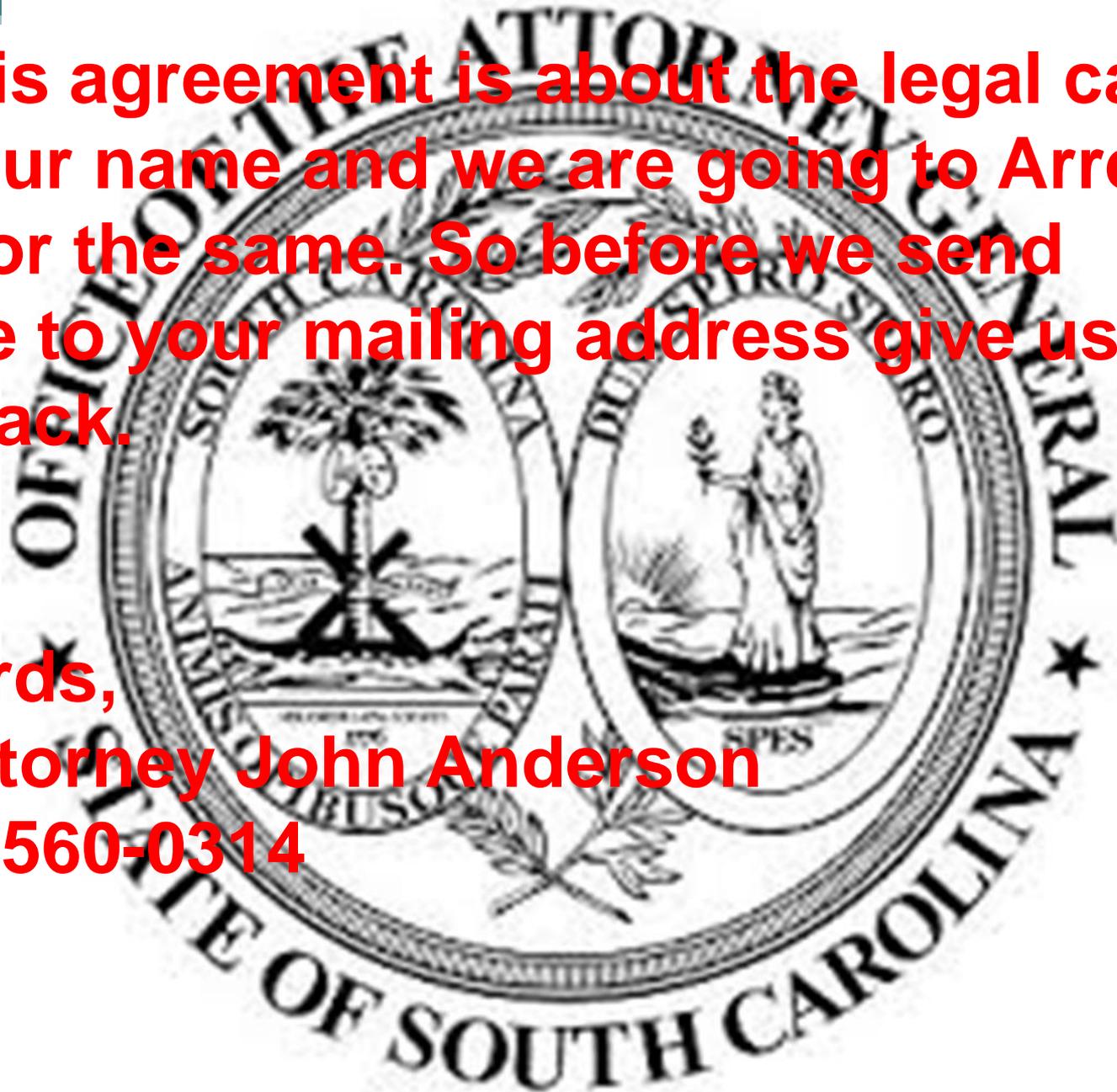
EMPLOYMENT OF ATTORNEY

The Client is in need of legal advice and counsel and hereby employs the Firm under the following conditions:

- A. The Firm will represent the Client in the above-referenced Matter by advising and counseling, by investigating the law and facts, by preparing for any hearing or trial and negotiating with the opposing attorneys, and or by conducting mediation or arbitration if directed by the Client or ordered by the Court, and by representing the Client at the trial if a trial becomes necessary or by negotiating a settlement if so directed by the Client.
- B. The Client hereby authorizes Firm to act as its agent in all matters affecting the above Matter, including but not limited to, the following:
 - (1) To appear before any court or administrative hearing on the Client’s behalf; to negotiate a proper disposition of the above Matter;
 - (2) To waive the Client’s appearance at any proceedings in reference to this Matter;
 - (3) To request that the hearing or setting of the Matter be postponed and reset with the Client’s approval;
 - (4) To appear in any hearing or trial that may be requested; and
 - (5) To further the interest of the Client to attempt to reach a successful resolution of this Matter.
- C. The Client has not employed the Firm to handle the appeal of this Matter or any other matter.

All this agreement is about the legal case on your name and we are going to Arrest you for the same. So before we send police to your mailing address give us a call back.

**Regards,
Sr. Attorney John Anderson
(803)-560-0314**



How Much is Your Data Worth?

- General info about a person, such as their age, gender and location is worth a mere \$0.50 per 1,000 people.
- A person who is shopping for a car, a financial product or a vacation is slightly more valuable to companies eager to pitch those goods.
 - For \$0.26 per person, buyers can access lists of people with specific health conditions or taking certain prescriptions

<http://www.ft.com/cms/s/2/927ca86e-d29b-11e2-88ed-00144feab7de.html#ixzz3PbDG5ZLc> (Source: *Financial Times*, June 2013)

What is your data worth?



DEMOGRAPHICS

FAMILY & HEALTH

PROPERTY

ACTIVITIES

CONSUMER

Data brokers scour public documents, such as birth records and motor vehicle reports, to compile basic data about individuals. It is likely they already know your:

- Age
- Gender
- ZIP code
- Ethnicity
- Education level

Are you a millionaire?

- No
- Yes

What is your job?

Not selected ▼

Are you engaged to be married?

- Yes
- No

\$0.007

Current value of my data



DEMOGRAPHICS

FAMILY & HEALTH

PROPERTY

ACTIVITIES

CONSUMER

Marketers would pay approximately for your data:

\$1.3325

 [Tweet your result](#)

Industry sources suggest the average value per individual is under one dollar.

Typically, marketers buy packages of data per 1,000 consumers. A package of data similar to yours would cost:

\$1332.46

Next: Debt Collection

Scams



Data
Breaches



Identity
Theft

Debt Collection Scams

- **The Pitch:** Fraudsters call saying you owe a debt.
- They may claim to be from a ***state, federal or law enforcement agency.***
 - *They'll try to scare you into settling for a fraction of the 'original' debt.*
- ***Victims have often had a payday loan at one time.***
 - *May have some of your personal information!*



The Defense:

- Ask for written notice of the debt. **NOT an e-mail.**
- **Never** release your financial info to someone you don't know.
 - *Government agents will not try to collect a debt.*
 - *The government won't ask you for personal info via telephone.*
 - *Debt collectors have to comply with federal laws.*
- *Check your credit reports!*



Debt Collection

- SC State law provides consumer protections against unfair debt collection.
 - **The Unconscionable Debt Collection Practices Act** requires collectors to treat consumers fairly and prohibits certain methods of debt collection
 - *Creditors*
 - *3rd Parties*
 - *Repossession Agents*



Debt Collection

- Federal law also gives consumers protection when dealing with debt collectors.
 - **Fair Debt Collection Practices Act (FDCPA)**
 - Broader prohibitions, but only applies to debt collectors hired by the creditor and creditors who use a different business name when collecting debts owed to them (“**third-party**” **debt collectors**) and attorneys who regularly collect debts on a regular basis



FEDERAL TRADE COMMISSION
FOR THE CONSUMER



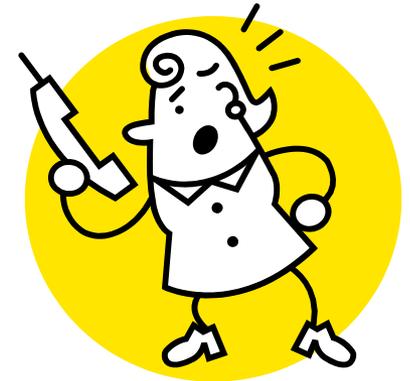
Consumer Financial
Protection Bureau

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...

Harassment

- Debt collectors may not harass, oppress, or abuse you or any third parties they contact. They may not:
 - Use threats of violence or harm
 - Publish a list of consumers who refuse to pay their debts
 - Use obscene or profane language
 - Repeatedly use the telephone to annoy someone



Debt Collection cont...

False statements

Debt collectors may not:

- **Falsely imply that they are attorneys or government representatives**
- Falsely imply that you have committed a crime
- Falsely represent that they operate or work for a credit bureau
- **Misrepresent the amount of your debt**
- **Indicate that papers being sent to you are legal forms when they are not**
- Indicate that papers being sent to you are not legal forms when they are



Debt Collection cont...

Debt collectors also may not state that:

- You will be arrested if you do not pay your debt
- They will seize, garnish, attach, or sell your property or wages, unless the collection agency or creditor intends to do so, and it is legal to do so
- Legal actions, such as a lawsuit, will be taken against you, when such action legally may not be taken, or when they do not intend to take such action

Debt Collection cont...

Debt collectors may not:

- Give false credit information about you to anyone, including a credit bureau
- Send you anything that looks like an official document from a court or government agency when it is not
- Use a false name



Debt Collection cont...

Unfair practices

Debt collectors may not:

- Collect any amount greater than your debt, unless your state law permits such a charge
- Deposit a post-dated check prematurely
- Use deception to make you accept collect calls or pay for telegrams
- Take or threaten to take your property unless this can be done legally
- Contact you by postcard

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

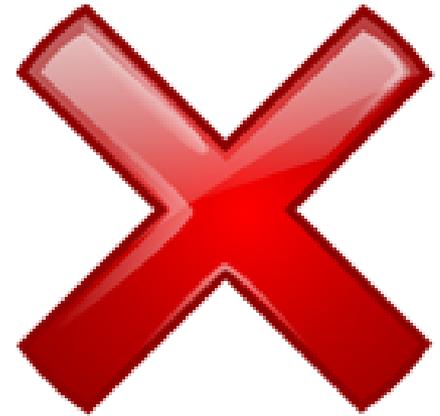
- Letter

- 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 from Debt Collector:

- 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...

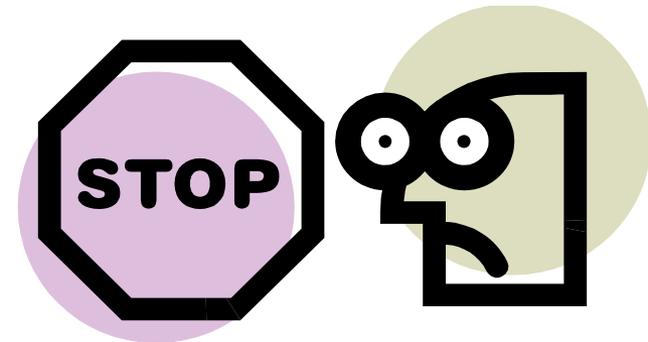
Federal Requirements/ Protections cont...

- *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...

Federal Requirements/ Protections cont...

- You have the right to sue a collector in a state or federal court within one year from the date the law was violated.
- If you win, you may recover money for the damages you suffered plus an additional amount up to \$1,000.
- Court costs and attorney's fees also can be recovered.
- A group of people also may sue a debt collector and recover money for damages up to \$500,000, or one percent of the collector's net worth, whichever is less.

Debt Collection cont...

- South Carolina Consumer Remedies
 - Consumers have a right to sue a collector for violating the Unconscionable Debt Collection Practices Act
 - Can ask for actual damages and a statutory penalty of not less than \$100 and not more than \$1,000.
 - Can be combined with Federal suit



Other SC Debt Collection Laws

Collection on Consumer Debt in SC

2 types of default in consumer transaction

1. Putting collateral @ risk
 - ie: Failing to maintain car insurance
2. Failure to make payments
 - Creditor has the right to file suit to collect on the contract or **repossess** collateral



Other SC Laws cont...

Repossession

Before engaging in self-help or claim & delivery, creditor must give consumer a Right to Cure Notice.

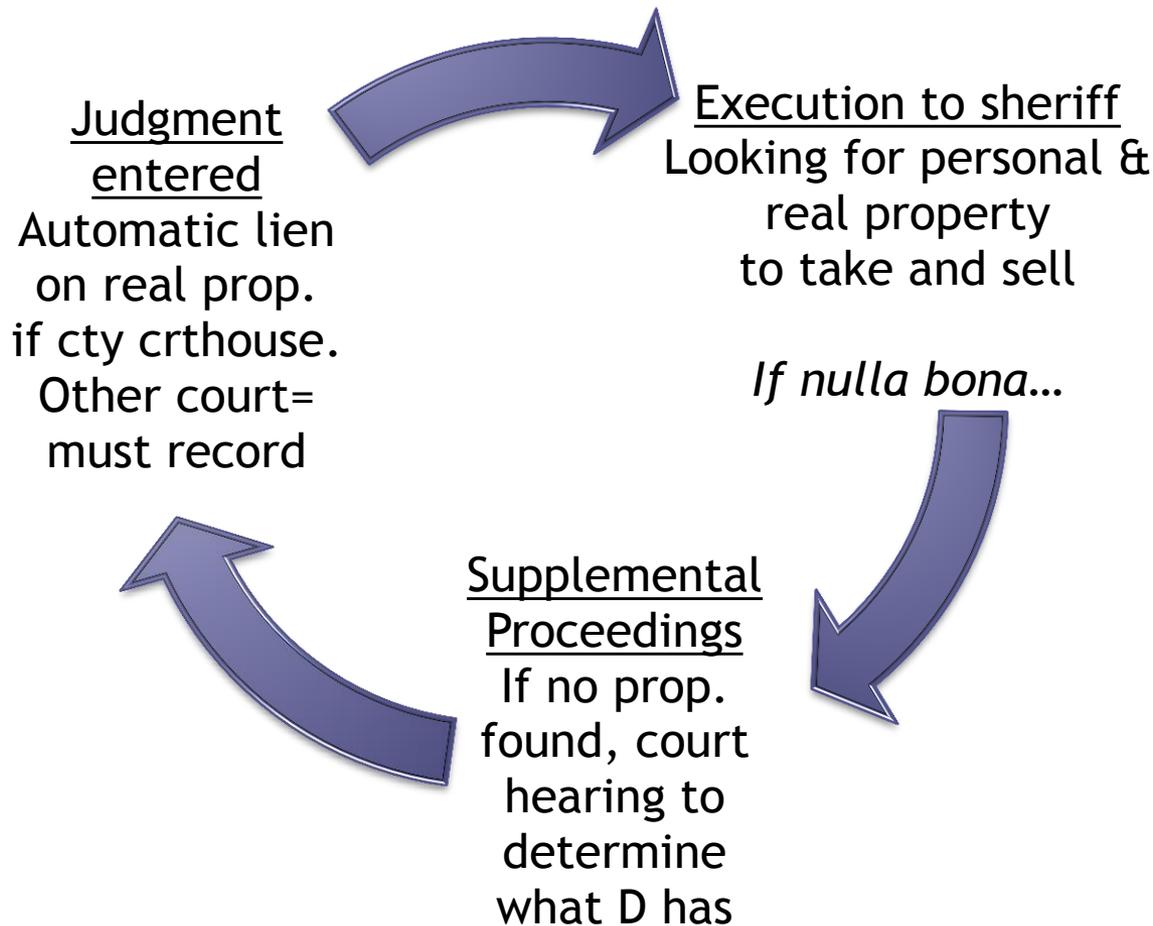
• Right to Cure

- Missing req'd payment ONLY
- Send after 10 days in default (11th 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



Other SC Laws cont...

- **Collection of a Money Judgment**



Other SC Laws cont...

- **Statute of Limitations**

- *Contracts*

- General = 3 years (includes unsecured credit cards)
 - Secured transaction = 6 years (includes store credit card)

- *Real Estate*

- 20 years (mortgage of real property)

- *Judgments*

- 10 years



Other SC Laws cont...

• ***Garnishment***

- Prohibited ***UNLESS***:
 - \$\$ owed to government
 - \$\$ owed for child support or alimony
 - Garnishment order issued and enforced in another state where consumer was a resident



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
 - Try to work out a modified payment plan you can afford
 - Creditors often “write-off” debt after you haven’t paid for 180 days. Results= hit on credit rating, still owe the debt. Most are still willing to work with you.
 - Get any work outs in writing
- Keep Good Records
- Dispute Own Credit Report



Options for Consumers cont...

Hire Help

- Debt Management, Debt Consolidation, etc.
- Credit Repair, etc.
- Debt Settlement, Debt Negotiation, Foreclosure Assistance, etc.



UP NEXT: Credit Counseling in SC

South Carolina Consumer Credit Counseling Act

Purpose:

- Establish 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: Requirements

Be Licensed by SCDCA!!!

- Application for Organization and Credit Counselors
- Bond - at least \$25k
- Financial Education Session
- Budget Analysis/ Contract



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 (only PO Box, 800#)
- Ask for Up Front Payment

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 dependent on the services provided.***

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 (only PO Box, 800#)
- Ask for Up Front Payment



Beware ~ Scams!

We have the SECRET to lowering credit card debt!

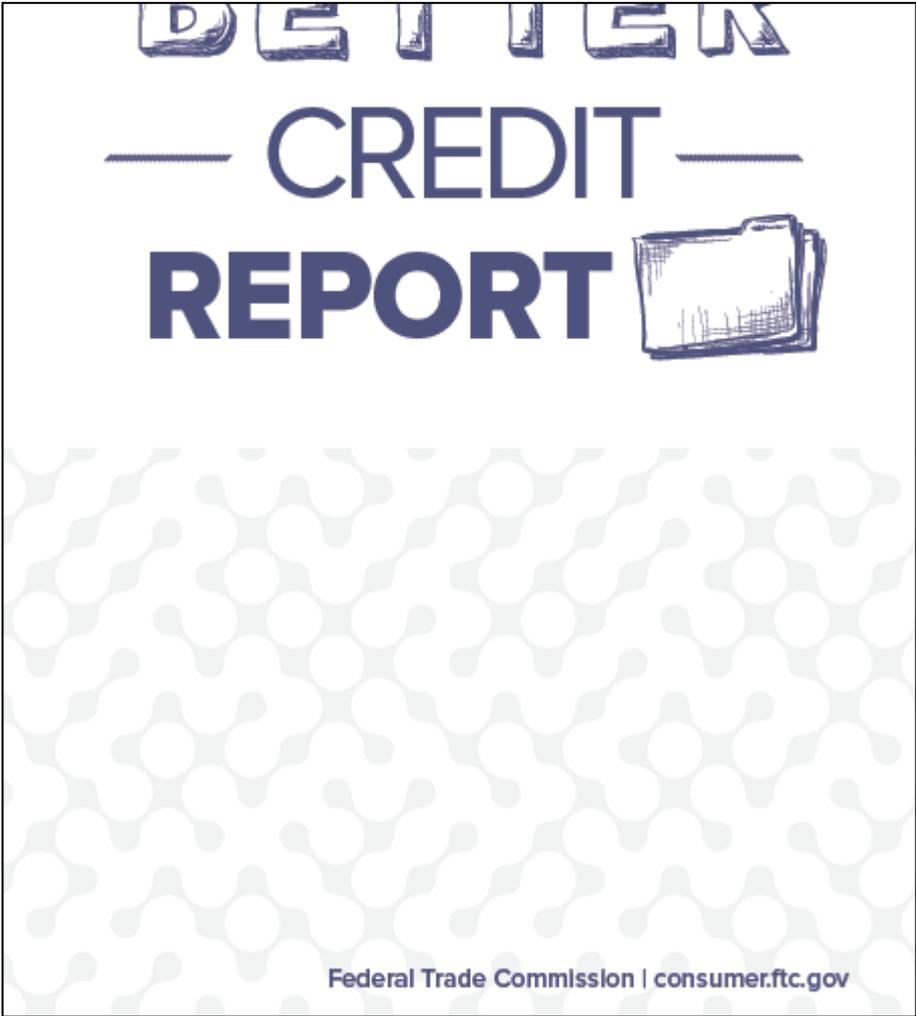
Settle your debt for pennies on the dollar!

Lower your credit card payment guaranteed!



Disputing Items on Credit Report

<https://www.consumer.ftc.gov/articles/pdf-0032-building-a-better-credit-report.pdf>



Resources

- SCDCA Debt Collection Brochure
 - www.consumer.sc.gov
 - “News Releases & Publications”; “Consumer Education”

What is a debt collector not allowed to do?

A debt collector cannot:

- Use obscene or profane language.
- Deposit or threaten to deposit a postdated check before the date on the check.
- Misrepresent the character, amount or legal status of the debt.
- Send a document that appears to be authorized, issued or approved by a state or federal agency or a court.
- Claim or imply that if the debt is not paid, you will be arrested or your wages will be garnished, UNLESS the creditor is legally allowed to do those acts AND intends to do so.

A Special Note About Wage Garnishment

Wage garnishment is prohibited in South Carolina EXCEPT in 3 cases:

- if money is owed to the government
- if money is owed for child support
- if a garnishment order has been entered in another state while the consumer was a resident there but the consumer later moves to South Carolina

Funding provided through a grant from the Central Carolina Community Foundation

Central Carolina Community Foundation

Who can you contact if you believe a debt collector violated the law?

Contact the Department of Consumer Affairs toll-free at 1.800.922.1594 or online at www.sccconsumer.gov.

What about federal law?

The Fair Debt Collection Practices Act also gives consumers protection when dealing with debt collectors. This law has broader prohibitions, but only applies to debt collectors hired by the creditor and creditors who use a different business name when collecting debts owed to them.

Helpful Tip:

Federal law places limits on how long a negative item can be reported on a consumer's credit report. For example, credit reporting agencies cannot report an account that has been put into collections or that has been charged off more than 7 ½ years after it was reported. For more information on the federal law, contact the Department or the Federal Trade Commission.

contact us



[3600 Forest Drive] [Columbia, SC 29204]
[800.922.1594] [www.sccconsumer.gov]

Debt Collection



a publication of the
South Carolina Department of
Consumer Affairs

More Info

WWW.CONSUMER.SC.GOV

The screenshot shows the homepage of the South Carolina Department of Consumer Affairs. At the top left is the SC.GOV logo. To the right are links for 'Online Services' and 'Agency Listing', and a search bar with the text 'Search consumer.sc.gov'. Below this is a banner with the department's name and a palm tree logo. A navigation bar contains 'HOME', 'CONTACT US', 'FILE A COMPLAINT', and 'LICENSEE LOOKUP'. A sidebar on the left lists categories like 'ABOUT US', 'CONSUMER INFORMATION', and 'BUSINESS/INDUSTRY INFORMATION'. The main content area features a 'Welcome' message and a 'What's New?' section with a link to 'Identity Theft Information'. On the right, a 'Helpful Links' section includes 'IDENTITY THEFT RESOURCES', 'Business Complaint Response Portal', 'Search Complaints', 'Credit Card Repayment Calculator', and 'SCBOS Online Filing'. Red arrows point to the 'FILE A COMPLAINT' link, the 'Business Complaint Response Portal' link, and the 'Identity Theft Information' link.

SC.GOV

Online Services Agency Listing Search consumer.sc.gov Search

SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS

QUICK LINKS

HOME CONTACT US FILE A COMPLAINT LICENSEE LOOKUP Font Size: A + A - Reset

Home

Welcome

The South Carolina Department of Consumer Affairs ("DCA"/ "Department") is the state's consumer protection agency. Established in 1974, DCA has more than thirty-five years of experience in protecting South Carolina consumers while recognizing those businesses that act honestly and fairly.

The Department accomplishes its mission by: 1.) acting as an effective regulator, 2.) providing complaint mediation services that are unmatched at both state and federal levels, 3.) saving millions for both consumers and small businesses through insurance rate filing intervention, 4.) serving as an educational portal for consumers and businesses alike, and 5) informing the public on effective ways of preventing and mitigating identity theft situations.

Click [here](#) to learn more about the agency.

What's New?

Identity Theft Information

State-Provided Identity Protection Service with

Helpful Links

IDENTITY THEFT RESOURCES

[Business Complaint Response Portal](#)

[Search Complaints](#)

[Credit Card Repayment Calculator](#)

[SCBOS Online Filing](#)

Tweets Follow

SC Consumer Affairs @SCDCA 3h

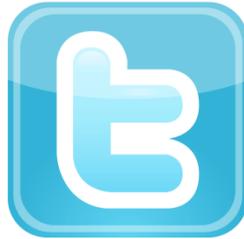
What you need to know about price gouging as the winter storm approaches! #SEstorm #SCTweetshttp://ow.ly/tw8FQ

Connect With Us!



Check out our YouTube channel.

[Youtube.com/scdcatv](https://www.youtube.com/scdcatv)



Look to Twitter for recent scam alerts and the latest consumer news. [@SCDCA](https://twitter.com/SCDCA)



Visit Facebook for updates and educational materials. [Facebook.com/scdca](https://www.facebook.com/scdca)

Marti Phillips

803-734-4241

mphillips@scconsumer.gov



Toll Free: 1-800-922-1594

Fax: 803-734-4229

www.consumer.sc.gov