

# Bankruptcy Litigation Model

## VOLUME 1

### Forms & Form Letters

### For Ipad

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# Volume 1 – Forms and Form Letters

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# Intake Forms, Fee Agreements and Letters

## INITIAL CASE FOLDER SET UP

341 Meeting

BAPCPA Deadlines

Claims

- Notices of Appearance
- Proofs of Claims
- Requests for Notice

Credit Counseling

Debtor Correspondence

Documentation

- DL/SS Cards
- Current Monthly Income
- Tax Returns
- Bank Statements
- Bills & Statements
- Credit Reports
- Vehicle Insurance/Reg Cards/Titles
- Mortgage Statement/DOT
- Home Owners Insurance
- Foreclosure Docs
- Credit Counseling/Financial Mgmt Certs
- DSO
- Life Insurance
- 401k/Retirement
- Fees/First Money Received

Initial Intake Memo

Insurance Matters

- Creditor Correspondence
- Debtor Correspondence
- Requests & Notices

Memos, Note & emails

Mortgage Defaults

- Creditor Correspondence
- Debtor Correspondence
- Default Notices

Motions & Pleadings

Orders & Judgments

Requests & Notices

Trustee

Worksheet for Chapter 13

## DEADLINES AND CALENDAR REMINDERS

Date of Filing		1/1/2011
Meeting of Creditors		2/17/2011
Chapter 13 Plan Confirmed		2/24/2011
Last date to file Section 521(a) documents to avoid automatic dismissal	45 days	2/15/2011
File with petition or within 45 days pay stubs received after this date	60 days	11/2/2010
Provide trustee a copy or transcript of most recent tax return by	7 days	2/10/2011
File copy of any Federal tax returns that come due while case is pending		1/1/2011
Credit counseling briefing not before this date	180 days	7/5/2010
Last date to file credit briefing certificate if waiver received	30 days	1/31/2011
Complete financial management course after 1st meeting of creditors	45 days	4/3/2011
Last date for US Trustee to file statement of abuse	10 days	2/27/2011
Last date for US Trustee to move to dismiss for abuse	30 days	3/29/2011
Certain property becomes property of the estate if acquired post-petition	180 days	6/30/2011
Education IRA or State Tuition program up to \$5K excluded from estate	365 days	1/1/2010
Unlimited Education IRA or State Tuition Program excluded from estate	720 days	1/11/2009
No stay if order of eviction and no deposit with court within	30 days	1/31/2011
No stay if prior "in rem" order entered for bankruptcy abuse within	2 years	12/31/2008
No stay beyond 30 days if prior case dismissed within	1 year	1/1/2010
No stay where 2 or more prior cases dismissed within	1 year	1/1/2010
Move to reinstate stay within	30 days	1/31/2011
File statement of intentions (secured property)	30 days	1/31/2011
Enter into reaffirmation/redemption agreement	45 days	2/15/2011
Last day for trustee to move to reclaim collateral	45 days	2/15/2011
Chapter 13: Cram down possible if car purchased prior to	910 Days	7/5/2008
Chapter 13: Cram down possible if non-car property purchased prior to	1 year	1/1/2010
Chapter 13: Proof of required insurance coverage	60 days	3/2/2011
Chapter 13: File any tax returns due within 4 years pre-petition	30 days	2/17/2011
Chapter 13: File yearly updated "I" & "J" schedules before anniversary	45 days	4/10/2010
Chapter 13: File claim on behalf of tax creditor who has not filed	210 days	7/30/2011
Last date to file objections to discharge/dischargeability	60 days	4/18/2011
Cash advance more than \$750 presumed non-dischargeable if after	70 Days	10/23/2010
Purchase of luxury goods presumed non-dischargeable if after	90 days	10/3/2010
No new Ch 7 discharge if prior Ch 7 filed after	8 years	1/1/2003
No new Ch 7 discharge if prior Ch13 paid <70% and filed after	6 years	12/31/2004
No new Ch 13 discharge if prior 7,11 or 12 filed after	4 years	1/1/2007
No new Ch 13 discharge if prior Ch 13 filed after	2 years	12/31/2008
Claim state exemptions if domiciled here since	730 days	1/1/2009
Or state of longest domicile for the 180 days prior to the 730 days	910 days	7/5/2008
Homestead exemption restricted if fraudulent transfer after	10 years	12/31/2000
Homestead capped at \$125K if acquired since	1215 day	9/4/2007
\$125K homestead cap if criminal act,intentional tort =serious injury since	5 years	1/1/2006

# INITIAL INTERVIEW QUESTIONNAIRE

Today's Date:
Last Name:

Are you married?	Yes	No
If so, are you separated?	Yes	No

How many children do you have?	
How old are your children?	

What county do you live in? (Circle One)		
Alexander	Cleveland	Mitchell
Allegheny	Gaston	Polk
Anson	Haywood	Rutherford
Ashe	Henderson	Transylvania
Avery	Iredell	Union
Buncombe	Lincoln	Watauga
Burke	McDowell	Wilkes
Caldwell	Madison	Yancey
Catawba	Mecklenburg	

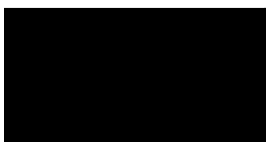
**Please take your time to complete the attached forms.  
We need full and complete answers.**

## PLEASE NOTE:

**Interviews will be conducted in the order in which the completed Initial Interview Questionnaire is turned in.**

**Please be patient, however, as some interviews take longer than anticipated and we sometimes get a little behind schedule.  
We apologize for any inconvenience.**



	Time of appointment:	Time questionnaire handed in:
	Intake.doc (02-01-09)	Did client come in due to a  <b>FFA LETTER ?</b> (If so, circle "FFA Letter")



# LAW OFFICES OF

## Gardner & Gardner, PLLC

Welcome to our office.  
Please take a few minutes to complete this questionnaire.  
Thank you.

Today's Date:	
---------------	--

### INFORMATION ABOUT YOU

Full Name:			
Mailing Address:			
Home Telephone:		Cell Telephone:	
Work Telephone:		Fax Number:	
Social Security #:		Date of Birth:	
E-Mail Address:			

### INFORMATION ABOUT YOUR SPOUSE

Full Name:			
Mailing Address:			
Home Telephone:		Cell Telephone:	
Work Telephone:		Fax Number:	
Social Security #:		Date of Birth:	
E-Mail Address:			

### WHY HAVE YOU COME TO US?

--

### WHO MAY BE THANK FOR REFERRING YOU TO US?

Full Name:		For office use only:					
Telephone Number:		Interviewer:					
Mailing Address:		Chapter:	7	13	FFA		
		Office:	R	D	F	W	
		Filing Status:	J	SF	SM		
		Processor:					

# IMPORTANT QUESTIONS:

Circle

I have read the following questions & answered each question truthfully.  
I understand that this information is confidential. PLEASE SIGN HERE: \_\_\_\_\_

Yes	No	1. Do you receive any money from an annuity or a trust?
Yes	No	2. Have you transferred any money or property into a trust of any kind?
Yes	No	3. Do you have anything in your <b>possession</b> that really belongs to someone else?
Yes	No	4. Does anyone have <b>possession</b> of anything that really belongs to you?
Yes	No	5. Do you have any property <b>titled in your name</b> that really belongs to someone else?
Yes	No	6. Have you sold or transferred any property in the last <b>48 months</b> ?
Yes	No	7. Have you made any large purchases in the last <b>90 days</b> ?
Yes	No	8. Have you taken out any loans or cash advances in the last <b>90 days</b> ?
Yes	No	9. Have you paid back friends or relatives more than <b>\$300</b> in the last <b>12 months</b> ?
Yes	No	10. Have you given away to friends or relatives anything worth more than <b>\$300</b> in the last <b>48 months</b> ?
Yes	No	11. Have you given friends or relatives a lien or mortgage on anything you own in the last <b>48 months</b> ?
Yes	No	12. Has any creditor ever taken back, repossessed or foreclosed on your car, truck or home?
Yes	No	13. Have you entered into any kind of <b>forbearance agreement</b> regarding overdue payments?
Yes	No	14. Is anyone threatening to take your car, truck, or home?
Yes	No	15. Did you come to us to try to save your home?
Yes	No	If so, <b>is your home in foreclosure?</b> If so: <b>Hearing date:</b> _____ <b>Sale date:</b> _____
Yes	No	If so, is there someone else who owns the home with you?
Yes	No	16. If someone owns the home with you, has the other owner ever filed bankruptcy? If so, <b>when?</b> _____ Did that case get <b>dismissed?</b> _____ If so, <b>when?</b> _____
Yes	No	17. Are you separated from your spouse or contemplating separation? <b>Spouse's Name:</b> _____
Yes	No	18. Are you required to pay any debts under a Separation Agreement or Divorce Decree?
Yes	No	19. Do estranged or ex-spouses have any claims against you?
Yes	No	20. Are you required to pay child support <u>or</u> alimony? If so, <b>how much:</b> \$ _____ / month
Yes	No	21. Do you owe any <b>overdue</b> child support <u>or</u> alimony? If so, <b>how much:</b> \$ _____
Yes	No	22. Are your wages being garnished to pay <b>current</b> or <b>overdue</b> child support?
Yes	No	23. Did you transfer any of your property to your ex-spouse?
Yes	No	24. Have you had any car accidents in the last <b>4 years</b> that were your fault?
Yes	No	25. Are any of your debts being paid by payroll deduction or military allotment?
Yes	No	26. Are you repaying any <b>401k, 403b or other loans</b> against your retirement? \$ _____ / month
Yes	No	27. Are you contributing to a <b>401k or 403b plan</b> ?
Yes	No	28. Have you given any loan company a list of your household goods?
Yes	No	29. Have you listed any motor vehicle as collateral for a personal loan?
Yes	No	30. Have you co-signed a loan or credit card for anyone?
Yes	No	31. Has anyone co-signed a loan or credit card for you?
Yes	No	32. Has anyone put up a CD, bank account, house or other property so you could get a loan?
Yes	No	33. Has anyone served you with Court papers or filed a lawsuit against you in the last <b>3 years</b> ?
Yes	No	34. Does anyone have a judgment against you?
Yes	No	35. Have you owned a business at any time within the last <b>6 years</b> ?
Yes	No	36. If so, do you owe any taxes because of that business (income, withholding, employment or sales?)
Yes	No	37. Are there any <b>Federal</b> or <b>State</b> tax returns which you have <u>not</u> filed? If so, <b>which?</b> _____
Yes	No	38. Do you owe any federal or state income taxes?
Yes	No	39. Do you owe any real estate or personal property taxes?
Yes	No	40. If you own a home, are your <b>real estate taxes</b> included in your mortgage payment?
Yes	No	41. Are your wages being garnished to pay back taxes?
Yes	No	42. Have you ever filed bankruptcy before? If so, <b>how many times?</b> _____ <b>When?</b> _____ If so, what was the final result? _____
Yes	No	If so have you had a bankruptcy case <b>dismissed</b> (kicked out) in the last <b>12 months</b> ?

## IMPORTANT QUESTIONS (continued)

Yes	No	43. Do you own any property in another County or State?					
Yes	No	44. Do you owe any <b>Court ordered restitution or fines</b> ?					
Yes	No	45. Do you have any unpaid student loans?					
Yes	No	46. Do you expect any gifts or an inheritance in the next <b>12 months</b> ?					
Yes	No	47. Do you have any car accident, Worker's Comp, or other personal injury claims against anyone?					
Yes	No	48. Do you have any <b>DUI</b> tickets or owe money as a result of an accident while <b>DUI</b> ?					
Yes	No	49. Do you owe any money on any <b>pay-day</b> loans?					
Yes	No	50. Have you pawned anything? If so, what?					
Yes	No	51. Do you have any <b>unpaid bad checks</b> ? If so, <b>how many</b> ?		Total amount: \$			
		If so, <b>how many months ago did this happen</b> ?		months ago.			
Yes	No	52. Do you have a right to an inheritance or some "heir" property because someone died?					
Yes	No	53. Do you owe Homeowner Association Dues? If so, <b>how much</b> ?		\$ / month			
Yes	No	54. Have you lived anywhere other than North Carolina, at any time, during the last 2 years?					
		If so: What other State or Country did you live in the last 2 years?					
		Location:					
		From approximately when to when?		to			
		If so: Where were you living between 2 and 2-1/2 years ago: ( <b>Note:</b> List all such locations.)					
		Location:					
		From approximately when to when?		to			
Yes	No	55. Have you used a credit card to pay any taxes in the last 3 years?					
Yes	No	56. Did you purchase any of your motor vehicles in the last 2-1/2 years?					
		If so: Please fill in the following chart for each of these vehicles. (Note: Just the ones you have that were purchased in the last 2-1/2 years.)					
		Year, Make and Model	Year Purchased	Do You Owe Money on it?	If so, how many more months do you owe on it?		
				Yes      No			
				Yes      No			
				Yes      No			
<b>Important</b>		57. What caused you to fall behind on your bills?					
<b>Important</b>		58. What's different now, compared to the time when you fell behind on your bills?					
List all employers you have worked for in the last 6 months:							
		Me		My Spouse			
		1.		1.			
		2.		2.			
		3.		3.			
Yes	No	59. Do you have <b>visitation rights with any children</b> ? If so, please fill in the following:					
		Name	Age	How Often?	Name	Age	How Often?
		1.			3.		
		2.			4.		
How many people are living in your home? (Including you, but NOT including above children)							
		Who is living in your home, other than you? (Please fill in the following)					
		Name	Age	Relationship to You	Name	Age	Relationship to You
		1.			4.		
		2.			5.		
		3.			6.		
(When you are done with this page, please continue on the next page.)							

## IMPORTANT QUESTIONS (continued)

Yes	No	60. Is there anyone who claims you were involved in any kind of fraud, lying, theft, deception or embezzlement?	
		If so, please explain:	
Yes	No	61. Did you purchase any furniture, computers, appliances or other equipment in the last 12 months?	
		If so, do you still owe money on any of these purchases? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		If so, please fill in the following:	
		Name of Creditor	Date of purchase (Month & Year)
			Amount you owe
			\$
Yes	No	62. Have you <b>"refinanced"</b> the loans on any of your vehicles? <span style="float: right;">(Re: 13 <u>only</u>)</span>	
		If so, which vehicles?	
Yes	No	63. Have you taken out any loans, where you listed one or more of your vehicle as collateral?	
		If so, please fill in the following to tell us about each of these loans? <span style="float: right;">(Re: 13 <u>only</u>)</span>	
		Name of Creditor	Which vehicle (Year / Make / Model)
Yes	No	64. Did you get a refund back on last year's Federal or State income taxes? <span style="float: right;">(Re: 7 &amp; 13)</span>	
		If so, approximately how much did you get back? Federal: \$      State: \$	
		If so, do you expect to get about the same amount of refund when you file your tax returns for this year?	
		<b>Yes</b> <b>No</b> <b>I don't know</b>	
		If your answer is "No", what is different about your situation this year compared to last year?	
Yes	No	65. Do you own a home? <span style="float: right;">(Re: 13 <u>only</u>)</span>	
		If so, do you have any <b>"adjustable rate mortgages"</b> ? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		Or, any <b>"interest only"</b> mortgages? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		⇒ If either answer is "yes", has your payment already increased <b>at least once</b> ? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		⇒ If your payment has NOT YET INCREASED <b>at least once</b> , please fill in the following:	
		Name of your Mortgage Lender	Date of Mortgage (Month & Year)
			Total Amount Owed
			Date Mortgage Payment Is Due to Increase
			\$
			\$
		FOR OFFICE USE: WE ARE ONLY CONCERNED WITH THE FIRST (1ST) MORTGAGE INTEREST RATE RESET. THIS IS USUALLY THE BIG ONE THAT INCREASES THE MORTGAGE PAYMENT THE MOST. SUBSEQUENT RESETS ARE GENERALLY SMALLER AND MORE AFFORDABLE.	
Yes	No	66. Do you owe any money on your vehicles? <span style="float: right;"><b>Yes</b>      <b>No</b></span> <span style="float: right;">(Re: 13 <u>only</u>)</span>	
		If so, which vehicle? _____ For Office Use: Asset # _____	
		Did you <b>"trade in"</b> any vehicles when you bought this vehicle? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		If so, did you owe any money on the "traded in" vehicles? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		If so, was the amount owed <u>more</u> than what they gave you on your trade-in? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		If so, approximately how much more (if you remember)? \$ _____	
		Do you have a copy of the purchase agreement at home? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		If so, which vehicle? _____ For Office Use: Asset # _____	
		Did you <b>"trade in"</b> any vehicles when you bought this vehicle? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		If so, did you owe any money on the "traded in" vehicles? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		If so, was the amount owed <u>more</u> than what they gave you on your trade-in? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		If so, approximately how much more (if you remember)? \$ _____	
		Do you have a copy of the purchase agreement at home? <span style="float: right;"><b>Yes</b>      <b>No</b></span>	
		FOR OFFICE USE: (" <b>910</b> " <b>CLAIMS ONLY</b> ): IN CH. 13, IF THE AMOUNT OWED ON THE TRADE-IN WAS SUBSTANTIALLY MORE THAN THE TRADE-IN ALLOWANCE, WE MAY BE ABLE TO SAVE THE CLIENT SOME ADDITIONAL MONEY BY SEPARATING OUT THE PMSI PART FROM THE NPMSI PART, HOWEVER, TO FIND OUT FOR SURE, WE WOULD NEED TO SEE THE PURCHASE AGREEMENT. IF NOT APPLICABLE, CHECK HERE [      ].	

(When you are done with this page, please continue on the next page.)

# MONTHLY LIVING EXPENSES:

Yes

No

- Do you live with a spouse, boyfriend, girlfriend or other adult AND "pool" your income?  
➤ If "YES" to both, please circle "Yes" box at left & include below that person's expenses with yours.

For Office Use	MT	Monthly	Type of Expense
	LS/H		<b>Home:</b> Rent/Home Mortgages/Mobile Home payment (include lot rent, if any)
	Y		<b>Home:</b> Homeowner's Association Dues
	LS/H		<b>Utilities:</b> Home Electricity/Gas/Heating Oil
	LS/H		Water and Sewer/Garbage Pickup
	LS/H		Home Phone (Land Line)
	LS/H		Cable & Satellite (NOT including Internet)
	LS/H		Cell Phones
	Y		Internet
	LS/H		Home Maintenance (needed repairs & upkeep)
	Y		Home Security Alarm System
	NS		Laundry & Dry Cleaning Outside Home
	NS		Clothing/Shoes & Clothing Accessories
	Y		Religious/Tithing/Charitable Contributions
	Y		Medical & Dental Expenses ( <b>Amounts NOT paid by insurance or health savings acct</b> )
	NS		Food & Grocery Store Items ( <b>Number of people being fed:</b> _____)
	Y/O		Extra Food (Prescribed or required special dietary needs)
	NS		Food: Away from home
	NS		Food: School Lunches for Children
	NS		Recreation/Clubs/Entertainment/Newspapers/Magazines/Alcohol/Tobacco
	LS/T		Transportation ( <b>Including Cost of Gas/Vehicle Repairs &amp; Upkeep/Cab or Bus Fare</b> )
	////		<b>Insurance:</b>
	LS/H		Property Insurance on home (Is it included in house payment? Yes No)
	LS/H		Renter's Insurance
	LS/H		Car/Truck Insurance (Number of vehicles insured: _____)
	Y		Term Life Insurance (The kind with NO cash value)
	N		Whole Life Insurance (The kind with cash value)
	Y		Disability Insurance
	Y		Health & Dental (Other than insurance deducted from wages)
	////		<b>Taxes (Other than taxes deducted from wages):</b>
	Y/S		Real Property Taxes (Yearly amount \$ _____)
	Y/S	Important:	➤ <b>Is this tax included in house payment? Yes No</b>
	Y/P		Personal Property Taxes (On vehicles, mobile homes, business equip.)
	Y/P		Income Taxes: <b>Overdue</b> for Prior Years
	Y/T		Income Taxes: <b>Estimated Re: Current Business Income</b> (NOT Withheld)
	Y/T		Income Taxes: <b>Current Under-Withholding Adjustment</b> (Approximate)
	Y/T		Income Taxes: ( <b>For Office Use</b> ) <b>Approx. UNDER-WITHHOLDING</b>
	Y/P		Withholding or Sales Taxes: <b>Current or Overdue (From a Business)</b>
	////		<b>Installment payments: (Purchases &amp; Leases)</b>
	Y/S		Motor Vehicle 1 (Purchase)
	Y/S	Important:	➤ <b>How many more payments are there?</b> ____ at what Interest Rate? ____%
	Y/S		Motor Vehicle 2 (Purchase)
	Y/S	Important:	➤ <b>How many more payments are there?</b> ____ at what Interest Rate? ____%
	LS/T		Motor Vehicle 1 (Lease)
	LS/T		Motor Vehicle 2 (Lease)

	Y/S		Motor Vehicle 3 (Staff: Why needed?/Who is it for?/How Many More Payments?)
	Y/S		Motor Vehicle 4 (Staff: Why needed?/Who is it for?/How Many More Payments?)
	Y/S		Motor Vehicle 5 (Staff: Why needed?/Who is it for?/How Many More Payments?)
	Y/S		House, Mobile Homes or Land (Other than your home)
	Y/S		Furniture, Appliances & Jewelry payments (Store Names: )
	Y/S		Boat/4-wheeler/Camper/Other recreational vehicles
	Y/S		Tax, Mechanic's and/or Judgment liens on real property obligations (Chapter 7 only)
	Y/S		Cross-Collateral secured liens on vehicles obligations (Chapter 7 only)
	Y/P		Alimony & Child Support Paid to others (Other than deducted from Wages)
	Y		Criminal Restitution Payments (Examples: Unemployment fraud, DUI, Embezzlement)
	Y		Other Court-Ordered Payment (For example: Debts pursuant to Divorce related order)
	N		Payments for Support of Dependents NOT living in your home
	Y		Continuing care/support of elderly, ill, or disabled family OR member of household
	Y		Business Expenses (sole proprietorship) --- <b>Ask for Business Budget</b> form to fill out.
	Y		Child Care & Babysitting costs
	N		Co-signed debts that must be paid
	N		Student Loans (Ch 7 only) Note to Staff: (Can't be paid outside Ch. 13 plan)
	LS/T		Prospective Vehicle (Anticipated Payment & additional cost of insurance)
	NS		Pet Expenses (Food & Vet Bills) (Describe: )
	Y**		Children under age 18: School/Sports Activities/Supplies/Travel/Expenses or Tuition
	NS		Emergencies
	NS		Miscellaneous
	NS		Personal Grooming Services
	Y		Education as condition of employment (For example: To keep license or certification)
	Y		Education for physically/mentally challenged child (Where NOJ public school services)
	Y		401K or 403B Retirement Loan Repayments <b>Means Test line # 7(26) 13(55)</b>
	?***		<b>Other Necessary Expenses (Describe: )</b>
	?***		<b>Other Necessary Expenses (Describe: )</b>
			<b>Office Use: SEPARATE EXPENSES (NON-Filing Spouse) (See **** below)</b>
			<b>TOTAL MONTHLY EXPENSES</b>

**For Office Use Only:**

- \* Where the spouse is not going to file bankruptcy, this can be a crucially important category, which includes all of the spouse's non-household expenses for such things as credit cards, medical bills, vehicle expense, personal grooming, etc., etc. For purposes of the Means Test, we have to list the non-filing spouse's income, but we can back out using this item all income not contributed to the household. It would probably make sense to have the non-filing spouse set up a separate bank account to deposit the non-filing spouse's income in.
- \*\* Must bring proof to Court meeting (341 Meeting)
- \*\*\* Means Test: (1) Expense must provide for the health and welfare of debtor and/or debtor's family, or  
(2) Expense must be necessary for the production of income
- \*\*\*\* Filling in this line assumes we are going to include the Non-Filing Spouse's income on Schedule I. To get this number, Complete our "**Separate Monthly Debts & Expenses**" form. In addition, you must create a 2nd Schedule J using BestCase to itemize the Non-Filing Spouse's separate monthly debts and expenses.

**Legion:**

- MT = Mean Test allowance  
NS = National Standards  
LS/H= Local Standards for Housing & Utilities  
LS/T= Local Standards for Transportation  
O = Other Necessary Expense per Internal Revenue Manual (Must be necessary/Must be actual expense)  
Y = Allowed as Means Test expense. N = Not allowed as Means Test expense.  
Y/S = Allowed as a Secured debt  
Y/P = Allowed as a Priority debt  
Y/T = Allowed on Means Test under "Taxes" category  
? = Unknown/Must fall within IRM Other Expense category as needed to provide for health and welfare of family or for the production of income.

## **Max Gardner's Master List of OFTEN OVERLOOKED EXPENSES**

Bank charges (monthly checking account fees, ATM fees, overdraft fees, new check orders, online bill-pay fees, etc.)	Home office supplies (computer, printer, toner, ink, paper, software, general office supplies, etc.)
Tax return preparation fees	Postage
Other accounting fees	Work expenses (including lunches and snacks)
Ongoing legal fees and costs	Parking, tolls
Medical/hospital/vision/dental/specialist/physical therapy/chiropractor/mental health visits	Job hunting (resumes, mileage, postage, fees, stationery)
Medical equipment (canes, crutches, wheelchair, brace, oxygen, etc.)	Home alarm system maintenance and fees
Eye glasses (care and replacement)	Home landscaping and lawn care (lawnmower, trimmer, gas, mulch, etc.)
Contact lenses and solutions	Home maintenance (pressure washing, painting inside/outside, etc.)
Dental hygiene products (toothpaste, whiteners, brush, floss, mouthwash)	Pool care
Physical therapy products (TENS unit, weights, strengthening aids, etc.)	Motor vehicle oil changes
Batteries for hearing aids and other health care devices	Tires
Non-prescription medications, antacids	Car washes
Pain killers (Tylenol, aspirin, Excedrin, etc.)	Other motor vehicle maintenance (brakes, tire rotation, washer fluid, etc.)
Cold, allergy and sinus medications	Annual registration cost for Motor Vehicles
Vitamins	Inspection, preparation costs
Humidifier, neti pot, dehumidifier (and supplies)	OnStar System payments
Weight loss programs and aids	EZ Pass costs

Hair care and personal grooming products	Pet food
Beauty/barber shop	Veterinary visits (including regular shots)
School meals (lunches, breakfasts at school)	Pet grooming and care
School uniforms	Dry cleaning, laundering
Books and school supplies	Shoe shines
Musical/band/orchestra instrument (purchase or rental, repairs and maintenance, piano tuning, strings, etc.)	Clothing alterations
School fees (book fees, music fees, sports fees, field trips, etc.)	Monthly magazine and/or newspaper subscriptions
Before/after school care	Monthly website subscriptions
College expenses (dorm furnishings, fees, books, laundry, etc.)	Church tithes
Boy/Girl Scout programs	Charitable donations
Music lessons	Office and school contributions for gifts, charity, projects
Music books	Christmas, birthday, anniversary gifts
Dance lessons/classes/recital fees/competition fees	Cigarettes
Dance shoes, attire, costumes, make-up	Beer, wine, alcohol
Sport participation fees	Life insurance
Sporting equipment, clothing (cleats, bats, balls, gloves, rackets, helmets, etc.)	Children's allowance
Summer camp and summer activities	Babysitters
Gym/YMCA fees	Pre-paid cell phones
Other membership fees	Emergency cell phone notification system for a senior citizen or anyone with a major disability





## **CHECKLIST FOR MANDATORY DOCUMENTS**

Debtor: \_\_\_\_\_ No: \_\_\_\_\_

(X=Attached; N/A=Not Applicable)

### **A. INCOME/DEDUCTIONS:**

1. \_\_\_\_\_ Paycheck stubs last 6 months and any year to date. The stubs should have the following information. If they do not then we will need documents showing each of the following.
  - Retirement or pension plan contributions in the last 6 months.
  - Retirement loan currently owed.
  - Insurance that is being deducted from your paycheck.
  - Any mandatory or voluntary deduction from your pay.
  - Any wage garnishment order.
  - Commissions or bonuses received in last 6 months.
2. \_\_\_\_\_ Unemployment, child or spousal benefits received in the last 6 months.
3. \_\_\_\_\_ Soc. Sec. or SS Disability payments received by anyone in household.
4. \_\_\_\_\_ Pension or retirement benefits received in the last 6 months.
5. \_\_\_\_\_ Bank interest or stock dividend income received in the last 6 months.
6. \_\_\_\_\_ Lease or rental income received.
7. \_\_\_\_\_ If you have your own business, a year-to-date P&L Statement.

### **B. FINANCIAL:**

1. \_\_\_\_\_ Tax returns (both federal and state) for the last four years.
2. \_\_\_\_\_ 12 months' monthly statements from all financial accounts.
3. \_\_\_\_\_ Last 2 (two) months statements for every bill you owe.
4. \_\_\_\_\_ Utility bills for the past 2 months (Just the face page).
5. \_\_\_\_\_ Last 2 months vehicle and mortgage statements.
6. \_\_\_\_\_ The last 2 (two) statements for any IRA, 401K or medical savings plan.
7. \_\_\_\_\_ Education IRA, Education Savings Account or tuition program
8. \_\_\_\_\_ Any bankruptcy you filed in the last eight years.

### **C. MISC. INSURANCE (Declarations page for the following insurances):**

1. \_\_\_\_\_ Articles
2. \_\_\_\_\_ Health and Dental
3. \_\_\_\_\_ Homeowners (property)/Earthquake or Renter's

**D. VEHICLES** (Cars, boats, quads, motorcycles, motor homes etc.):

1. \_\_\_\_\_ Contracts and leases during the past four years
2. \_\_\_\_\_ Registrations for each vehicle, motor home or mobile home.
3. \_\_\_\_\_ Insurance (Declarations Page)

**E. REAL PROPERTY** (Homes, Mobile Homes, Time Shares, Vacant Land, Burial):

1. \_\_\_\_\_ Deeds of Property owned or transfer papers from last 10 years.
2. \_\_\_\_\_ The last Property Tax bill for current ownership.
3. \_\_\_\_\_ Information regarding refinancing within the last three years.
4. \_\_\_\_\_ Foreclosures, repossessions, garnishments, attachments 1 yr.

**F. PERSONAL PROPERTY:**

1. \_\_\_\_\_ Documents concerning any personal property that has cash value.
2. \_\_\_\_\_ Any document evidencing a Secured Transaction for the last year.  
(Secured Transaction is any loan secured by property of any kind.)

**G. DISSOLUTION PROBLEMS:**

1. \_\_\_\_\_ Orders of Support or letter from family law attorney as to potential.
2. \_\_\_\_\_ Dissolution Agreements or Stipulations
3. \_\_\_\_\_ 6 (Six) months evidence of payment of Support Obligations.
4. \_\_\_\_\_ Support you owe that is secured by a lien on your home or other security.

**H. MISCELLANEOUS:**

1. \_\_\_\_\_ Face page from any ongoing lawsuit in the last two years.
2. \_\_\_\_\_ Felony conviction information.
3. \_\_\_\_\_ Distribution from an estate or trust,
4. \_\_\_\_\_ Papers regarding any potential inheritance.

**I. IDENTIFICATION:**

1. \_\_\_\_\_ Driver's License, Cal. ID, or Passport (Must be current and valid)
2. \_\_\_\_\_ A copy of your social security card.

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### **DEBT ASSISTANCE INITIAL CONSULTATION AGREEMENT**

1. The client desires to obtain advice and assistance with debt issues and relief from debt and has scheduled an initial consultation with the Law Offices of O. Max Gardner III, PC. This initial consultation with an attorney is free of charge. The client understands that in order for the attorney to give meaningful advice, certain detailed financial information must be provided fully and accurately. The client agrees to give accurate, honest, full and fair disclosure of financial information concerning average income over the previous 6 months from all sources, monthly living expenses, the type and amount of all debts (including names and addresses of all creditors), and a disclosure of all assets and property owned by the client.

2. The attorney agrees to interview the client and give advice and counsel to assist the client in making decisions about debt problems, the possibility of filing bankruptcy, selecting the appropriate chapter of bankruptcy, and how a bankruptcy case may help or hurt the debt problems of the client. The initial consultation will consist of a review of the client's current monthly income, completion of a monthly budget of regular expenses, preliminary analysis of qualifications for certain chapters of bankruptcy, a preliminary analysis of the client's debt statements and a recommendation.

3. The initial one-hour consultation and interview will be performed by an attorney free of charge. In the event that the client decides to file a bankruptcy case, a new written agreement must be signed by the client and the attorney which will supersede this agreement relating to attorney fees and expenses. This new agreement will also provide a detailed explanation of the services performed or to be performed by the Law Offices of O. Max Gardner III, PC.

4. ALL INFORMATION PROVIDED BY THE CLIENT WITH A BANKRUPTCY PETITION MUST BE COMPLETE, ACCURATE, AND TRUTHFUL. ALL ASSETS AND ALL LIABILITIES ARE REQUIRED TO BE COMPLETELY AND ACCURATELY DISCLOSED IN THE DOCUMENTS FILED TO COMMENCE THE CASE. REPLACEMENT VALUE OF EACH ASSET DEFINED IN TITLE 11 UNITED STATES CODE SECTION 506 MUST BE STATED IN THOSE DOCUMENTS WHERE REQUESTED AFTER REASONABLE INQUIRY TO ESTABLISH SUCH VALUE. INFORMATION PROVIDED DURING THE CASE MAY BE AUDITED AND THAT FAILURE TO PROVIDE SUCH INFORMATION MAY RESULT IN DISMISSAL OF THE CASE OR OTHER SANCTION, INCLUDING A CRIMINAL SANCTION.

5. If the Client desires to file a Chapter 7 or 13 bankruptcy case, attached hereto and incorporated by this reference is our Fee Agreement for a Chapter 7 case (Exhibit A) or Chapter 13 (Exhibit B).

This, the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Attorney signature

\_\_\_\_\_  
Client signature

\_\_\_\_\_  
Client signature

EXHIBIT A TO  
DEBT ASSISTANCE INITIAL CONSULTATION AGREEMENT

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**CONTRACT FOR CHAPTER 7 BANKRUPTCY SERVICES**

This Agreement is executed this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by and between The Law Offices of O. Max Gardner III, P.C. (the Attorney) and  
\_\_\_\_\_ (the Debtor, whether one or more parties).

The parties agree as follows:

**1. Type of Bankruptcy.**

Debtor retains attorney to file a Chapter 7 bankruptcy case. If the Debtor determines at a later date that the Debtor desires to file a Chapter 13 bankruptcy case, the parties shall execute a new fee contract setting forth the terms of such representation.

**2. Base Attorney Fees.**

The base attorney fee for filing the Chapter 7 bankruptcy case is \$2,500.00.

The base fee of \$2,500.00 is based on the following assumptions:

- (a) The Debtor has provided the Attorney with complete and accurate information.
- (b) The Debtor's circumstances, particularly the Debtor's Current Monthly Income as defined by the Bankruptcy Code, does not substantially change prior to the actual filing of the Chapter 7 Bankruptcy case.
- (c) The Debtor must pay the fee in full upon the execution of this Agreement.

If any of these assumptions prove to be inaccurate, and as a result the amount of legal services provided by the Attorney is increased, then the base attorney fee shall be increased accordingly and to compensate the Attorney for the additional time and services in providing the legal services. At such time, the parties must execute a supplement to this Agreement. If the Debtor refuses to sign such a supplement, then the Attorney-Debtor relationship shall be terminated and no Chapter 7 bankruptcy Case will be filed for Debtor by the Attorney.

**3. Refund of Percentage of Base Fee.**

In the event the legal services provided for herein are terminated by either party prior to the filing of a Chapter 7 bankruptcy case, then the Debtor may be entitled to a refund of some of the base fee. The refund shall be determined by the number of hours devoted by Attorney to the case prior to the time of termination computed at the rate of \$325.00 per hour; by the time devoted to the case by the Legal Assistants of Attorney



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computed at the rate of \$125.00 per hour; by adding all expenses incurred (such as copies, postage, securing records and documents, tax transcripts, credit reports, etc); and then by deducting the total amount of all charges from the Base Fee. If the event the total of all such fees and charges exceed the Base Fee, the Debtor's liability shall be limited to the amount of the Base Fee.

#### **4. Debtor's Obligations to Pay Designated Costs.**

The Debtor shall be obligated to pay the following costs related to the filing of a Chapter 7 bankruptcy case. The costs are as follows:

- (a) The fee of \$299.00 charged by the Bankruptcy Court to file a Chapter 7 bankruptcy case.
- (b) The cost of pre-filing consumer credit counseling, which is a prerequisite to filing for bankruptcy relief, which is approximately \$50.00 for an individual and no more than \$75.00 for a husband and wife.
- (c) The cost of a post-filing instructional course concerning personal financial management, which is a prerequisite to obtaining the Discharge of debts in a Chapter 7 case. The amount of this fee is not known at this time but should be consistent with the pre-filing credit counseling fees.
- (d) The cost of obtaining any consumer credit reports.
- (e) The cost of obtaining tax returns or tax transcripts directly from the taxing authorities or from any third-party provider.
- (f) The cost of obtaining copies of judgments, deeds, deeds of trust, title certificates, court papers, county tax records, and other similar documents.
- (g) The cost of securing any prior court records from the PACER system for federal cases.
- (h) The cost of securing any other records or statements not otherwise produced by or available to the Debtor.

#### **5. Services provided Under the Attorney's Base Fee.**

The services of the attorney included in the base fee are those normally contemplated for a Chapter 7 case. They include the services listed below:

- (a) All services reasonably necessary to fully inform the Debtor of the Debtor's rights and responsibilities under the Bankruptcy Laws.
- (b) All services reasonably necessary to enable the Debtor to make an informed decision about the filing of a Chapter 7 bankruptcy case.
- (c) Advising the Debtor of all available exemptions under any applicable law and assisting the Debtor in claiming the exemptions that best serve the Debtor's needs and desires.
- (d) Assisting the Debtor in complying with all of the requirements imposed by the Bankruptcy Laws, the Bankruptcy Rules, or any Local Bankruptcy Rules.
- (e) Preparation and electronic filing of petition, schedules, supplemental local forms, and mailing matrix.
- (f) Drafting and mailing notice to creditors advising of filing of case.



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- (g) Drafting and mailing to you a letter regarding your attendance at the Section 341 meeting of creditors and your other responsibilities.
- (h) Preparation for and attendance at Section 341 meeting.
- (i) Filing of any motions to avoid non-purchase money liens on exempt household goods and judgment liens that impair exempt property.
- (j) Assisting the Debtor in carrying out the Debtor's Statement of Intentions, provided that the Debtor pays the Non-Base Fee for any redemptions.
- (k) Assisting the Debtor in complying with all proper and timely requests for information and/or documents by the Bankruptcy Trustee, the Bankruptcy Administrator, the Court, or other parties involved in the case.
- (l) Communicating as necessary with the creditors and other parties involved in the case (including their attorneys) to facilitate the administration of the case and the application of the Automatic Stay.

## 6. Additional or Non-Base Legal Services.

In some Chapter 7 cases, the legal services which are beyond those contemplated in the base fee must nonetheless be provided by the Attorney. These legal services are listed below:

- (a) Representing the Debtor in any dischargeability proceeding, including student loan discharge proceedings.
- (b) Representing the Debtor in any contested motion to avoid any type of a lien or judgment.
- (c) Representing the Debtor in a motion to continue the Automatic Stay.
- (d) Representing the Debtor in any contested matters or adversary proceedings related to the enforcement of the Automatic Stay by a creditor.
- (e) Representing the Debtor in any action to enforce the Discharge injunction or enforce the Automatic Stay.
- (f) Representing the Debtor in any motions related to the enforcement of Sections 707(a) or 707(b) of the Bankruptcy Code, except as provided in the Special Circumstance Addendum.
- (g) Representation the Debtor in any contested motions for relief from the Automatic Stay.
- (h) Representing the Debtor in any motions to redeem exempt personal property.
- (i) Representing the Debtor in any contested matter regarding the Debtor's claim of exempt property.
- (j) Filing any amendments to the Schedules, unless the amendment arises out of a mistake by the Attorney.
- (k) Filing a motion to continue the 341 meeting of creditors at the request of the Debtor.
- (l) Filing of motions to abandon property.
- (m) Representing the Debtor in any other matters not specifically designated as a Base Fee Service in this Agreement.

## 7. Compensation for Non-Base Legal Services.



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For such non-base services, you may be charged without any further notice and in the discretion of the Court non-base fees for the following services and in the amounts noted:

- |     |  |          |
|-----|--|----------|
| (a) | Amendments to Schedules & Court Fee  | \$126.00 |
| (b) | Motion to continue the 341 meeting   | \$100.00 |
| (c) | Defending a motion for relief from stay  | \$450.00 |
| (d) | Motion for Redemption  | \$350.00 |
| (e) | Motion to continue the Automatic Stay  | \$450.00 |
| (f) | Motion to Avoid a Lien or Judgment   | \$350.00 |
| (g) | With respect to all other matters, other than the contingent fee cases described below, the Attorney will keep time and expense records for any non-base service and apply to the Court for the approval of the fee plus all expenses incurred. The current hourly fee for your Attorney is \$375.00 and the current hourly fee for his Legal Assistant is \$125.00. |          |
| (h) | The attorney will be entitled to a contingency fee equal to 50% of any actual recovery from any party for a violation of the automatic stay, the discharge injunction, or for breach of any state or federal consumer protection statutes. The North Carolina Contingency Fee Addendum form is attached to and made a part of this Agreement.                        |          |

## 8. Expenses.

The Attorney shall be entitled to apply to the Court for approval of any expenses related to your case for base fee or non-base fee services. Such expenses include but are not limited to court fees, telephone fees, fax fees, copy fees, postage fees, PACER fees, electronic or other research fees. In the Court's discretion, the Attorney may request without any notice or documentation a blanket expense of \$1.00 for each item noticed to creditors as an expense for postage, copying and envelopes.

## 9. Payment of Base and Non-Base Fees.

- (a) The Base Fee shall be paid in full prior to the time the Attorney begins any actual work on the Chapter 7 Petition and Schedules.
- (b) All fixed Non-Base fees must be paid in Advance of the Service by the Debtor.
- (c) Fees for services based on time and expenses shall be paid within 30 days of the Debtor's receipt of the bill for such services; provided, however, that the Attorney may require the payment of a retainer fee for non-base services that are expected to require more than 2 hours of the Attorney's time.
- (d) The Debtor understands that if the Debtor does not pay the non-base fees as provided in this Agreement then the Attorney has no obligation to provide the non-base services and has the right to file a motion to withdraw as the attorney for the debtor in the Chapter 7 case, the contested case, or the adversary proceeding.

## 10. Means Test Services.



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With respect to the "means test" provisions imposed by Section 707(b) of the Bankruptcy Code, the base fee charged in this case is based on one of the four assumptions set forth below. The assumption that applies is designated by the assumption that applies is designated by the initials of the Debtor placed after the Assumption.

- (a) The Debtor's debts are not primarily consumer debts and therefore the "means test" does not apply. The parties assume that no issues concerning the "means test" will arise in this case.
- (b) The Debtor's current monthly income as defined by the Bankruptcy Code is below the median income. The parties assume that no issues concerning the "means test" will arise in this case.
- (c) The Debtor's current monthly income as defined by the Bankruptcy Code is above the median income but the Debtor's expenses, as calculated under Section 707(b)(2)(A) are sufficient to rebut the presumption that the filing of a Chapter 7 case would be an abuse of the Bankruptcy laws. The parties assume that no issues concerning the "means test" will arise in this case.
- (d) A presumption of Bankruptcy abuse does arise in this case, but the Debtor and the Attorney will attempt to rebut the presumption by demonstrating extraordinary circumstances pursuant to Section 707(b)(2)(B) of the Bankruptcy Code. Attached to this Agreement is an Addendum setting forth an explanation of the Debtor's obligations in demonstrating extraordinary circumstances and the details of the parties' Agreement concerning fees for proceedings related to the establishment of extraordinary circumstances.

## 11. Debtor's Obligations.

The Debtor's obligations are as follows:

- (a) To promptly pay all Base and Non-Base Legal fees and charges.
- (b) To provide the Attorney with all requested documents, bills statements, payment advices, bank records, tax returns, tax bills, appraisals, retirement and savings account, and income information and to sign any and all necessary forms to allow the Attorney to secure such documentation.
- (c) To provide accurately and honestly all of the information necessary to prepare and file the Chapter 7 bankruptcy case, and other motions or proceedings arising during the course of the case.
- (d) To timely respond to all letters, emails and telephone calls from the Attorney or any member of his staff.
- (e) To keep the Attorney advised at all times of the Debtor's mailing and physical addresses, telephone numbers, and email addresses.
- (f) To appear at the first meeting of creditors (the 341 meeting) and at any other court hearings or meetings as may be required by the Court or any other party.
- (g) To keep all scheduled office appointments with the Attorney and to notify the Attorney in advance of any problems with the timing and scheduling or rescheduling of such appointments.



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- (h) To contact the attorney by Telephone with the understanding that the Attorney is only able to return calls between the hours of 8:00 a.m. to 9:30 a.m. and 4:00 p.m. to 6:00 p.m. If the Attorney is available when the call is actually received, then the call will be taken at that time. However, if you have to leave a message for the Attorney then you must provide a number that you can be reached at during the designated times. The Attorney or Legal Assistant will make every effort to return all such telephone calls within 48 hours, excluding weekends and holidays.
- (i) To provide any information requested of the Debtor by the Chapter 7 Trustee, the Bankruptcy Administrator, or any other party in the case, unless the Court rules that the Debtor is not required to provide such information.
- (j) To respond as soon as possible to any requests for the Debtor by the Attorney or his Legal Assistant.
- (k) To comply with the obligations imposed upon the Debtor by the Local Rules of the Bankruptcy Court for the Western District of North Carolina, a copy of which is attached to this Agreement.
- (l) To sign a tax authorization form to authorize the Attorney to get copies of income tax returns from the respective taxing agencies for a period of four (4) years prior to the filing of your bankruptcy case.
- (m) To provide current bank account information to include monthly statements as requested and online account balances as of the date of the signing of your bankruptcy petition packet.

## **12. Attorney Withdrawal from Chapter 7 case, Adversary Proceeding or Contested Matter.**

Pursuant to the Local Rules of the Bankruptcy Court, the Attorney shall remain the responsible attorney of record for the Debtor in all matters in the case until the case is closed, dismissed or the discharge is entered or until the Attorney is relieved from such representation by order of the Court. The parties agree that just reasons for the Attorney to withdraw from the representation of the Debtor, include but are not limited to the following:

- (a) The failure of the Debtor to provide complete, truthful and accurate information to the Attorney.
- (b) The failure of the Debtor to comply with the Debtor's obligations as provided for in this Agreement and in the Local Rules.
- (c) The failure of the Debtor to comply with any of the obligations imposed on the Debtor by the Bankruptcy Code and the Bankruptcy Rules.
- (d) The failure or refusal of the Debtor to comply with the Debtor's obligations to provide any supplemental information to the Court or to the Chapter 7 Trustee or to correct any incorrect or incomplete information previously provided to the Court or the Trustee.
- (d) The failure of the Debtor to provide complete, truthful and accurate information to the Court, the Chapter 7 Trustee and the Bankruptcy Administrator.



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- (e) The failure of the Debtor to pay for all Non-Base fee services.
- (f) If the Debtor are husband and wife, then any separation, serious domestic dispute, or divorce of the parties.
- (g) Any irreconcilable conflict between the Attorney and the Debtor with respect to the case.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Law Offices of O. Max Gardner III, P.C.

Dated: \_\_\_\_\_

Debtor: \_\_\_\_\_

Dated: \_\_\_\_\_

Debtor: \_\_\_\_\_

**Debtor has also received copies of The North Carolina Contingency Fee Addendum, Local Rules of the Bankruptcy Court for the Western District of North Carolina, and Special Circumstances Addendum.**



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EXHIBIT B TO  
DEBT ASSISTANCE INITIAL CONSULTATION AGREEMENT

403 S Washington Street  
PO Box 1000  
Shelby, NC 28151-1000



704.487.0616 (voice)  
704.487.0619 (fax)  
maxgardner@maxgardner.com

**CONTRACT FOR CHAPTER 13 BANKRUPTCY SERVICES**

This Agreement is executed this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by and between The Law Offices of O. Max Gardner III, P.C. (the Attorney) and  
\_\_\_\_\_ (the Debtor, whether one or more parties).

The parties agree as follows:

**1. Type of Bankruptcy.**

Debtor retains attorney to file a Chapter 13 bankruptcy case. If the Debtor determines at a later date that the Debtor desires to file a Chapter 7 bankruptcy case, the parties shall execute a new fee contract setting forth the terms of such representation. If Debtor elects to convert the Chapter 13 case to a Chapter 7 case, then Attorney shall be under no duty to prepare and file the necessary court papers until the new fee agreement has been signed and the agreed upon fees paid.

**2. Base Attorney Fees.**

The base attorney fee for filing the Chapter 13 bankruptcy case is \$3250.00. The entire base fee shall be added to and paid through the Chapter 13 plan. The Debtor shall not be obligated to pay any part of the base fee as an "up front" payment or as a condition to filing. The services of the attorney included in the base fee are those normally contemplated for a Chapter 13 case. They include the services listed below:

- (a) Preparation and electronic filing of petition, schedules, supplemental local forms, Chapter 13 Plan and mailing matrix.
- (b) Drafting and mailing notice to creditors advising of filing of case, including a copy of your Chapter 13 Plan.
- (c) Drafting and mailing to you a letter regarding your attendance at the Section 341 meeting and your other responsibilities.
- (d) Preparation for and attendance at Section 341 meeting.
- (e) Review of order confirming plan and periodic case status reports from the Chapter 13 trustee.
- (f) Review of trustee's motion for allowance of claims.
- (g) Maintaining custody and control of case files.
- (h) Service of orders on all affected parties.
- (i) Verification of your identity and social security number.
- (j) Defending objections to confirmation of your Chapter 13 Plan.

The base fee shall also include the following services to the extent they are requested or reasonably necessary for your effective representation:

- (a) Preparation and filing of proofs of claim on your behalf for your creditors.



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- (b) Drafting and filing objections to scheduled and unscheduled proofs of claim.
- (c) Assumptions and rejections of unexpired leases and executory contracts.
- (d) Preparation for and attendance at valuation hearings.
- (e) Motions to transfer venue.
- (f) Requesting copies of proofs of claim from Trustee.
- (g) Consultation with you regarding obtaining post-petition credit (no motion filed).
- (h) Motions to avoid liens.
- (i) Calculation of plan payment modifications (no motion filed).
- (j) Adding creditor address to mailing matrix as necessary.
- (k) Responding to written creditor contacts regarding plan terms, valuation of collateral, claim amounts and the like.
- (l) Responding to your contacts regarding changes in your financial and personal circumstances and advising the Court and Trustee of the same.
- (m) Communicating with you regarding payment defaults, insurance coverage, credit disability and the like.
- (n) Obtaining and providing the Trustee with copies of documents relating to lien perfection issues.
- (o) Notifying creditors of entry of discharge.
- (p) Notifying creditors by certified mail of alleged violations of the automatic stay.
- (q) Drafting and mailing letters regarding voluntary turnover of property.
- (r) Review of documents in relation to the use or sale of collateral (no motion filed).
- (s) Providing you with a list of answers to frequently asked questions and other routine communications with you.

### 3. Non-Base Attorney Fees.

In some Chapter 13 cases, the legal services which are beyond those contemplated in the base fee must nonetheless be provided by the Attorney. These legal services are also listed below:

- (a) Abandonment of property post-confirmation.
- (b) Motion for moratorium.
- (c) Motion for authority to sell property.
- (d) Motion to modify.
- (e) Motion to use cash collateral or to incur credit.
- (f) Defense of motion for relief from stay or co-debtor stay.
- (g) Defense of motion to dismiss filed after confirmation of your plan.
- (h) Non-base fee requests.
- (i) Stay violation litigation, including amounts paid as fees by the creditor or other party.
- (j) Post-discharge injunction actions.
- (k) Adversary proceedings.
- (l) Wage garnishment orders.
- (m) Turnover adversaries.
- (n) Conversion to Chapter 7.
- (o) Motions to substitute collateral.



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- (p) Motions For Discharge.
- (q) Any other matter not covered by the base fee.

For such non-base services, you may be charged without any further notice and in the discretion of the Court non-base fees for the following services and in the amounts noted:

Defense of motion to dismiss the case	\$200.00
Motion to modify order, including moratorium	\$350.00
Motion to substitute collateral	\$450.00
Defense of Motion to lift any stay	\$450.00
Motion to sell real or personal property	\$450.00

The Attorney, in his discretion, may also keep time and expense records for any non-base service and apply to the Court for the approval of the fee plus all expenses incurred. The current hourly fee for your Attorney is \$375.00. All base and non-base fees will be added to your plan (unless paid directly by Debtor or a third-party such as a creditor in a contested case) and will be paid through the plan. It is possible that any non-base fees added to your plan may result in an increase in your monthly plan payment or in an extension of the length of your plan or both.

#### 4. Contingent Fees.

The attorney will be entitled to a contingency fee equal to 50% of any actual recovery from any party for a violation of the automatic stay, the co-debtor stay, the discharge injunction, for breach of the plan or any terms thereof, or for breach of any state or federal consumer protection statutes. The North Carolina Contingency Fee Addendum form is attached to and made a part of this Agreement.

#### 5. Expenses.

The Attorney shall be entitled to apply to the Court for approval of any expenses related to your case for base fee or non-base fee services. Such expenses include but are not limited to court fees, telephone fees, fax fees, copy fees, postage fees, PACER fees, electronic or other research fees. In the Court's discretion, the Attorney may request without any notice or documentation a blanket expense of \$1.00 for each item noticed to creditors as an expense for postage, copying and envelopes.

#### 6. Court Approval of Fees.

All fees included in this Agreement are subject to the control of the United States Bankruptcy Court for the Western District of North Carolina. Any changes in the presumed non-base fees by the Court shall be deemed to immediately modify and amend the terms and conditions of this Agreement as to the non-base fees and shall be incorporated herein by this reference. Any subsequent increase in the base fees by the Court shall have no impact on the original base fee provided for in this Agreement.

#### 7. Assumptions for the Base Fee.



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The base fee is based on the following assumptions:

- (a) The Debtor has provided the Attorney with all requested information.
- (b) The Debtor has provided the Attorney with complete and accurate information.
- (c) The Debtor's circumstances, especially the Debtor's current monthly income (as defined by the Bankruptcy Code) does not substantially change prior to the filing of the case.
- (d) The Debtor will provide all requested documents within 15 days of the date of this Agreement.

#### **8. Costs and Expenses to be paid directly by Debtor.**

The debtor shall pay all costs related to the filing of the bankruptcy case. These costs currently include the court filing fee of \$274.00; the costs of mandatory pre-filing credit counseling, which is approximately \$50.00; the mandatory post-filing educational course, which is also approximately \$50.00; the costs of any PACER checks, which is approximately \$10.00; the costs of any appraisals of real or personal property; the costs of obtain current consumer reports in the Debtor is not entitled to free reports; and any other costs as agreed to by the parties.

#### **9. First Payment.**

The Debtor must be in a position to make the first full Chapter 13 monthly plan payment at the time the Debtor signs the Chapter 13 court papers. This payment must be made at this time because under local Court Rules the case will be automatically dismissed unless this payment is made within 10 days of the filing of the bankruptcy case. The Debtor must also pay or have paid the \$189.00 filing fee at the time of sign and secured and paid for the consumer credit counseling certificate.

#### **10. Mortgage Payments.**

The Debtor acknowledges that the contract mortgage payments on residential real estate cannot be reduced under the Bankruptcy laws but will be paid as follows:

(a) By adding the amount of the payment (plus any back payments), and any future increases as allowed by the mortgage contract, to the Chapter 13 plan payment. As a result, the Debtor will only be responsible for making one single debt payment per month, said payment being the Chapter 13 plan payment; or

(b) By including only the pre-filing arrears or back payments in the plan, with the Debtor being responsible for making all future mortgage payments directly to the mortgage company.

The Debtor has elected to proceed with option: \_\_\_\_\_

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#### **11. Debtor's Obligations.**

The Debtor's obligations are as follows:



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- (a) To provide the Attorney with all requested documents, bills statements, payment advices, bank records, tax returns, tax bills, appraisals, retirement and savings account, and income information and to sign any and all necessary forms to allow the Attorney to secure such documentation.
- (b) To provide accurately and honestly all of the information necessary to prepare and file the Chapter 13 bankruptcy case, and other motions or proceedings arising during the course of the case.
- (c) To timely respond to all letters, emails and telephone calls from the Attorney or any member of his staff.
- (d) To keep the Attorney advised at all times of the Debtor's mailing and physical addresses, telephone numbers, and email addresses.
- (e) To appear at the first meeting of creditors (the 341 meeting) and at any other court hearings or meetings as may be required by the Court or any other party.
- (f) To keep all scheduled office appointments with the Attorney and to notify the Attorney in advance of any problems with the timing and scheduling or rescheduling of such appointments.
- (g) To contact the attorney by Telephone with the understanding that the Attorney is only able to return calls between the hours of 8:00 a.m. to 9:30 a.m. and 4:00 p.m. to 6:00 p.m. If the Attorney is available when the call is actually received, then the call will be taken at that time. However, if you have to leave a message for the Attorney then you must provide a number that you can be reached at during the designated times. The Attorney or Legal Assistant will make every effort to return all such telephone calls within 48 hours, excluding weekends and holidays.
- (h) To provide any information requested of the Debtor by the Chapter 13 Trustee, the Bankruptcy Administrator, or any other party in the case, unless the Court rules that the Debtor is not required to provide such information.
- (i) To respond as soon as possible to any requests for the Debtor by the Attorney or his Legal Assistant.
- (j) To comply with the obligations imposed upon the Debtor by the Local Rules of the Bankruptcy Court for the Western District of North Carolina, a copy of which is attached to this Agreement.
- (k) To sign a tax authorization form to authorize the Attorney to get copies of income tax returns from the respective taxing agencies for a period of four (4) years prior to the filing of your bankruptcy case.
- (l) To provide current bank account information to include monthly statements as requested and online account balances as of the date of the signing of your bankruptcy petition packet.

## 12. **Attorney Withdrawal from Chapter 13 case, Adversary Proceeding or Contested Matter.**

Pursuant to the Local Rules of the Bankruptcy Court, the Attorney shall remain the responsible attorney of record for the Debtor in all matters in the case until the case is closed, dismissed or the discharge is entered or until the Attorney is relieved from such representation by order of the Court. The parties agree that just reasons for the Attorney



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to withdraw from the representation of the Debtor, include but are not limited to the following:

- (a) The failure of the Debtor to provide complete, truthful and accurate information to the Attorney.
- (b) The failure of the Debtor to comply with the Debtor's obligations as provided for in this Agreement and in the Local Rules.
- (c) The failure of the Debtor to comply with any of the obligations imposed on the Debtor by the Bankruptcy Code and the Bankruptcy Rules.
- (d) The failure or refusal of the Debtor to comply with the Debtor's obligations to provide any supplemental information to the Court or to the Chapter 13 Trustee or to correct any incorrect or incomplete information previously provided to the Court or the Trustee.
- (d) The failure of the Debtor to provide complete, truthful and accurate information to the Court, the Chapter 13 Trustee and the Bankruptcy Administrator.
- (e) If the Debtor are husband and wife, then any separation, serious domestic dispute, or divorce of the parties.
- (f) Any irreconcilable conflict between the Attorney and the Debtor with respect to the case.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Law Offices of O. Max Gardner III, P.C.

Dated: \_\_\_\_\_

Debtor: \_\_\_\_\_

Dated: \_\_\_\_\_

Debtor: \_\_\_\_\_

**Debtor has also received copies of The North Carolina Contingency Fee Addendum and Local Rules of the Bankruptcy Court for the Western District of North Carolina.**



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**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

**DEBT COLLECTION CONTACT INSTRUCTIONS**

The following are creditor violations that should be noted and reported to our office:

- If a creditor calls you on the phone please record that contact on the provided sheet noting the time, date, name and telephone number of the person calling. You do not need to get mad with the creditor or collector as this will only serve to terminate the call before you can get valuable information that we may be able to use if a decision is made to sue this party on your behalf. I tell clients to be nice, act stupid and basically get information. For example, you can say that your husband is not at home and, if they want you to pay a specific amount of money then ask them who the certified check be made payable to, the amount of the check, the mailing address to use, the name of any party at that mailing address, and the name of the original creditor if you are dealing with a debt relief agency. If they think you are going to send them money, they will gladly give you all of this information. You can get the first name and phone number (including the extension) of the caller by saying you want to discuss this with your husband and call them back. Again, if they think you are going to pay you will get the information. So, the bottom line is to get the information for me and then let me get even with them for you.
- You have the right in North Carolina to record a telephone conversation from any person to you. This is called a two-party conversation. If you have someone at your home listen in on another line, then this is not lawful. However, any recording of a conversation between you and the caller is perfectly legal. If you record a conversation, be sure to state that "I am recording your call and if you continue talking that will be considered your consent to being recorded." Accordingly, if you have a recording device then use it and save the tape or the digital recording.
- If you use an answering machine, then save the tape or digital recording since most of these devices also record the time and date of each call
- If a creditor sends you a letter keep the letter and the envelope and provide it to our office. The envelope via the post-mark date will provide us with evidence of where the letter was mailed and more importantly the date of the mailing
- If a creditor talks with a minor in your home, then instruct and train all minors to tell the creditor to call back and leave a detailed "recording for mommy" of if you have an answering machine.
- If you do not have an answering machine, then immediately go to Wal-Mart and buy one. It will be the best investment you have made in a long time.

If a creditor does the following please make a record on the provided sheet or bring the letter by the office:

- Creditor sends a letter to your friends, family or employer.
- Creditor calls your friend, family member or employer.
- Creditor threatens you with filing a lawsuit.
- Creditor warns that you may be arrested.
- Creditor sends someone to speak with you or your family.
- You are receiving mail that states you won a prize and request you send personal information to claim the prize.

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- You receive letters that look like legal papers and may be signed by a lawyer or judge.
- Creditor threatens to garnish your wages.
- Creditor threatens to repossess your furniture, clothes, jewelry or children's toys.
- Your employer suspends or fires you because a creditor has been calling you at work.
- You employer threatens to fire or suspend you if the creditors don't stop calling.
- Creditor threatens to contact a social worker.
- Letters that contain badges or government symbols.
- Creditor uses offensive or demeaning language.
- Creditor calls late at night, early in the morning, or numerous times during the day.

Any other action that made you or someone else sick, nervous, scared, and threatened or caused you to miss work or incur expenses should be reported.

You need to understand that since you are now represented by a consumer attorney the legal power between you and your creditors has shifted from them to you. Your attorney has made a career of suing creditors and collection agents for their violations of numerous consumer protection laws. He stands ready, willing and able to do the same for you. All he needs is your cooperation and good evidence gather techniques.



## CONSUMER COLLECTION EVIDENCE RECORD

If the communication is by phone, then please note the date and time of the call; the name and phone number of the caller; and the name of the creditor or collection agent. Then tell the caller the following: ***"I have filed for bankruptcy. My attorney is O. Max Gardner III. You should call him at (704) 487-0616 and he will answer all of your questions about my case."*** I recommend that you do not engage in any further conversation. If the communication is by letter, then please note the date the letter is received and the name of the creditor or collection agency and save the envelope for proof of the postmark date.

In summary, record and save every single answering machine or voice message, collection letter, and paper message. Don't throw anything away, including the envelopes that the collection letters come in or anything included with the collection letters.

DATE OF CONTACT (MM/DD/YY)	TIME OF CONTACT (00:00 AM or PM)	TYPE OF CONTACT (PHONE OR LETTER)	NAME OF CALLER AND PHONE NUMBER	NAME OF CREDITOR OR COLLECTION AGENCY

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Facsimile: (888) 870-1644

(DATE)

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999

**In the Matter of:**

Your Potential Chapter 13 Case  
Our File No:

Dear John & Mary:

Please have your insurance agent or agents fax me proof of insurance on the following:

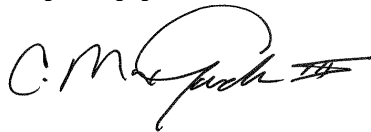
1. Any motor vehicle subject to a lien;
2. Any mobile home subject to a lien;
3. Any residential real estate subject to a deed of trust.

The fax must include the name and address of the insurance agent, the name and address of the insurance company, the policy number, a description of the collateral, and confirmation that all lien-holders have been scheduled on the policy.

Since this information is required by the Bankruptcy Laws, please have your agent fax me this information as soon as possible.

With best regards, I remain

Very truly yours,



O. Max Gardner III  
OMGIII/mrg

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bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999

**In the Matter of:**

Your Potential Chapter 13 Case  
SSN: --- -- 1234 & --- -- 5678  
Our File No: 11999

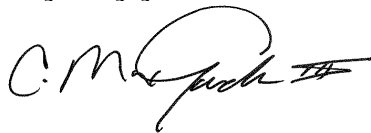
Dear John and Mary:

I am enclosing an IRS form that you will need to sign and return to my office so that we can obtain the required tax transcript to forward to the Trustee. This is the transaction for which you have already paid the \$20.00 fee. This needs to be processed as soon as possible due to time restrictions on the provision of the documents to the Trustee so please return the signed form as soon as possible.

If you have any questions, please call me.

With best regards, I remain

Very truly yours,



O. Max Gardner III

OMGIII/mrg

enclosure: Form 4506-T

**Request for Transcript of Tax Return**

► Request may be rejected if the form is incomplete or illegible.

OMB No. 1545-1872

**Tip.** Use Form 4506-T to order a transcript or other return information free of charge. See the product list below. You can also call 1-800-829-1040 to order a transcript. If you need a copy of your return, use **Form 4506, Request for Copy of Tax Return**. There is a fee to get a copy of your return.

<b>1a</b> Name shown on tax return. If a joint return, enter the name shown first.	<b>1b</b> First social security number on tax return or employer identification number (see instructions)
<b>2a</b> If a joint return, enter spouse's name shown on tax return.	<b>2b</b> Second social security number if joint tax return
<b>3</b> Current name, address (including apt., room, or suite no.), city, state, and ZIP code	
<b>4</b> Previous address shown on the last return filed if different from line 3	
<b>5</b> If the transcript or tax information is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number. The IRS has no control over what the third party does with the tax information.	

**Caution.** If the transcript is being mailed to a third party, ensure that you have filled in line 6 and line 9 before signing. Sign and date the form once you have filled in these lines. Completing these steps helps to protect your privacy.

- 6 Transcript requested.** Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. ►
- a Return Transcript**, which includes most of the line items of a tax return as filed with the IRS. A tax return transcript does not reflect changes made to the account after the return is processed. Transcripts are only available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120A, Form 1120H, Form 1120L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days . . . . . ☐
- b Account Transcript**, which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 30 calendar days. . . . . ☐
- c Record of Account**, which is a combination of line item information and later adjustments to the account. Available for current year and 3 prior tax years. Most requests will be processed within 30 calendar days . . . . . ☐
- 7 Verification of Nonfiling**, which is proof from the IRS that you did not file a return for the year. Current year requests are only available after June 15th. There are no availability restrictions on prior year requests. Most requests will be processed within 10 business days . . . . . ☐
- 8 Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript.** The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2007, filed in 2008, will not be available from the IRS until 2009. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 45 days . . . . . ☐

**Caution.** If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

- 9 Year or period requested.** Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T. For requests relating to quarterly tax returns, such as Form 941, you must enter each quarter or tax period separately.

**Signature of taxpayer(s).** I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer. **Note.** For transcripts being sent to a third party, this form must be received within 120 days of signature date.

<b>Sign Here</b>	Signature (see instructions)	Date	Telephone number of taxpayer on line 1a or 2a
	Title (if line 1a above is a corporation, partnership, estate, or trust)		
	Spouse's signature	Date	



## General Instructions

**Purpose of form.** Use Form 4506-T to request tax return information. You can also designate a third party to receive the information. See line 5.

**Tip.** Use Form 4506, Request for Copy of Tax Return, to request copies of tax returns.

**Where to file.** Mail or fax Form 4506-T to the address below for the state you lived in, or the state your business was in, when that return was filed. There are two address charts: one for individual transcripts (Form 1040 series and Form W-2) and one for all other transcripts.

If you are requesting more than one transcript or other product and the chart below shows two different RAILS teams, send your request to the team based on the address of your most recent return.

**Automated transcript request.** You can call 1-800-829-1040 to order a transcript through the automated self-help system. Follow prompts for "questions about your tax account" to order a tax return transcript.

### Chart for individual transcripts (Form 1040 series and Form W-2)

If you filed an individual return and lived in:	Mail or fax to the "Internal Revenue Service" at:
Florida, Georgia, North Carolina, South Carolina	RAIVS Team P.O. Box 47-421 Stop 91 Doraville, GA 30362 <b>770-455-2335</b>
Alabama, Kentucky, Louisiana, Mississippi, Tennessee, Texas, a foreign country, or A.P.O. or F.P.O. address	RAIVS Team Stop 6716 AUSC Austin, TX 73301 <b>512-460-2272</b>
Alaska, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming	RAIVS Team Stop 37106 Fresno, CA 93888 <b>559-456-5876</b>
Arkansas, Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia	RAIVS Team Stop 6705 P-6 Kansas City, MO 64999 <b>816-292-6102</b>

### Chart for all other transcripts

If you lived in or your business was in:	Mail or fax to the "Internal Revenue Service" at:
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wyoming, a foreign country, or A.P.O. or F.P.O. address	RAIVS Team P.O. Box 9941 Mail Stop 6734 Ogden, UT 84409 <b>801-620-6922</b>
Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Wisconsin	RAIVS Team P.O. Box 145500 Stop 2800 F Cincinnati, OH 45250 <b>859-669-3592</b>

**Line 1b.** Enter your employer identification number (EIN) if your request relates to a business return. Otherwise, enter the first social security number (SSN) shown on the return. For example, if you are requesting Form 1040 that includes Schedule C (Form 1040), enter your SSN.

**Line 6.** Enter only one tax form number per request.

**Signature and date.** Form 4506-T must be signed and dated by the taxpayer listed on line 1a or 2a. If you completed line 5 requesting the information be sent to a third party, the IRS must receive Form 4506-T within 120 days of the date signed by the taxpayer or it will be rejected.

**Individuals.** Transcripts of jointly filed tax returns may be furnished to either spouse. Only one signature is required. Sign Form 4506-T exactly as your name appeared on the original return. If you changed your name, also sign your current name.

**Corporations.** Generally, Form 4506-T can be signed by: (1) an officer having legal authority to bind the corporation, (2) any person designated by the board of directors or other governing body, or (3) any officer or employee on written request by any principal officer and attested to by the secretary or other officer.

**Partnerships.** Generally, Form 4506-T can be signed by any person who was a member of the partnership during any part of the tax period requested on line 9.

**All others.** See Internal Revenue Code section 6103(e) if the taxpayer has died, is insolvent, is a dissolved corporation, or if a trustee, guardian, executor, receiver, or administrator is acting for the taxpayer.

**Documentation.** For entities other than individuals, you must attach the authorization document. For example, this could be the letter from the principal officer authorizing an employee of the corporation or the Letters Testamentary authorizing an individual to act for an estate.

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to establish your right to gain access to the requested tax information under the Internal Revenue Code. We need this information to properly identify the tax information and respond to your request. You are not required to request any transcript; if you do request a transcript, sections 6103 and 6109 and their regulations require you to provide this information, including your SSN or EIN. If you do not provide this information, we may not be able to process your request. Providing false or fraudulent information may subject you to penalties.

Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file Form 4506-T will vary depending on individual circumstances. The estimated average time is: **Learning about the law or the form, 10 min.; Preparing the form, 12 min.; and Copying, assembling, and sending the form to the IRS, 20 min.**

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 4506-T simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where to file* on this page.

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

403 SOUTH WASHINGTON STREET  
POST OFFICE BOX 1000  
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Facsimile: (888) 870-1647

**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

**VIA EMAIL to tatech@vnet.net**

Steven G. Tate  
Chapter 13 Trustee  
P.O. Box 1778  
Statesville, NC 28687-1778

**In the Matter of:**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Our File No:


Dear Steve:

I am attaching hereto a copy of the 2009 income tax returns for the debtors. The debtors only receive Social Security retirement benefits and as a result are not and will not be required to file income tax returns for 2010 or subsequent years unless their circumstances change.

Please give me a call if you have any questions.

With best regards, I remain

Very truly yours,



O. Max Gardner III

OMGIII/mrg

attachment: 2009 Federal and North Carolina income tax returns



\*The Law Offices of O. Max Gardner III, designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States, has proudly assisted consumers seeking relief under the US Bankruptcy Code for over 30 years.



O. Max Gardner III, CEO, Vice President of Litigation Management  
Gardner.Botes PLLC - National Consumer Bankruptcy Litigation Center  
403 South Washington Street, Shelby, North Carolina 28150  
mgardner@ncblc.com - (704) 481-1403 (voice) - (888) 870-1647 (fax)





## **AUTHORIZATION TO RELEASE EMPLOYMENT RECORDS**

Employer: \_\_\_\_\_

Employer Address: \_\_\_\_\_

I authorize the above employer and any other employer or entity with whom I am or have been employed to furnish to the Law Offices of O. Max Gardner, III, PC, all information and records in their possession regarding my wages, hours, time lost from work, work performance, and nature of my employment.

Further, I authorize the furnishing of my personnel file to the Law Offices of O. Max Gardner, III, PC.

A photocopy of this Authorization is considered as valid as the original.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CLIENT SIGNATURE

CLIENT NAME:

DOB:

SSN:



**AUTHORIZATION TO RELEASE ACCOUNT INFORMATION**

The undersigned do hereby authorize \_\_\_\_\_ to release any and all information regarding our loan having account number \_\_\_\_\_ to the Law Offices of O. Max Gardner III, PC. We have retained the Law Offices of O. Max Gardner III, P.C., to represent us in connection with our current financial problems. This authorization extends to the production of any documents, default notices, loss mitigation options, the application of payments, amounts owed, amounts due, and any and all other matters involving our mortgage loan.

This, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Debtor

Sworn and subscribed before me this the \_\_\_\_\_ day  
Of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION  
UNDER FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996  
(HIPAA)**

I hereby authorize the use or disclosure of my individually identifiable health information as described below. I understand that this authorization is voluntary. I understand that if the organization authorized to receive the information is not a health plan or health care provider, the released information may be subject to re-disclosure and may no longer be protected by federal privacy regulations, including HIPAA. I hereby release the organization providing this information from any legal responsibility or liability for disclosure of this information to the extent indicated and authorized herein.

Patient Name: \_\_\_\_\_ ID/SS #: xxx-xx- \_\_\_\_\_

Patient Address: \_\_\_\_\_ Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_  
(Street/City/State/Zip)

Person(s)/organization(s) providing the information: \_\_\_\_\_  
(Medical Provider Name/Practice Name)

Person(s)/organization(s) receiving the information: (Send to)

**MaxGardnerLaw, PLLC  
403 South Washington Street  
P.O. Box 1000  
Shelby, NC 28151-1000  
Phone: (704) 487-0616  
Fax: (888) 870-1647**

Specific description of information, covering health care from \_\_\_\_\_ to \_\_\_\_\_:  
(Start Date) (End Date)

☐ Complete health records and bills (prescription bills, history and physical, discharge summary, operative reports, consultation reports, radiology and imaging reports), excluding all images (x-rays, photographs, etc.)

☐ Other (please specify) \_\_\_\_\_

The patient or patient's representative must read and initial the following statements:

1. I understand that this authorization will expire on \_\_\_\_\_ Initials: \_\_\_\_\_
2. I understand that I may revoke this authorization at any time by notifying the providing organization in writing and that, if I do revoke this authorization, this will not have any affect on my action the providing organization takes before receiving the revocation. Initials: \_\_\_\_\_
3. I understand that I have the right to refuse to sign this Authorization. Initials: \_\_\_\_\_
4. I understand that information disclosed pursuant to this Authorization may be subject to redisclosure by a recipient of such information. It is possible that once disclosed, the privacy of the information will no longer be protected under federal medical privacy law. Initials: \_\_\_\_\_
5. I understand the data release may include material protected by law including Mental Health, Drugs and Alcohol, HIV/AIDS and other communicable diseases and Genetic Testing. Initials: \_\_\_\_\_

**I have read and understand the information in this Authorization.**

X \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of patient or patient's representative  
(Form **MUST** be completed before signing.)

Printed name of patient's representative: \_\_\_\_\_

Relationship to patient: \_\_\_\_\_

*YOU MAY REFUSE TO SIGN THIS AUTHORIZATION*

## General Power of Attorney

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of \_\_\_\_\_

County of \_\_\_\_\_

I, \*\*\*, appoint \*\*\*\* to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes.

(DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

- \_\_\_\_\_ (1) Real property transactions
- \_\_\_\_\_ (2) Personal property transactions
- \_\_\_\_\_ (3) Bond, share, stock, securities and commodity transactions
- \_\_\_\_\_ (4) Banking transactions
- \_\_\_\_\_ (5) Safe deposits
- \_\_\_\_\_ (6) Business operating transactions
- \_\_\_\_\_ (7) Insurance transactions
- \_\_\_\_\_ (8) Estate transactions
- \_\_\_\_\_ (9) Personal relationships and affairs
- \_\_\_\_\_ (10) Social security and unemployment
- \_\_\_\_\_ (11) Benefits from military service
- \_\_\_\_\_ (12) Tax matters
- \_\_\_\_\_ (13) Employment of agents
- \_\_\_\_\_ (14) Gifts to charities, and to individuals other than the attorney-in-fact
- \_\_\_\_\_ (15) Gifts to the named attorney-in-fact

\_\_\_\_ (16) Sign documents, represent me in court hearings and act on my behalf on all matters and things relating to my bankruptcy case under Title 11 the United States Code to be filed before the United States Bankruptcy Court for the Western District of North Carolina.

This power of attorney shall not be affected by my subsequent incapacity or mental incompetence and shall be deemed a durable power of attorney under the provision of Article 2 of Chapter 32A

Dated this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
\*\*\*\*

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared before me, the said named \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

Notary Public Official Seal

DATE

Mortgage Servicer  
Pay-Off Department  
Street  
City, State

DEBTOR PAYOFF LETTER TO SERVICER

Home Mortgage Loan  
Loan No: \_\_\_\_\_  
Property Address: \_\_\_\_\_

Dear Sirs:

We are requesting you to please provide us with a complete and itemized payoff statement for our home mortgage loan. We are also requesting you to provide us with an explanation of and documentation of any late fees, legal fees, or any other fees and charges that have been or may be included in the payoff.

We are also requesting you to please identify the full name, address and telephone number of the current holder of the original mortgage note including the name, address and phone number of any Trustee under the Trust or other fiduciary. This request is being made pursuant to Section 1641(f)(2) of the Truth In Lending Act, which requires the servicer to identify the holder of the debt.

With best regards, we remain

Very truly yours,

John and Mary Public

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

403 SOUTH WASHINGTON STREET  
POST OFFICE BOX 1000  
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Facsimile: (888) 870-1647

**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

Agent  
Creditor  
Address  
City, State Zip

**In the Matter of:**

**VERY SHORT QWR – PRE-FILING**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
SSN:  
Our File No:  
Your Account No: \_\_\_\_\_

Dear Sir or Madam:

Please treat this letter as a “qualified written request” under Section 6(e) of the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(e). This request is made on behalf of my Clients, the above-named debtors, based on the pending dispute in their Chapter 13 case about the proper application of payments from the Chapter 13 Trustee and from the debtors to interest, principal, escrow advances and expenses (in that order of priority as provided for in the loan instruments); about your use of suspense accounts in connection with your receipt of Trustee’s and debtors’ payments; about your use of legacy late charges with respect to post-petition mortgage payments; about your use of automatically triggered property inspections and broker price opinion charges and fees based on pre-petition legacy accounting for pre-petition arrears; and about legal fees and expenses that have been attached to this account in the form of corporate advances that have neither been applied for nor approved by the United States Bankruptcy Court. Specifically, I am requesting the following information:

1. A complete and original life of loan transaction history to the date of your response to this letter prepared by the Servicer from its own records using its own system and default servicing personnel. Also, please identify the mortgage servicing software you use in connection with this loan (MSP, LSAMS, etc).
2. A copy of your **Key Loan Transaction history**, bankruptcy work form, XLS spreadsheet, or any other manually-prepared spreadsheet or record of all accounts associated with this mortgage loan (**this would include both recoverable and non-recoverable and restricted and non-restricted accounts**).
3. A full and complete plain-English definitional dictionary of all transaction codes and other similar terms used in the records requested above or any of the other documents or records requested or referred to herein.
4. If this is a MERS or MOM loan, please attach a copy of **all MERS Milestone Reports**

5. If this is a MERS or MOM loan, please attach a copy of **all MIN Reports**.
6. Please identify the **full name, address and telephone number of the current holder of the original mortgage note including the name, address and phone number of any Trustee under the Trust or other fiduciary. This request is being made pursuant to Section 1641(f)(2) of the Truth In Lending Act**, which requires the servicer to identify the holder of the debt.
7. Copies of all collection notes, collection records, communication files or any other form of recorded data with respect to any communications between you and the debtor.
8. An itemized statement of the full **amount needed to reinstate** the mortgage as of the date of your response along with an **itemized pay-off statement**.
9. Copies of all written or recorded communications between you and any non-lawyer third parties regarding this mortgage (**including but not limited to LPS Desktop communiqués, NewTrak communications, NewInvoice transmittals, NewImage transmittals, electronic communications by email or otherwise, collection notes, and any other form of written or electronic document related to the servicing of or ownership of this loan**).
10. **All P-309 screen shots of the history all of the accounts** (principal, interest, escrow, late charges, legal fees, property inspection fees, broker price opinion fees, statutory expense fees, miscellaneous fees, corporate advance fees, etc.) associated with this loan.
11. IF A CHAPTER 13 CASE NUMBER IS LISTED AT THE TOP OF THIS LETTER: To the extent that the servicer of this mortgage loan has charged the debtor's mortgage loan account, subsequent to the filing of their bankruptcy case, any appraisal fees, broker price opinion fees, property inspection/preservation fees, legal fees, bankruptcy/Proof of Claim fees, recoverable corporate advances and other fees or costs that were not disclosed to the debtor(s) and approved by the bankruptcy court, the debtor(s) dispute(s) any such fees and costs and specifically requests that the account be corrected.

You should be advised that you must acknowledge receipt of this qualified written request within five (5) business days, pursuant to 12 U.S.C. Section 2605(e)(1)(A) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and Reg. X Section 3500.21(e)(1).

You should also be advised that the debtor(s) herein will seek the recovery of damages, costs, and reasonable legal fees for each failure to comply with the questions and requests herein. The debtor(s) also reserve the right to seek statutory damages for each violation of any part of Section 2605 of Title 12 of the United States Code in the amount of \$2,000.00 for each violation.

With best regards, I remain.

Very truly yours,

A handwritten signature in black ink, appearing to read "O. Max Gardner, III".

O. Max Gardner, III  
OMGIII/cjh  
Cc: Debtors



THE LAW OFFICES OF  
**O. MAX GARDNER III\***

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**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

(DATE)

**ADDRESS FOR CREDITOR**

(See BLM Volume XI – Creditor Addresses for Max Gardner’s Mega Creditor List)

**NOTICE OF LEGAL REPRESENTATION OF CONSUMER DEBTOR  
(FDCPA & UDAP)**

**In the Matter of:**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Our File No: 11999  
Your Account or File No: ----- 1742

Dear Sir or Madam:

Please be advised that the consumer debtor in the matter referenced above has retained the services of the Law Offices of O. Max Gardner III, P.C. to assist in the matter of debt relief. The purpose of this letter is to provide you with written notice in your capacity as a creditor, collection agent, or collection attorney that this consumer debtor, now our client, is in fact and in law **REPRESENTED BY AN ATTORNEY**. As a result of this notice, and pursuant to Section 1692(b)(6) of Title 15 of the United States Code and Section 75.55(3) of the North Carolina General Statutes, you are to immediately terminate any further direct or indirect contacts with our client. Please note that such prohibited contacts include, but are not limited to, all forms of communication by letter, phone, fax, email or any other means. This also includes any contact directly or indirectly with any employer, family member, friend, or other creditor of our client.

Upon receipt of this letter, any future direct or indirect contacts with our client will result in our office filing a claim against you under the Federal Fair Debt Collection Act, the North Carolina Unfair and Deceptive Practices Act, and any other available and applicable state or federal laws. If our client subsequently seeks relief under any Chapter of the United States Bankruptcy Code, then, and in that event, any pre-petition violations will be preserved for the benefit of the Bankruptcy Estate and vigorously pursued in United States Bankruptcy Court by the debtor and/or the Bankruptcy Trustee. If it becomes necessary to file any and all such claims, then please be advised and take due notice that our client will be seeking actual damages, statutory damages, reduction or loss of any bankruptcy claim filed by you and/or your client, and our reasonable attorney fees based on our hourly rate of \$320.00.

You are also hereby placed on notice that if unlawful and illegal conduct persists or is egregious, then our client will also seek an award of punitive damages as may be determined at the discretion of the Bankruptcy Court.

In order to comply with the applicable laws, any further communications concerning our client and/or the subject debt must be directed to the **Law Offices of O. Max Gardner III, P.C.** Be advised that any request for information will be addressed in a reasonable time period.

Sincerely,

A handwritten signature in black ink, appearing to read "O. Max Gardner III", with a stylized flourish at the end.

O. Max Gardner III  
Attorney for the Consumer Debtor

OMGIII/djj

**From:** Metro Hi Speed E-Mail Fax [faxbounce@fax.metrohispeed.com]  
**Sent:** Monday, March 30, 2009 12:52 PM  
**To:** Casey Hopper  
**Subject:** Your fax has been successfully sent to a.s.collection.assoc at 802-433-2124. RE: Your Client: Vrettos Pappas Consulting/B34890

**Your fax has been sent successfully!**

<b>From:</b>	<b>CHopper@maxgardner.com</b>
<b>To Name:</b>	<b>a s collection assoc</b>
<b>To Number:</b>	<b>802-433-2124</b>
<b>Subject:</b>	<b>Your Client: Vrettos Pappas Consulting/B34890</b>

**Attempt 1**

Date/Time: 3-30-2009 9:50:33 AM (GMT -08:00)  
Pages: 4  
Transmission Time: 00:54  
Reason: Successful Send

Thank you for using MetroFax by Metro Hi Speed®. If you have any questions, please contact [support@metrohispeed.com](mailto:support@metrohispeed.com)

DO NOT ignore written/faxed requests from creditors. re-read the FDCPA about failing to respond.

FDCPA 1692(b)(6)

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, **UNLESS the attorney fails to respond within a reasonable period of time to the communication from the debt collector.**

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**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

Mr. John B Damn  
We Don't Give A Damn, PLLC  
123 That Way  
Anywhere, IL 22222-2222

**In the Matter of:**

John Q. Public  
Mary Q. Public  
Shelby, NC 28150  
Acct #: -- 1234  
Our No: 12999-B

**GRAMM LEACH BLILEY NOTICE LETTER**

**NOTICE**

Dear Mr. Damn:

1. O. Max Gardner III of The Law Offices of O. Max Gardner III represents the Consumer as to any matter, existing or future, relating to the Consumer, which concerns an obligation, creditor, or debt collection.
2. The Law Offices of O. Max Gardner III will respond within a reasonable period of time to a communication from any debt collector, including you.
3. Neither the Consumer or The Law Offices of O. Max Gardner III consents to any 15 U.S.C. § 1692a(2) communication with the consumer attempted by the Creditor, together with any successor in interest and/or their respective debt collectors, at any location, including, but not limited to, the Consumer's residence or work or to The Law Office of O. Max Gardner III.
4. In addition to other laws, the Gramm-Leach-Bliley Act has privacy provisions. The Consumer wants all personal information including Social Security number, driver's license number and passport number and transaction information kept in complete confidence and within the physical boundaries of the United States of America. Moreover, no one is to share any credit related information about the Consumer. Any plan to transmit any of the Consumer's private information to an unaffiliated entity, creates a duty and an obligation to notify The Law Offices of O. Max Gardner III of the specific plan to share that information before doing so. The notice must disclose the type of private information possessed, the specific information to be disclosed, and who will receive, directly or indirectly, the disclosure.
5. A credit card issued by a financial institution does not create the sort of debtor-creditor relationship required in order to bring suit under any "open account" or similar common law theory. Any such action may only be filed under the written card member

agreement and any lawful amendments thereto.

6. *Quantum meruit*, an equitable remedy, for goods and services doesn't arise from a contract.

7. Unjust enrichment, a claim subject to a two year statute of limitations, requires proof that the consumer secured a benefit by fraud, duress, or the taking of undue advantage.

## INSTRUCTIONS

The Creditor together with its successors and their respective employees and agents is instructed by The Law Office of O. Max Gardner III, on the Consumer's behalf, to:

1. Immediately furnish a copy of this letter to every person having or seeking an ownership, servicing, participatory, litigation, arbitrational and/or managerial relationship (including, but not limited to that relating to securitization, hypothecation, collateralization and/or marketing) with the above referenced claim;

2. Cease all direct 15 U.S.C § 1692a(2) communications with the Consumer;

3. Provide The Law Offices of O. Max Gardner III with complete verification of any obligation the Debt Collector ever has attempted to collect from the consumer together with the name and address of the original creditor or creditors;

4. Do not prosecute any claim or other legal action in the above case unless it is warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

5. Treat any such obligation the Debt Collector ever attempts to collect from the Consumer as disputed and to report the same as disputed.

Authorized and Consented to and Approved by:

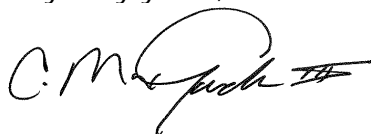
\_\_\_\_\_  
John Q. Public, Debtor

\_\_\_\_\_  
Mary Q Public, Debtor

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

With best regards, I remain.

Very truly yours,

A handwritten signature in black ink, appearing to read "O. Max Gardner III", with a stylized flourish at the end.

O. Max Gardner III  
OMGIII/cwg

# Sample Chapter 13 Petition, Plan Summary, Initial Case Forms and Notice of Filing

IN RE Public, Joe Bob & Public, Mary Jane

Debtor(s)

Case No. \_\_\_\_\_

(If known)

**SCHEDULE A - REAL PROPERTY**

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

**Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
Building and .07 acres at 195 N. Main St. Rutherfordton, North Carolina as described in that certain Deed as recorded in Book 874, Page 296 of the Rutherford County Public Registry. Debtors dispute the secured mortgage claims as to the total amount of the debt as of the petition date and as to the alleged arrears and also dispute that the scheduled party is the lawful owner and holder of the original mortgage note.	Fee Simple	J	81,500.00	195,607.50
Home and 12.86 acres at 490 Marble Creek Road, Rutherfordton, North Carolina as described in that certain Deed as recorded in Book 786, Page 804 of the Rutherford County Public Registry; property is exempt from claims against one spouse under Section 522(b)(2), which allows an individual debtor to exempt from the property of the estate any interest in property in which the debtor had, immediately before the commencement of the case, an interest as tenant by the entirety to the extent such interest is exempt from process under applicable non-bankruptcy law. Debtors dispute the secured mortgage claims as to the total amount of the debt as of the petition date and as to the alleged arrears and also dispute that the scheduled party is the lawful owner and holder of the original mortgage note.	Tenancy by the Entirety	J	156,500.00	232,709.12
<b>TOTAL</b>			<b>238,000.00</b>	

(Report also on Summary of Schedules)



IN RE Public, Joe Bob &amp; Public, Mary Jane

Case No. \_\_\_\_\_

Debtor(s)

(If known)

**SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

**Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.		Cash on hand - rounded to the nearest whole number	H	200.00
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Checking Account at SECU - rounded to the nearest whole number	J	230.00
		Savings Account at SECU - rounded to the nearest whole number	J	30.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, include audio, video, and computer equipment.		2 end tables 50; filing cab 20; scrapbooking table 500	J	570.00
		2 IMAC, 1 iBook and 2 PC's 800; 3 comp desks 240	J	1,040.00
		5 tv's 300; 5 dvd players 75; stereo 75	J	450.00
		Baby Grand piano 1,000.00; buffet/china cab 100	J	1,100.00
		couch 100; loveseat 100; chair/ottoman 75	J	275.00
		Daughter's twin bed & dresser	J	80.00
		dishwasher 100; misc hhgs/linens 35	J	135.00
		gas grill 20; misc tools 75; sofa table 10	J	105.00
		master b/r suit 400; jewelry armoire 20	J	420.00
		patio table & 8 chairs 200; wicker pool furn 200	J	400.00
		son's bunkbed, armoire, dresser, nightstand	J	200.00
		son's crib/changing table set 100; rocking chair/ottoman 25	J	125.00
		son's toddler car bed 25; Thomas the Train table 25	J	50.00
		washer 200; dryer 200; stove 200; refrig 100	J	700.00
		Misc. books	J	100.00
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.				
6. Wearing apparel.		Children's clothing		700.00
		Clothing and accessories	H	300.00
		Clothing and accessories	W	300.00
7. Furs and jewelry.		Misc jewelry	W	75.00
		watch 25; wedding band 200	H	225.00
		wedding ring 200; watch 20	W	220.00
8. Firearms and sports, photographic, and other hobby equipment.		Glock 45 mg semi auto 200; 2 digital cameras & camcorder 300	J	500.00

IN RE Public, Joe Bob &amp; Public, Mary Jane

Case No. \_\_\_\_\_

Debtor(s)

(If known)

### SCHEDULE B - PERSONAL PROPERTY (Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
9. Interest in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		<b>Flexible Premium Variable Life Insurance policy through Pacific Life; face amount \$2,561,909.00</b>	H	<b>1.00</b>
		<b>Term life policy through Primerica FV \$</b>	H	<b>1.00</b>
		<b>Term policy through Woodmen of the World FV\$</b>	H	<b>1.00</b>
10. Annuities. Itemize and name each issue.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		<b>100% stock ownership of ASAPH Music &amp; Technologies, Inc., Wilcom Leasing, LLC and ASAPH Music, LLC</b>	H	<b>0.00</b>
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements in which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.		<b>Female debtor holds a durable power of attorney for her mother, Martha Smith, who is deaf</b>		<b>0.00</b>
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.		<b>Potential claims against American Express and Nationwide Credit, Inc. for violations of the NC UDAP statutes and FDCPA for contacting the consumers after receiving Notice of Legal Representation in an amount greater than \$5500.00</b>	J	<b>5,500.00</b>
		<b>Potential claims against Chrysler Financial and G. Abraham Investments, LLC for unlawful repossession and other claims including, but not limited to, violations of NC UDAP statutes and FDCPA in an amount greater than \$5500.00</b>	J	<b>5,500.00</b>

IN RE Public, Joe Bob &amp; Public, Mary Jane

Case No. \_\_\_\_\_

Debtor(s)

(If known)

**SCHEDULE B - PERSONAL PROPERTY**  
**(Continuation Sheet)**

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.		<b>The name MenuPublisher has been filed to register as a trademark</b> <b>The name Piano CD Player has been filed to register as a trademark</b> <b>The book "The Ultimate Piano Buyer's Guide" has been registered for copyright</b> <b>Debtors have also registered the following websites:</b> <b>www.pianosuperstore.com</b> <b>www.thepianosuperstore.com</b> <b>www.pianobuy.com</b> <b>www.asaphcorp.com</b> <b>www.asaphmusictech.com</b> <b>www.wilcomleasing.com</b> <b>www.menupublisher.com</b> <b>www.scrapbookingonmain.com</b>	<b>J</b>	<b>20,000.00</b>
23. Licenses, franchises, and other general intangibles. Give particulars.		<b>NC Driver's licenses</b>	<b>J</b>	<b>0.00</b>
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.		<b>All customer records for the corporate entities are located in the business location</b>	<b>J</b>	<b>0.00</b>
25. Automobiles, trucks, trailers, and other vehicles and accessories.		<b>1990 Ford Ranger Truck, 58,000 mi; VIN 1FTCR10A5LUA92091; vehicle titled in the name of Asaph Music</b>		<b>1,862.00</b>
		<b>1995 Chevrolet Kodiak Expeditor with sleeper &amp; liftgate; odometer reading 454,000 mi; new motor has approx 250,000 mi; owned by Wilcom but co-signed by male debtor</b>		<b>10,000.00</b>
		<b>2004 Chrysler Town and Country van, 56,000 mi, entertainment pkg; VIN 2C4GP54LO4R537264</b>	<b>H</b>	<b>9,375.00</b>
		<b>2005 Chrysler 300 4dr, 38,000 mi, auto, pw, pl; VIN 2C3JA53G15H163979</b>	<b>W</b>	<b>11,100.00</b>
		<b>2007 Chrysler Aspen 4dr SUV, 8500 mi, 4 x 4 auto, pl, pw, VIN 1A8HW58397F516412; vehicle leased through Wilcom Leasing, LLC and guaranteed by both debtors; registered in the name of Wilcom and male debtor.</b>		<b>24,725.00</b>
26. Boats, motors, and accessories.	<b>X</b>			
27. Aircraft and accessories.	<b>X</b>			
28. Office equipment, furnishings, and supplies.	<b>X</b>			
29. Machinery, fixtures, equipment, and supplies used in business.		<b>2 fork lifts, moving and packing gear, stair climbers, blankets, dollies - all property of Wilcom Leasing, LLC</b>		<b>5,000.00</b>
		<b>20 wire displays 260; 15 pair slat wall shelf brackets 134.70; 20 wire display hooks 10; 3 vendor light boxes 35; drum head display rack 180; 20 slat-wall guitar hangers 149.60; small ceiling light 10; 2 desktop computers 600; front counter display 800; 4 metal shelf units 300; plastic 5 shelf unit 50; all items owned by ASAPH Music</b>		<b>2,529.30</b>

IN RE Public, Joe Bob &amp; Public, Mary Jane

Case No. \_\_\_\_\_

Debtor(s)

(If known)

**SCHEDULE B - PERSONAL PROPERTY**  
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
30. Inventory.		<b>Musical instruments and accessories inventory of ASAPH Music &amp; Technologies, Inc.; value given is cost basis and based on item availability as of 10.2.07</b>		<b>86,756.05</b>
31. Animals.		<b>Maltese dog</b>	<b>J</b>	<b>800.00</b>
32. Crops - growing or harvested. Give particulars.	<b>X</b>			
33. Farming equipment and implements.	<b>X</b>			
34. Farm supplies, chemicals, and feed.	<b>X</b>			
35. Other personal property of any kind not already listed. Itemize.		<b>Potential Consumer Rights Claims. The debtors claim an exemption in any possible consumer rights claim only to the extent that the settlement/award is found by the Bankruptcy Court, upon the filing of a Motion for Approval of Settlement/Award and for Allowance of Exemptions and an Amendment to Schedule C, to be in the nature of a personal injury claim, if allowed as exempt under applicable law, or to the extent that it is found to be other than a personal injury claim only to the extent of the dollar amount available to the debtors under another exemption, such as the wildcard exemption, under applicable exemptions law. The time within which the trustee may object to the claiming of any exemption in this asset, shall be deemed tolled until such time as the Motion and Amendment are filed and served upon the trustee.</b>	<b>J</b>	<b>unknown</b>
		<b>Potential Personal Injury settlement including, but not limited to, any claims for medical bills and lost wages.</b>	<b>J</b>	<b>unknown</b>
		<b>Potential Social Security {can be exempted under G.S. Section 108A-36 or 42 USC 407}</b>	<b>J</b>	<b>unknown</b>
		<b>Potential unemployment</b>	<b>J</b>	<b>unknown</b>
		<b>Potential VA benefits - {can be exempted under G.S. Section 108A-36 or 38 USC 5301(a)}</b>	<b>J</b>	<b>unknown</b>
		<b>Potential Workman's Comp</b>	<b>J</b>	<b>unknown</b>
		<b>The debtors claim the full market value of assets as stated in Schedules A and B as entirely exempt for the purposes of the rules as established in the United States Supreme Court in Schwab v. Reilly on June 17, 2010, if the actual value claimed is equal to or greater than the actual full market value of the asset as stated in Schedules A and B or if it is greater than the debtors' equity in such asset as shown by Schedules A, B and D.</b>	<b>J</b>	<b>unknown</b>
		<b>It is the debtor's intention to claim the property listed on Schedule C as fully exempt to the maximum extent permitted by law and up to the maximum value of the property consistent with the applicable exemption limits or caps.</b>		
		<b>The debtors elect all exemptions to which the debtors are entitled under applicable state or federal law as of the date of the filing of the petition at the place where the debtors' domicile has been located for the 730 days immediately preceding the date of the filing of the petition, or if the debtors' domicile has not been located in a single state for such 730 day period, the place in which the debtors' domicile was located for 180 days</b>	<b>J</b>	<b>unknown</b>

IN RE Public, Joe Bob & Public, Mary Jane

Debtor(s)

Case No. \_\_\_\_\_

(If known)

**SCHEDULE B - PERSONAL PROPERTY**  
**(Continuation Sheet)**

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
		<p>immediately preceding the 730 day period or for a longer portion of the 180 day period than in any other place. If no state exemptions are available, the debtors elect all exemptions under 11 U.S.C. Section 522. The debtors do not claim any exemption in any amount greater than permitted by the applicable exemption law.</p>		
<b>TOTAL</b>				<b>191,680.35</b>

IN RE Public, Joe Bob &amp; Public, Mary Jane

Case No. \_\_\_\_\_

Debtor(s)

(If known)

**SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**Debtor elects the exemptions to which debtor is entitled under:  
(Check one box)☐ Check if debtor claims a homestead exemption that exceeds \$146,450. \*☐ 11 U.S.C. § 522(b)(2)☒ 11 U.S.C. § 522(b)(3)

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS
<b><u>SCHEDULE A - REAL PROPERTY</u></b>			
Home and 12.86 acres at 490 Marble Creek Road, Rutherfordton, North Carolina as described in that certain Deed as recorded in Book 786, Page 804 of the Rutherford County Public Registry; property is exempt from claims against one spouse under Section 522(b)(2), which allows an individual debtor to exempt from the property of the estate any interest in property in which the debtor had, immediately before the commencement of the case, an interest as tenant by the entirety to the extent such interest is exempt from process under applicable non-bankruptcy law. Debtors dispute the secured mortgage claims as to the total amount of the debt as of the petition date and as to the alleged arrears and also dispute that the scheduled party is the lawful owner and holder of the original mortgage note.	G.S. § 1C-1601(a)(1)	70,000.00	156,500.00
<b><u>SCHEDULE B - PERSONAL PROPERTY</u></b>			
Cash on hand - rounded to the nearest whole number	G.S. § 1C-1601(a)(2)	200.00	200.00
Checking Account at SECU - rounded to the nearest whole number	G.S. § 1C-1601(a)(2)	230.00	230.00
Savings Account at SECU - rounded to the nearest whole number	G.S. § 1C-1601(a)(2)	30.00	30.00
2 end tables 50; filing cab 20; scrapbooking table 500	G.S. § 1C-1601(a)(4)	570.00	570.00
2 IMAC, 1 iBook and 2 PC's 800; 3 comp desks 240	G.S. § 1C-1601(a)(4)	1,040.00	1,040.00
5 tv's 300; 5 dvd players 75; stereo 75	G.S. § 1C-1601(a)(4)	450.00	450.00
Baby Grand piano 1,000.00; buffet/china cab 100	G.S. § 1C-1601(a)(4)	1,100.00	1,100.00
couch 100; loveseat 100; chair/ottoman 75	G.S. § 1C-1601(a)(4)	275.00	275.00
Daughter's twin bed & dresser	G.S. § 1C-1601(a)(4)	80.00	80.00
dishwasher 100; misc hhgs/linens 35	G.S. § 1C-1601(a)(4)	135.00	135.00
gas grill 20; misc tools 75; sofa table 10	G.S. § 1C-1601(a)(4)	105.00	105.00
master b/r suit 400; jewelry armoire 20	G.S. § 1C-1601(a)(4)	420.00	420.00
patio table & 8 chairs 200; wicker pool furn 200	G.S. § 1C-1601(a)(4)	400.00	400.00
son's bunkbed, armoire, dresser, nightstand	G.S. § 1C-1601(a)(4)	200.00	200.00
son's crib/changing table set 100; rocking chair/ottoman 25	G.S. § 1C-1601(a)(4)	125.00	125.00
son's toddler car bed 25; Thomas the Train table 25	G.S. § 1C-1601(a)(4)	50.00	50.00

\* Amount subject to adjustment on 4/1/13 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

IN RE Public, Joe Bob &amp; Public, Mary Jane

Case No. \_\_\_\_\_

Debtor(s)

(If known)

**SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**  
**(Continuation Sheet)**

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS
washer 200; dryer 200; stove 200; refrig 100	G.S. § 1C-1601(a)(4)	700.00	700.00
Misc. books	G.S. § 1C-1601(a)(4)	100.00	100.00
Children's clothing	G.S. § 1C-1601(a)(4)	700.00	700.00
Clothing and accessories	G.S. § 1C-1601(a)(4)	300.00	300.00
Clothing and accessories	G.S. § 1C-1601(a)(4)	300.00	300.00
Misc jewelry	G.S. § 1C-1601(a)(4)	75.00	75.00
watch 25; wedding band 200	G.S. § 1C-1601(a)(4)	225.00	225.00
wedding ring 200; watch 20	G.S. § 1C-1601(a)(4)	220.00	220.00
Glock 45 mg semi auto 200; 2 digital cameras & camcorder 300	G.S. § 1C-1601(a)(4)	500.00	500.00
Flexible Premium Variable Life Insurance policy through Pacific Life; face amount \$2,561,909.00	Art. X § 5 Of Con., G.S. §§ 1C-1601(a)(6)	100%	1.00
Term life policy through Primerica FV \$	Art. X § 5 Of Con., G.S. §§ 1C-1601(a)(6)	100%	1.00
Term policy through Woodmen of the World FV\$	Art. X § 5 Of Con., G.S. §§ 1C-1601(a)(6)	100%	1.00
Potential claims against American Express and Nationwide Credit, Inc. for violations of the NC UDAP statutes and FDCPA for contacting the consumers after receiving Notice of Legal Representation in an amount greater than \$5500.00	G.S. § 1C-1601(a)(2)	5,500.00	5,500.00
Potential claims against Chrysler Financial and G. Abraham Investments, LLC for unlawful repossession and other claims including, but not limited to, violations of NC UDAP statutes and FDCPA in an amount greater than \$5500.00	G.S. § 1C-1601(a)(2)	4,040.00	5,500.00
2004 Chrysler Town and Country van, 56,000 mi, entertainment pkg; VIN 2C4GP54LO4R537264	G.S. § 1C-1601(a)(3)	7,000.00	9,375.00
2005 Chrysler 300 4dr, 38,000 mi, auto, pw, pl; VIN 2C3JA53G15H163979	G.S. § 1C-1601(a)(3)	7,000.00	11,100.00
2 fork lifts, moving and packing gear, stair climbers, blankets, dollies - all property of Wilcom Leasing, LLC	G.S. § 59-55	5,000.00	5,000.00
20 wire displays 260; 15 pair slat wall shelf brackets 134.70; 20 wire display hooks 10; 3 vendor light boxes 35; drum head display rack 180; 20 slat-wall guitar hangers 149.60; small ceiling light 10; 2 desktop computers 600; front counter display 800; 4 metal shelf units 300; plastic 5 shelf unit 50; all items owned by ASAPH Music	G.S. § 59-55	2,529.30	2,529.30
Maltese dog	Art. X, § 1 Of Constitution	800.00	800.00
Potential Consumer Rights Claims. The debtors claim an exemption in any possible consumer rights claim only to the extent that the settlement/award is found by the Bankruptcy Court, upon the filing of a Motion for Approval of Settlement/Award	G.S. § 108A-36	100%	unknown

IN RE Public, Joe Bob &amp; Public, Mary Jane

Case No. \_\_\_\_\_

Debtor(s)

(If known)

**SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**  
**(Continuation Sheet)**

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS
and for Allowance of Exemptions and an Amendment to Schedule C, to be in the nature of a personal injury claim, if allowed as exempt under applicable law, or to the extent that it is found to be other than a personal injury claim only to the extent of the dollar amount available to the debtors under another exemption, such as the wildcard exemption, under applicable exemptions law. The time within which the trustee may object to the claiming of any exemption in this asset, shall be deemed tolled until such time as the Motion and Amendment are filed and served upon the trustee.			
Potential Personal Injury settlement including, but not limited to, any claims for medical bills and lost wages.	G.S. § 108A-36	100%	unknown
Potential Social Security {can be exempted under G.S. Section 108A-36 or 42 USC 407}	G.S. § 108A-36	100%	unknown
Potential unemployment	G.S. § 108A-36	100%	unknown
Potential VA benefits - {can be exempted under G.S. Section 108A-36 or 38 USC 5301(a)}	G.S. § 108A-36	100%	unknown
Potential Workman's Comp	G.S. § 108A-36	100%	unknown
The debtors claim the full market value of assets as stated in Schedules A and B as entirely exempt for the purposes of the rules as established in the United States Supreme Court in Schwab v. Reilly on June 17, 2010, if the actual value claimed is equal to or greater than the actual full market value of the asset as stated in Schedules A and B or if it is greater than the debtors' equity in such asset as shown by Schedules A, B and D.	G.S. § 108A-36	100%	unknown
It is the debtor's intention to claim the property listed on Schedule C as fully exempt to the maximum extent permitted by law and up to the maximum value of the property consistent with the applicable exemption limits or caps.			
The debtors elect all exemptions to which the debtors are entitled under applicable state or federal law as of the date of the filing of the petition at the place where the debtors' domicile has been located for the 730 days immediately preceding the date of the filing of the petition, or if the debtors' domicile has not been located in a single state for such 730 day period, the place in which the debtors' domicile was located for 180 days immediately preceding the 730 day period or for a longer portion of the	G.S. § 108A-36	100%	unknown



IN RE Public, Joe Bob & Public, Mary Jane

Debtor(s)

Case No. \_\_\_\_\_

(If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT  
(Continuation Sheet)

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS
180 day period than in any other place. If no state exemptions are available, the debtors elect all exemptions under 11 U.S.C. Section 522. The debtors do not claim any exemption in any amount greater than permitted by the applicable exemption law.			

IN RE **Public, Joe Bob & Public, Mary Jane**

Case No. \_\_\_\_\_

Debtor(s)

(If known)

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. <b>0805-40508781</b> <b>American General Finance</b> <b>181 Commercial St.</b> <b>Forest City, NC 28043-2850</b>	<b>J</b>	<b>1st d/t on debtors' residence; debtors dispute this claim as to the total amount of the debt as of the petition date and as to the alleged arrears and also dispute that the scheduled party is the lawful owner and holder of the original mortgage note or is a perfected secured creditor.</b>  VALUE \$ <b>156,500.00</b>			<b>X</b>	<b>223,772.91</b>	<b>67,272.91</b>
ACCOUNT NO. <b>American General Finance</b> <b>P O Box 3212</b> <b>Evansville, IN 47731-3212</b>		<b>Assignee or other notification for:</b> <b>American General Finance</b>  VALUE \$					
ACCOUNT NO. <b>Elizabeth B. Ells, Substitute Trustee</b> <b>8520 Cliff Cameron Dr. Suite 300</b> <b>Charlotte, NC 28269</b>		<b>Assignee or other notification for:</b> <b>American General Finance</b>  VALUE \$					
ACCOUNT NO. <b>Hometown Servicing, Inc.</b> <b>P O Box 10</b> <b>Asheville, NC 28802</b>		<b>Assignee or other notification for:</b> <b>American General Finance</b>  VALUE \$					
Subtotal (Total of this page)						<b>\$ 223,772.91</b>	<b>\$ 67,272.91</b>
Total (Use only on last page)						\$	\$

3 continuation sheets attached

(Report also on  
Summary of  
Schedules.)

(If applicable, report  
also on Statistical  
Summary of Certain  
Liabilities and Related  
Data.)

IN RE Public, Joe Bob &amp; Public, Mary Jane

Case No. \_\_\_\_\_

Debtor(s)

(If known)

### SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS (Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. <b>Rutherford County Clerk Of Court 07-SP-35890 P O Box 630 Rutherfordton, NC 28139-0630</b>		<b>Assignee or other notification for: American General Finance</b>					
		VALUE \$					
ACCOUNT NO. <b>0805-40508782</b> <b>American General Finance 181 Commercial St. Forest City, NC 28043-2850</b>	<b>J</b>	1st mortgage arrears on residence thru Nov 2010 to be pd thru plan; debtors to resume direct pmts in Dec 2010. <b>Debtors dispute this claim as to the total amount of the debt as of the petition date and as to the alleged arrears and also dispute that the scheduled party is the lawful owner and holder of the original mortgage note.</b>			<b>X</b>	<b>8,936.21</b>	<b>8,936.21</b>
		VALUE \$ <b>156,500.00</b>					
ACCOUNT NO. <b>907080504753****</b> <b>American General Finance 181 Commercial St. Forest City, NC 28043-2850</b>	<b>W</b>	<b>Non-PMSI; \$100 for hhgs in lieu of lien avoidance purs. to Section 522f</b>				<b>5,096.00</b>	<b>5,096.00</b>
		VALUE \$					
ACCOUNT NO. <b>American General Finance P O Box 3212 Evansville, IN 47731-3212</b>		<b>Assignee or other notification for: American General Finance</b>					
		VALUE \$					
ACCOUNT NO. <b>Audio Ethics, Inc. 2540 Beltway Blvd. Charlotte, NC 28214</b>	<b>J</b>	<b>Loan for asset purchase; to surrender collateral</b>				<b>331,157.98</b>	<b>331,157.98</b>
		VALUE \$					
ACCOUNT NO. <b>Brett E. Dressler, Esq. Sellers Hinshaw Ayers Dortch &amp; Lyons, PA 301 S. McDowell St., Suite 410 Charlotte, NC 28204-2686</b>		<b>Assignee or other notification for: Audio Ethics, Inc.</b>					
		VALUE \$					
Sheet no. <u>1</u> of <u>3</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims						Subtotal (Total of this page)	\$ <b>345,190.19</b>
						Total (Use only on last page)	\$

(Report also on  
Summary of  
Schedules.)(If applicable, report  
also on Statistical  
Summary of Certain  
Liabilities and Related  
Data.)

IN RE Public, Joe Bob &amp; Public, Mary Jane

Case No. \_\_\_\_\_

Debtor(s)

(If known)

### SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS (Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. <b>Mecklenburg County Clerk Of Court File 07-CVS-19517 801 E. 4th Street Charlotte, NC 28202</b>		<b>Assignee or other notification for: Audio Ethics, Inc.</b>					
		VALUE \$					
ACCOUNT NO. <b>1003162929</b> <b>Chrysler Financial P O Box 55000 Dept. 277001 Detroit, MI 48255</b>	<b>H</b>	<b>1st lien on 2004 Chrysler Town and Country; purch 10.31.03. Debtors dispute creditor is the holder of the RISA contract and is a perfected secured creditor.</b>		<b>X</b>		<b>10,185.00</b>	<b>810.00</b>
		VALUE \$ <b>9,375.00</b>					
ACCOUNT NO. <b>Chrysler Financial P O Box 9223 Farmington Hills, MI 48334</b>		<b>Assignee or other notification for: Chrysler Financial</b>					
		VALUE \$					
ACCOUNT NO. <b>Shelby Motors, LLC 1310 E. Dixon Blvd. Shelby, NC 28152</b>		<b>Assignee or other notification for: Chrysler Financial</b>					
		VALUE \$					
ACCOUNT NO. <b>1003162961</b> <b>Chrysler Financial P O Box 2993 Milwaukee, WI 53201-2993</b>	<b>W</b>	<b>1st lien on 2005 Chrysler 300; purch 1.10.05. Debtor disputes creditor is holder of the RISA contract and is a perfected secured creditor.</b>		<b>X</b>		<b>12,845.44</b>	<b>1,745.44</b>
		VALUE \$ <b>11,100.00</b>					
ACCOUNT NO. <b>G. Abraham Investments, LLC 221 Daniel Rd. Forest City, NC 28043</b>		<b>Assignee or other notification for: Chrysler Financial</b>					
		VALUE \$					
<div style="display: flex; justify-content: space-between;"> <div>Sheet no. <u>2</u> of <u>3</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims</div> <div>Subtotal (Total of this page)</div> </div>						\$ <b>23,030.44</b>	\$ <b>2,555.44</b>
<div style="display: flex; justify-content: space-between;"> <div>Total (Use only on last page)</div> <div></div> </div>						\$	\$

(Report also on  
Summary of  
Schedules.)(If applicable, report  
also on Statistical  
Summary of Certain  
Liabilities and Related  
Data.)

IN RE Public, Joe Bob &amp; Public, Mary Jane

Case No. \_\_\_\_\_

Debtor(s)

(If known)

### SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS (Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. <b>259-1154833-000***</b> <b>Daimler Chrysler Truck Financial</b> <b>P O Box354</b> <b>Lisle, IL 60532-0354</b>	<b>H</b>	<b>Lease for 2007 Chrysler Aspen SUV in name of Wilcom; debtor to reject lease, surrender collateral and grant relief from stay.</b>  VALUE \$ <b>24,725.00</b>				<b>29,609.93</b>	<b>4,884.93</b>
ACCOUNT NO. <b>4315296</b> <b>First National Bank</b> <b>P O Box 168</b> <b>Shelby, NC 28151-0168</b>	<b>H</b>	<b>1st d/t on commercial property located at 195 N. Main St., Rutherfordton, NC; debtors dispute this claim as to the total amount of the debt as of the petition date and as to the alleged arrears and also dispute that the scheduled party is the lawful owner and holder of the original mortgage note or is a perfected secured creditor.</b>  VALUE \$ <b>81,500.00</b>			<b>X</b>	<b>195,607.50</b>	<b>114,107.50</b>
ACCOUNT NO. <b>First National Bank</b> <b>P O Box 168</b> <b>Shelby, NC 28151-0168</b>	<b>H</b>	<b>1st lien on 1995 Chevy Kodiak Expeditor; to surrender collateral and grant relief from stay.</b>  VALUE \$ <b>10,000.00</b>				<b>19,855.00</b>	<b>9,855.00</b>
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
Subtotal (Total of this page)						<b>\$ 245,072.43</b>	<b>\$ 128,847.43</b>
Total (Use only on last page)						<b>\$ 837,065.97</b>	<b>\$ 543,865.97</b>

Sheet no. 3 of 3 continuation sheets attached to  
Schedule of Creditors Holding Secured Claims

(Report also on  
Summary of  
Schedules.)

(If applicable, report  
also on Statistical  
Summary of Certain  
Liabilities and Related  
Data.)

IN RE Public, Joe Bob & Public, Mary Jane

Debtor(s)

Case No. \_\_\_\_\_

(If known)

**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

**TYPES OF PRIORITY CLAIMS** (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$11,725\* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,775\* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,600\* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☒ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

\* Amounts are subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

1 continuation sheets attached

IN RE Public, Joe Bob & Public, Mary Jane

Debtor(s)

Case No. \_\_\_\_\_

(If known)

## SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS (Continuation Sheet)

### Taxes and Other Certain Debts Owed to Governmental Units

(Type of Priority for Claims Listed on This Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. (See Instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCOUNT NO.  IRS P.O. Box 21126 Philadelphia, PA 19114	H	2009 Federal Tax Liability				2,469.88	2,469.88	
ACCOUNT NO.  N.C. Department Of Revenue P.O. Box 25000 Raleigh, NC 27602	H	2009 State income tax liability				1,234.65	1,234.65	
ACCOUNT NO. 15171634  Rutherford County Tax Collector 229 North Main Street Rutherfordton, NC 28139	J	2010 personal property taxes for ASAPH				470.81	470.81	
ACCOUNT NO. 15206367  Rutherford County Tax Collector 229 North Main Street Rutherfordton, NC 28139	J	2010 personal property taxes				562.31	562.31	
ACCOUNT NO. 15162444  Rutherford County Tax Collector 229 North Main Street Rutherfordton, NC 28139	J	2009-2010 ad valorem taxes on residence				1,688.77	1,688.77	
ACCOUNT NO.  								

Sheet no. 1 of 1 continuation sheets attached to  
Schedule of Creditors Holding Unsecured Priority Claims

Subtotal  
(Totals of this page)

\$ **6,426.42** \$ **6,426.42** \$

Total

(Use only on last page of the completed Schedule E. Report also on the Summary of Schedules.)

\$ **6,426.42**

Total

(Use only on last page of the completed Schedule E. If applicable,  
report also on the Statistical Summary of Certain Liabilities and Related Data.)

\$ **6,426.42** \$

IN RE **Public, Joe Bob & Public, Mary Jane**

Debtor(s)

Case No. \_\_\_\_\_

(If known)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. (See Instructions Above.)	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. <b>3715-510644-82006</b> <b>American Express</b> <b>P O Box 297879</b> <b>Ft. Lauderdale, FL 33329-7879</b>	<b>H</b>	<b>Credit Service - disputed as to the amount of late fees, overlimit fees, interest fees, late charges or any other additional fees or charges.</b>			<b>X</b>	<b>6,471.00</b>
ACCOUNT NO. <b>Nationwide Credit, Inc.</b> <b>Acct 07122159481</b> <b>P O Box 740640</b> <b>Atlanta, GA 30374-0640</b>		<b>Assignee or other notification for: American Express</b>				
ACCOUNT NO. <b>Nationwide Credit, Inc.</b> <b>Acct 07122159481</b> <b>3010 Corporate Way</b> <b>Miramar, FL 33025-6547</b>		<b>Assignee or other notification for: American Express</b>				
ACCOUNT NO. <b>4178-0650-0020-3084</b> <b>Bank Of America Bankruptcy Dept.</b> <b>Dept. NC4-105-03-14</b> <b>P O Box 26012</b> <b>Greensboro, NC 27420</b>	<b>H</b>	<b>Credit Service - disputed as to the amount of late fees, overlimit fees, interest fees, late charges or any other additional fees and charges.</b>			<b>X</b>	<b>17,935.76</b>

1 continuation sheets attached

Subtotal  
(Total of this page) \$ **24,406.76**

Total  
(Use only on last page of the completed Schedule F. Report also on the Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.) \$



IN RE Public, Joe Bob &amp; Public, Mary Jane

Case No. \_\_\_\_\_

Debtor(s)

(If known)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
**(Continuation Sheet)**

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. (See Instructions Above.)	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. <b>Bank Of America</b> <b>P O Box 15026</b> <b>Wilmington, DE 19850-5026</b>		<b>Assignee or other notification for:</b> <b>Bank Of America Bankruptcy Dept.</b>				
ACCOUNT NO. <b>4188-0506-0020-3337</b> <b>Bank Of America Bankruptcy Dept.</b> <b>Dept. NC4-105-03-14</b> <b>P O Box 26012</b> <b>Greensboro, NC 27420</b>	<b>H</b>	<b>Credit Service - disputed as to the amount of late fees, overlimit fees, interest fees, late charges or any other additional fees or charges</b>		<b>X</b>		<b>5,689.07</b>
ACCOUNT NO. <b>517805238647*****</b> <b>Capital One Bank</b> <b>P O Box 30285</b> <b>Salt Lake City, UT 84130-0285</b>	<b>W</b>	<b>For notice purposes on account believed to have been satisfied.</b>		<b>X</b>		<b>0.00</b>
ACCOUNT NO. <b>Capital One Bank</b> <b>P O Box 85167</b> <b>Richmond, VA 23285</b>		<b>Assignee or other notification for:</b> <b>Capital One Bank</b>				
ACCOUNT NO. <b>L070520035</b> <b>Cleveland Regional Medical Center</b> <b>201 E. Grover St.</b> <b>Shelby, NC 28150</b>	<b>W</b>	<b>Medical bill</b>				<b>252.02</b>
ACCOUNT NO. <b>Spartan Financial Services</b> <b>Act 5559013-501</b> <b>P O Box 47248</b> <b>Oak Park, MI 48237</b>		<b>Assignee or other notification for:</b> <b>Cleveland Regional Medical Center</b>				
ACCOUNT NO. <b>2793207-9</b> <b>State Employees Credit Union</b> <b>PO Box 29562</b> <b>Raleigh, NC 27626</b>	<b>J</b>	<b>Personal Loan</b>				<b>3,091.78</b>

Sheet no. 1 of 1 continuation sheets attached to  
Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal  
(Total of this page) \$ **9,032.87**

(Use only on last page of the completed Schedule F. Report also on  
the Summary of Schedules, and if applicable, on the Statistical  
Summary of Certain Liabilities and Related Data.) \$ **33,439.63**

IN RE Public, Joe Bob & Public, Mary Jane

Debtor(s)

Case No. \_\_\_\_\_

(If known)

**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE OF OTHER PARTIES TO LEASE OR CONTRACT	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.
<b>Chrysler Financial</b> <b>P O Box 55000 Dept. 277001</b> <b>Detroit, MI 48255</b>  <b>Bank Of America Bankruptcy Dept.</b> <b>Dept. NC4-105-03-14</b> <b>P O Box 26012</b> <b>Greensboro, NC 27420</b>  <b>American Express</b> <b>P O Box 297879</b> <b>Ft. Lauderdale, FL 33329-7879</b>  <b>American General Finance</b> <b>181 Commercial St.</b> <b>Forest City, NC 28043-2850</b>	<b>All contractual provisions regarding arbitration or alternative dispute resolution are rejected in connection with the administration of this Chapter 13 case</b>  <b>All contractual provisions regarding arbitration or alternative dispute resolution are rejected in connection with the administration of this Chapter 13 case</b>  <b>All contractual provisions regarding arbitration or alternative dispute resolution are rejected in connection with the administration of this Chapter 13 case</b>  <b>All contractual provisions regarding arbitration or alternative dispute resolution are rejected in connection with the administration of this Chapter 13 case</b>

## **GLOBAL NOTES TO SCHEDULES OF ASSETS AND LIABILITIES AND STATEMENT OF FINANCIAL AFFAIRS OF JOHN LEE SMITH AND MARY ANN SMITH, CHAPTER 13 DEBTORS**

John Lee Smith and wife, Mary Ann Smith (the "Debtor") submits the Schedules of Assets and Liabilities (the "Schedules") and Statement of Financial Affairs (the "Statements") pursuant to 11 U.S.C. § 521 and Federal Rule of Bankruptcy Procedure 1007. The Schedules and Statements prepared by the Debtor are unaudited and were prepared with data as near as possible to the petition date. While the Debtor has exercised reasonable best efforts to ensure that the Schedules and Statements are accurate and complete based on information that was available at the time of preparation, inadvertent errors or omissions may exist. Accordingly, the Debtor reserves the right to amend the Schedules and Statements from time to time as may be necessary or appropriate and expects it will do so as information becomes available.

These global notes (the "Global Notes") are incorporated by reference in, and comprise an integral part of, the Schedules and Statements, and should be referred to and reviewed in connection with any review of the Schedules and Statements. The Debtor reserves the right to dispute, or to assert offset or defenses to, any claim reflected on the Schedules and/or Statements as to amount, liability or classification. The Debtor also reserves all rights with respect to the values, amounts and characterizations of the assets and liabilities listed in its Schedules and Statements.

Any failure to designate a claim listed on the Debtor's Schedules as "disputed," "contingent" or "unliquidated" does not constitute an admission by the Debtor that such amount is not "disputed," "contingent" or "unliquidated". The Debtor reserves the right to dispute, or to assert setoff rights, counterclaims or defenses to, any claim reflected on its Schedules as to amount, liability or classification, or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated". Additionally, the dollar amounts of claims listed may be exclusive of contingent and additional unliquidated amounts. Further, the claims of individual creditors for, among other things, merchandise, goods, services, or taxes are listed as the amounts entered on the Debtor's books and records and may not reflect credits or allowances due from such creditors to the Debtor.

The Debtor reserves all of its rights with respect to any such credits and allowances. As it would be expensive and unduly burdensome to obtain current market valuations of the Debtor's property interests, unless otherwise noted, the carrying value on the Debtor's books (net book value), rather than the current market values, of the Debtor's interests in property and of the Debtor's liabilities, is reflected on the Debtor's Schedules and Statements.

The Debtor has not set forth all causes of action against all third parties as assets in its Schedules and Statements. The Debtor reserves all of its rights with respect to any causes of action it may have and neither these Global Notes nor the Schedules and Statements shall be deemed a waiver of any such causes of action.

In reviewing and signing the Schedules and Statements, the Debtor has necessarily used the statements and representations of one or more of their creditors, debt collectors, debt buyers, collection attorneys and other parties. The Debtor has not been able to personally verify the accuracy of each such statement and representation, including statements and representations concerning amounts owed to creditors and their addresses. In addition to the foregoing, the following conventions were adopted by the Debtor(s) in the preparation of the Schedules and Statements:

### **Schedules of Assets and Liabilities**

#### **Schedule B Notes**

- Unless otherwise noted, Schedule B lists the estimated fair market value for each of the Debtor's assets as of the petition date. These values have been based on NADA publications, public tax values, Ebay sales data for similar items, yard sale values of similar items, and flea market values for certain items.

#### **Schedule D Notes**

- Except as otherwise agreed in accordance with a stipulation or agreed order or any other order entered by the Bankruptcy Court, the Debtor reserves the rights to dispute or challenge the validity, perfection or immunity from avoidance of any lien purported to be granted or perfected in any specific asset to a secured creditor listed on Schedule D.

- Although the Debtor has scheduled the claims of various creditors as secured claims, the debtor reserves all rights to dispute or challenge the secured nature of any such creditor's claim or the characterization of the structure of any such transaction, or any document or instrument, related to such creditor's claim.

- In certain instances, the Debtor may be a co-obligor, co-mortgagor or guarantor with respect to scheduled claims, and no claim schedule on Schedule D is intended to acknowledge claims of creditors that are otherwise satisfied or discharged by other entities.

- The descriptions provided are intended only to be a summary. Reference to the applicable credit agreements and related documents is necessary for a complete description of the collateral and the nature, extent and priority of any liens. Nothing herein shall be deemed a modification or interpretation of the terms of such agreements.

#### Schedule E Notes

- The listing of any claim on this Schedule E does not constitute an admission by the Debtor that such claim is entitled to priority treatment under 11 U.S.C. § 507. The Debtor reserves the right to take the position that any claim listed on Schedule E is not entitled to priority.

#### Schedule F Notes

- The Debtor expressly incorporates by reference into Schedules F all parties to pending and potential litigation listed in 4(a) of the Debtor's Statements as contingent, unliquidated and disputed claims, to the extent not already listed on Schedule F.

#### Schedule G Notes

- While reasonable best efforts have been made to ensure the accuracy of Schedule G, inadvertent errors or omissions may have occurred. To the extent the Debtor may become aware of additional executory contracts and unexpired leases, the Debtor will supplement this Schedule.
- The Debtor hereby reserve all rights to dispute the validity, status or enforceability of any contracts, agreements or leases set forth in Schedule G and to amend or supplement such Schedule as necessary. Additionally, the placing of a contract or lease onto this Schedule shall not be deemed an admission that such contract is an executory contract or unexpired lease, or that it is necessarily a binding, valid and enforceable contract. Any and all of the Debtor's rights, claims and causes of action with respect to the contracts and agreements listed on this Schedule are hereby reserved and preserved.
- Omission of a contract or agreement from this Schedule does not constitute an admission that such omitted contract or agreement is not an executory contract or unexpired lease. The Debtor's rights under the Bankruptcy Code with respect to any such omitted contracts or agreements are not impaired by the omission. This Schedule may be amended at any time to add any omitted contract or agreement.

· The contracts, agreements and leases listed on Schedule G may have expired or may have been rejected, terminated, assigned, modified, amended and/or supplemented from time to time by various amendments, change orders, restatements, waivers, estoppel certificates, letters and other documents, instruments, and agreements which may not be listed therein. Certain of the real property leases listed on Schedule G may contain renewal options, guarantees of payment, options to purchase, rights of first refusal, rights to lease additional space and other miscellaneous rights. Such rights, powers, duties and obligations are not set forth on Schedule G. Certain of the agreements listed on Schedule G may be in the nature of conditional sales agreements or secured financings, and the inclusion of such on Schedule G is not an admission that the agreement is an executory contract, financing agreement or otherwise.

\*\*\* END OF GLOBAL NOTES \*\*\*

## **Rule 9037 and the Full Account Numbers**

I list the debtor's full account number in Schedule F, in the Description field in the middle of the row, for accounts which are closed/to be discharged, because:

- Bankr Rule 9037(g) allows the debtor to waive his/her own privacy objection, and list your own acct numbers fully; the Comments to that rule are to the same effect
- Schedules D, E, and F of the Official Forms, suggest in the top paragraph of text that there is an advantage to listing the full account number if the debtor so chooses
- The full acct number helps the creditor to find the account in its computer and mark it discharged in bankruptcy, and hence to obey the stay and the discharge injunctions
- Years later, when some debt-buyer tries to sue on a discharged account, you have instant proof that the account was a prepetition debt, listed on Sch F with the matching account number.

We put the acct number in the Description field to eliminate acct numbers from creditor addresses. This separates them completely.

In re: \_\_\_\_\_ ) Case No. - - -  
 \_\_\_\_\_ )  
 \_\_\_\_\_ ) Chapter 13  
 \_\_\_\_\_ )  
 Debtor(s) \_\_\_\_\_ )

[illegible]



**d. Insurance information for secured claims (real property or motor vehicles)**

<u>Collateral</u>	<u>Insurance Agent and Address</u>	<u>Vehicle Mileage</u>	<u>VIN.</u>
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**3. Priority Claims**

a. Section 507(a)(2-10) Priority Claims

i. ☐ None

**OR**

ii. The names and amounts of all claims entitled to priority under 11 U.S.C. Section 507, other than DSOs:

Name

Claim Amount

b. Domestic Support Obligations ("DSOs")

i. ☐ None

**OR**

ii. The name, address and phone number including area code of the holder of any DSO as defined in 11 U.S.C. Section 101(14A), and amount of pre-petition arrearage owed, if any.

Name of Holder

Address (incl. city, state, zip code)

Telephone

Amt. of Any Pre-Pet. Arrearage

**4. Special Terms**

a. ☐ None

b. Special Treatment of Unsecured Claims, and Explanation of Treatment

c. Brief Comment Explaining Direct Payment Treatment for Secured Claims under Paragraph 3(a)(2)

d. ☐ Pay no interest on mortgage arrearages **OR** ☐ Pay interest on mortgage arrearages at \_\_\_\_%

e. Other Special Terms:

**5. Plan Motions:**

(a) Section 522(f) Personal Property and Household Goods Lien Avoidance:

Creditor

Acct. # Last 4 Digits

Debt Amount

Description of Property

(b) Section 522(f) Judicial Lien Avoidance

Creditor

Judgment Bk and Pg

Registry

Judgment Date

Judgment Lien Amt.

Real property to which the lien attaches:

Value of debtor(s) interest in this real property is: \$

Amount of exemption claimed in the real property: \$

(c) Assumption or Rejection of Executory Contracts and Unexpired Leases

Creditor

Assume or Reject

Amt. of Arrears in Plan

# of Months To Cure

**[YOU MAY DELETE SECTIONS OF THIS PLAN DETAIL FORM THAT ARE NOT APPLICABLE TO THE DEBTOR(S) PLAN]**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
*[insert correct division name]* DIVISION

In re: )  
 )  
 ) Case No. - - -  
 )  
 ) Chapter 13  
 )  
 )  
 Debtor(s) )

**CHAPTER 13 PLAN INCLUDING NOTICE AND MOTION(S) FOR VALUATION;  
MOTION(S) TO AVOID CERTAIN LIENS; MOTION(S) FOR ASSUMPTION  
AND REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.  
NOTICE OF OPPORTUNITY FOR HEARING ON CONFIRMATION OF THE PLAN INCLUDING ALL  
MATTERS AS SET FORTH IN THE PLAN  
FOR CASES FILED ON OR AFTER AUGUST 1, 2010**

The following is the Chapter 13 plan proposed by the above-named debtor(s). **THE DETAILS OF THIS PLAN ARE SET FORTH IN THE PLAN DETAILS (AND ANY AMENDMENT THERETO) ATTACHED TO THIS PLAN AND ARE INCORPORATED HEREIN.** The plan may also include in its provisions certain motions to avoid liens, motions for valuation of collateral securing claims, and motions to assume or reject executory contracts and unexpired leases.

**The Motions Applicable To This Plan Are Noted on Page 1 of the Plan Details**

TAKE NOTICE: Your rights may be affected. You should read the plan carefully, including any motions contained in the plan, and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to confirm the proposed plan of the debtor(s), including any of the motions included in the plan, or if you want the court to consider your views on these matters, then you or your attorney must file with the Court a written objection to confirmation and request for hearing on confirmation at one of the following addresses:

Cases filed in the **Charlotte, Shelby or Wilkesboro** Divisions:  
Clerk, U.S. Bankruptcy Court, P.O. Box 34189, Charlotte, N.C. 28234-4189

Cases filed in the **Asheville or Bryson City** Divisions:  
Clerk, U.S. Bankruptcy Court, Room #112, 100 Otis Street, Asheville, N.C. 28801

Your objection to confirmation and request for hearing must include the specific reasons for your objection, and must be filed with the Court no later than fourteen (14) days following the conclusion of the Section 341(a) meeting of creditors. If you mail your objection to confirmation to the Court for filing, you must mail it early enough so that the Court will receive it on or before the deadline stated above. You must also serve a copy of your objection to confirmation on the debtor(s), the attorney for the debtor(s), and the Chapter

13 trustee at their addresses as they are listed in the notice of the meeting of creditors. If any objections to confirmation are filed with the Court, the objecting party will provide written notice of the date, time and location of the hearing on the objection. No hearing will be held unless an objection to confirmation is filed.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the proposed plan of the debtor(s), including any motions contained in the plan, and may enter an order confirming the plan and granting the motions. **Any creditor's failure to object to confirmation of the proposed plan shall constitute the creditor's acceptance of the treatment of its claim as proposed, pursuant to 11 U.S.C. Section 1325(a)(5)(A).**

STANDING STAY MODIFICATION: The automatic stay provided in 11 U.S.C. § 362(a) is modified in Chapter 13 cases as follows: Affected secured creditors may contact the debtor about the status of insurance coverage on property used as collateral. If there are direct payments to creditors, affected secured creditors may contact the debtor in writing about any payment in default; and shall send to the debtor statements, payment coupons or other correspondence that the creditor sends to its non-debtor customers. Such actions do not constitute violations of 11 U.S.C. § 362(a).

### **PLAN PAYMENTS; ADMINISTRATIVE COSTS; PROOFS OF CLAIM**

#### **1. The Proposed Plan Payments Are Set Forth in Paragraph 1 of the Plan Details**

#### **2. Administrative Costs**

a. Attorney's Fees. The total base attorney fee, and the amount the attorney has received are set forth in Paragraph 1(d) of the Plan Details. The remainder of the base fee shall be paid through the plan by the trustee on a pro rata basis with required monthly payments to allowed secured claimants.

b. Trustee's Costs. The trustee shall be entitled to reimbursement of fees and costs up to the statutory maximum on each disbursement made by the trustee, regardless of whether it is paid prior to or following confirmation.

#### **3. Filing of Proofs of Claim**

a. The trustee shall only distribute payments, including adequate protection and conduit mortgage payments, to creditors who have actually filed proofs of claim (including adequate proof of security) with the Court that are deemed allowed pursuant to 11 U.S.C. Section 502(a). However, if a creditor does not file a timely proof of such creditor's claim, then either the debtor(s) or the trustee may file such a claim as provided for by 11 U.S.C. Section 501(c) and in that event such claim shall be deemed the claim for all purposes under the plan.

b. The trustee shall mail payments and provide notices to the address provided on the filed proof of claim or amended proof of claim or filed name or address change or assignment or transfer of claim filed with the Court

### **CLASSIFICATION AND TREATMENT OF CLAIMS**

#### **4. Secured Claims**

Other than conduit mortgage payments or secured claims that are to be paid directly by the debtor(s), the trustee shall pay the value of all allowed secured claims, on a pro rata basis in monthly amounts sufficient

to provide adequate protection, as indicated in Paragraph 2(a) of the Plan Details, pursuant to the following treatment classifications:

a. For purposes of the plan, the treatment of each claim is specified in Paragraph 2(a) of the Plan Details. Treatment shall be one of the following: (1) Mortgage payment through Chapter 13 Trustee: **“Conduit;”** (2) Direct payment by the debtor(s) : **“Direct”**, (if mortgage, only as authorized by the Court) and include a brief comment in “Special Terms” of Plan Details as to why this treatment is proposed; (3) Payment in full by the Chapter 13 Trustee through the plan where Section 506(a) does not apply: **“910/365”**; (4) Payment of the value of the collateral by the Chapter 13 Trustee through the plan where Section 506(a) does apply: **“As valued”**; (5) Debtor(s) will surrender the collateral: **“Surrender”**, or (6) File proceeding to determine validity of lien: **“Avoidance.”**

b. For secured claims to be paid directly by the debtor(s) or secured claims paid through the Chapter 13 Trustee, the amount of prepetition arrearages shown in Paragraph 2(b) of the Plan Details, if any, to be paid through the Chapter 13 Trustee:

c. Monthly Conduit Payment – details are shown in Paragraph 2(c) of the Plan Details.

If the treatment option for secured claims is **“Surrender”**, the debtor(s) surrenders any interest in the collateral securing the claims of the specified creditors. Upon confirmation, the automatic stay will be deemed lifted for the collateral and the creditor need not file a motion for relief from stay in order to repossess, foreclose upon or sell the collateral. Nothing herein is intended to lift any applicable co-debtor(s) stay, or to abrogate the debtor(s)’ state law contract rights.

d. For claims secured by improved real property or motor vehicles, information regarding insurance, vehicle mileage, and vehicle identification number are shown in paragraph 2(d) of the Plan Details

**5. Priority Claims** All claims entitled to priority under 11 U.S.C. Section 507 and 1322 shall be paid in full in deferred cash payments, except for priority claims under Section 507(a)(1)(B), unless the holder of the particular claim agrees to a different treatment of such claim.

a. Section 507(a)(2-10) Priority Claims

All priority claims other than DSOs shall be paid in full on a pro rata basis after the payment in full of all DSO priority claims. Such priority claims, if any, are listed in Paragraph 3(e) of the Plan Details.

b. Section 507(a)(1) Domestic Support Obligations (“DSOs”)

All post-petition DSOs, including post-petition DSOs assigned to a governmental unit, will be paid directly to the holder by the debtor(s) or to the assignee of the claim and not through the Chapter 13 Trustee unless otherwise specified under the “Special Terms” section of the plan. Domestic Support Obligations, if any, are listed on Paragraph 3(b) of the Plan Details.

DSO Prepetition Arrearages (as noted in Paragraph 3(b) of the Plan Details) Owed to DSO Holders Under 11 U.S.C. Section 507(a)(1)(A), or assigned to a governmental unit, to be paid in full through the Chapter 13 plan on a pro-rata basis after payment of secured claims and the attorney fee and prior to

payment of any non-DSO priority claim, unless a different treatment is proposed under the "Special Terms" section of the plan.

**6. General Unsecured Claims Not Separately Classified.** General unsecured claims shall be paid on a pro rata basis with payments to commence after the payment of all administrative, secured and priority unsecured claims in full.

**7. Special Terms are noted in Paragraph 4 of the Plan Details.**

**8. Plan Motions** (see Paragraph 5 of the Plan Details):

#### **Motion to Value All Liens in Paragraph 2(a)**

The debtor(s) hereby moves the Court to value the collateral of each of the creditors described in Paragraph 2(a) of the Plan Details (except those creditors whose claims are classified as conduit or to be paid directly or to be paid in full by the Chapter 13 Trustee where Section 506(a) does not apply) at the collateral value stated. To the extent that the amount of the debt of any such creditor exceeds the stated collateral value, the debtor(s) hereby moves the Court that said difference be treated in the Chapter 13 plan as a general unsecured claim without priority. The debtor(s) further moves the Court that the lien of each creditor listed upon the collateral listed hereinabove be satisfied upon payment of the collateral value and the issuance of the debtor(s) discharge.

#### **Motion to Avoid Non-Possessory, Non-Purchase Money Security Interests in Household Goods and Personal Items**

The debtor(s) is indebted to certain designated creditors listed in Paragraph 2(a) of the Plan Details, in the amounts stated. As security for the debt, each such creditor insisted upon, and the debtor(s) executed, a waiver of exemption of certain property, and a security agreement granting said creditors a non-possessory, non-purchase money security interest in household goods which is property delineated by 11 U.S.C. Section 522(f)(2) and which is held primarily for the personal, family or household use of the debtor(s) or a dependent of the debtor(s). The debtor(s) believes that a financing statement may have been properly filed evidencing each such creditor's security interest and liens:

The debtor(s)' interest in any item of property referred to above does not exceed the value claimed as exempt. The money borrowed from each such creditor does not represent any part of the purchase money of any of the items covered by each such creditor's security agreement. The existence of each such creditor's lien on the debtor(s)' household goods and personal items impairs the exemptions to which the debtor(s) would be entitled under Section 1C-1601 of the North Carolina General Statutes or as otherwise applied under applicable state law. The debtor(s) moves the Court for the cancellation and avoidance of the security interest of each such creditor in the debtor(s)' personal and household goods, effective upon discharge

#### **Motion to Avoid Judicial Liens**

Judgments were obtained by certain designated creditors listed in Paragraph 2(b) of the Plan Details in cases before the General Court of Justice of the State of North Carolina, and said judgments have been

recorded in the Public Registry as indicated in Paragraph 5(b) of the Plan Details.

The judgments noted in Paragraph 5(b) of the Plan Details created liens on the real property in which the debtor(s) has an interest. The real property, its value, and the exemption claimed by the debtor(s) are more specifically described in Paragraph 5(b) of the Plan Details

The aforesaid liens constitute judicial liens under 11 U.S.C. Section 522(f)(1). The property which this judicial lien encumbers is property which the debtor(s) is entitled to exempt under 11 U.S.C. Section 522 and the debtor(s) has claimed an exemption in the stated amount. The existence of this judicial lien impairs the exemption to which the debtor(s) is entitled under Section 1C-1601 of the North Carolina General Statutes or as otherwise applied under applicable state law.

The debtor(s) respectfully moves the Court to issue an order compelling the above-stated creditors to cancel and avoid their judicial liens upon the real property described herein, effective upon discharge.

### **Motion to Assume or Reject Executory Contracts and Unexpired Leases**

- a. The debtor(s) moves to assume or reject the executory contracts and unexpired leases as listed in Paragraph 5(c) of the Plan Details. If assumed, payments due after the filing of the case will be paid directly by the debtor(s) rather than by the trustee.
- b. Unless otherwise provided, the debtor(s) proposes to promptly cure any pre-bankruptcy defaults on the assumed leases or contracts over the period of months stated, with said payments to be made by the trustee.

### **General Provisions**

1. To receive payment from the trustee, either prior to or following confirmation, a secured creditor must file a proof of claim. Secured claims which are not filed within the time period required by Federal Bankruptcy Rule 3002(c) may be disallowed or subordinated to other claims upon further order of the Court.
2. Confirmation of this plan does not bar a party in interest from objecting to a claim for good cause shown.
3. Unless otherwise ordered, any creditor holding a claim secured by property which is removed from the protection of the automatic stay, whether by judicial action, voluntary surrender, or through operation of the plan, will receive no further distribution from the trustee, unless an itemized proof of claim for any deficiency is filed within one-hundred twenty (120) days (or one-hundred eighty (180) days if the property is real estate or manufactured housing) (or such other period as the Court orders) after the removal of the property from the protection of the automatic stay. For purposes hereof, the removal date shall be the date of the entry of the order confirming the plan, modifying the plan, or granting relief from stay. This also applies to creditors who may claim an interest in, or lien upon, property which is removed from the protection of the automatic stay of another lien holder or release to another lien holder.
4. If a claim is listed in the plan as secured and the creditor files a proof of claim as an unsecured creditor, the creditor shall be treated as unsecured for purposes of distribution and for any other purpose under the plan.

5. Property of the estate includes all of the property specified in 11 U.S.C. Section 541 and all property of the kind specified in such section acquired by the debtor(s) after commencement of the case but before the case is closed, dismissed or likewise converted to one under another chapter of the Code. All property of the debtor remains vested in the estate until completion of the plan.

6. All arrearages paid under the provisions of the plan will either accrue interest at the interest rate set forth in the plan under paragraph 4(d) of the Plan Details, or will accrue no interest if the plan so designates this treatment under the same paragraph. "Administrative Arrearages" is defined as the total amount of two full post-petition mortgage payments, which for purposes of distribution will be created by the Bankruptcy Trustee or added to the pre-petition arrearage claim if it exists.

7. Confirmation of the plan shall impose a duty on Real Property Creditors and/or servicers of such Creditors, with respect to application of mortgage and mortgage-related payments, to comply with the provisions of 11 U.S.C. §524(i), Local Rule 4001-1(e) and all Administrative Order(s) of the Bankruptcy Court relating to Arrearages, Administrative Arrearages, Mortgage Payments, and Conduit Mortgage Payments. The terms and conditions of the respective Administrative Orders are specifically incorporated herein by this reference as if completely set-forth with respect to the acceptance and application of all funds pursuant to the Conduit Mortgage Payment Rule. As a result, all Real Property Creditors and/or servicers for such Creditors shall have an affirmative duty to do the following upon confirmation of the Plan:

A. To apply all post-petition payments received from the Chapter 13 Trustee and designated to the pre-petition arrearage claim and the administrative arrearage claim only to such claims;

B. To apply all post-petition payments received from the Chapter 13 Trustee and designated as Conduit Mortgage Payments beginning with the calendar month and year designated for payment by the Court in the Order Confirming Plan;

C. To apply all post-petition payments received directly from the Debtor in a non-conduit mortgage plan only to post-petition payments unless otherwise ordered by the Court;

D. To refrain from assessing or adding any additional fees or charges to the loan obligation of the Debtor based solely on the pre-petition default;

E. To refrain from assessing or adding any additional fees or charges to the loan obligation of the Debtor (including additional interest, escrow and taxes) unless notice of such fees and charges has been timely filed pursuant to the Administrative Orders of the Court, and a proof of claim has been filed and has not been disallowed upon objection of the Chapter 13 Trustee or the Debtor;

F. To the extent that any post-confirmation fees or charges are allowed pursuant to the said Administrative Order and are added to the Plan, to apply only payments received from the Chapter 13 Trustee and designated in payment of such fees and charges to such fees and charges.

G. To the extent that any post-confirmation fees or charges are allowed pursuant to the said Administrative Order and are NOT added to the Plan, to apply only payments received directly from the Debtor and designated in payment of such fees and charges to such fees and charges.

8. All contractual provisions regarding arbitration or alternative dispute resolution are rejected in connection with the administration of this Chapter 13 case.

I declare under penalty of perjury that the information provided in the Chapter 13 Plan, including Motion(s) for Valuation; Motion(s) to Avoid Certain Liens; and Motion(s) for Assumption and Rejection of Executory Contracts and Unexpired Leases; as to all matters set forth herein are true and correct.

Dated\_\_\_\_\_

\_\_\_\_\_  
Debtor's Signature

Dated\_\_\_\_\_

\_\_\_\_\_  
Debtor's Signature

I hereby certify that I have reviewed this document with the debtor(s) and that the debtor(s) have received a copy of this document.

Dated\_\_\_\_\_

\_\_\_\_\_  
Attorney for the Debtor(s)



THE LAW OFFICES OF  
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Facsimile: (888) 870-1644

DATE

Creditor Name  
123 Bankruptcy Way  
Feewheeling, IL 12345

**In the Matter of:**

John Q. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Our File No:  
Your Account No: 1234567890

**SECTION 524(i) NOTICE LETTER TO  
MORTGAGE SERVICER**

Dear Sirs:

I represent the above named debtor(s) in the Chapter 13 case which was filed in the Bankruptcy Court on                     . Your company has been listed in this Chapter 13 case as a creditor to whom the debtor(s) make monthly mortgage payments upon a loan secured by real property.

Enclosed herein is a copy of the debtor(s') Chapter 13 Plan. Pursuant to Section 6 of the Chapter 13 Plan, any pre-petition arrearage upon the loan will be paid "through" the Chapter 13 Plan." The amount of the pre-petition arrears also includes by Administrative Order the first two (2) post-petition payments. This means all payments your company receives towards curing the pre-petition and post-petition arrears will come to your company in designated checks drawn upon the account of the Chapter 13 Trustee. Further, pursuant to Section 6 of the Chapter 13 Plan, post-petition payments on this loan will be paid by the Chapter 13 Trustee in the form of "Conduit Payments." This means that all payments your company receives to be applied to the post-petition payments will come to your company in payments from the Chapter 13 Trustee and each monthly check will note the **month and year for the application** thereof.

Your attention is hereby specifically directed to paragraph 6 of the General Provisions of the Chapter 13 Plan and your company is hereby put on specific notice of same. This provision states in relevant part:

Confirmation of the plan shall impose a duty on Real Property



\*The Law Offices of O. Max Gardner III, designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States, has proudly assisted consumers seeking relief under the US Bankruptcy Code for over 30 years.



O. Max Gardner III, CEO, Vice President of Litigation Management  
Gardner.Botes PLLC - National Consumer Bankruptcy Litigation Center  
403 South Washington Street, Shelby, North Carolina 28150  
mgardner@ncblc.com - (704) 481-1403 (voice) - (888) 870-1647 (fax)

Creditors and/or servicers of such Creditors, with respect to application of mortgage and mortgage-related payments, to comply with the provisions of 11 U.S.C. §524(i), Local Rule 4001-1(e) and all Administrative Order(s) of the Bankruptcy Court relating to Arrearages, Administrative Arrearages, Mortgage Payments, and Conduit Mortgage Payments. The terms and conditions of the respective Administrative Orders are specifically incorporated herein by this reference as if completely set-forth with respect to the acceptance and application of all funds pursuant to the Conduit Mortgage Payment Rule. As a result, all Real Property Creditors and/or servicers for such Creditors shall have an affirmative duty to do the following upon confirmation of the Plan:

- A. To apply all post-petition payments received from the Chapter 13 Trustee and designated to the pre-petition arrearage claim and the administrative arrearage claim only to such claims;
- B. To apply all post-petition payments received from the Chapter 13 Trustee and designated as Conduit Mortgage Payments only to the month designated for payment by the Chapter 13 Trustee;
- C. To apply all post-petition payments received directly from the Debtor in a non-conduit mortgage plan only to post-petition payments unless otherwise ordered by the Court;
- D. To refrain from assessing or adding any additional fees or charges to the loan obligation of the Debtor based solely on the pre-petition default;
- E. To refrain from assessing or adding any additional fees or charges to the loan obligation of the Debtor (including additional interest, escrow and taxes) unless notice of such fees and charges has been timely filed pursuant to the Administrative Order of the Court entered on the \_\_\_\_ day of \_\_\_\_\_, 2009, and a proof of claim has been filed and has not been disallowed upon objection of the Chapter 13 Trustee or the Debtor;
- F. To the extent that any post-confirmation fees or charges are allowed pursuant to the said Administrative Order and are added to the Plan, to apply only payments received from the Chapter 13 Trustee and designated in payment of such fees and charges to such fees and charges.
- G. To the extent that any post-confirmation fees or charges are allowed pursuant to the said Administrative Order and are NOT added to the Plan, to apply only payments received directly from the Debtor and designated in payment of such fees and charges to such fees and charges.

You are further specifically put upon notice that 11 U.S.C. Section 524(i) is applicable to your company as a creditor in this Chapter 13 case. It provides:

The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required by the plan), shall constitute a violation of an injunction

under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

With best regards, I remain.

Very truly yours,

A handwritten signature in black ink, appearing to read "O. Max Gardner III". The signature is fluid and cursive, with a large loop at the beginning and a horizontal line at the end.

O. Max Gardner III  
OMGIII/cjh

Cc: Debtors  
Trustee

**RULE 3002.1 Notice Relating to Claims Secured by Security Interest in the**

**Debtor's Principal Residence**

**Effective Date: December 1, 2011**

(a) NOTICE OF PAYMENT CHANGES. In a chapter 13 case, if a claim secured by a security interest in the debtor's principal residence is provided for under the debtor's plan pursuant to § 1322(b)(5) of the Code, the holder of such claim shall file and serve on the debtor, debtor's counsel, and the trustee notice of any change in the payment amount, including changes that result from interest rate and escrow account adjustments, at least 30 days before a payment at a new amount is due.

(b) FORM AND CONTENT. Any notice filed and served pursuant to subdivision (a) of this rule (1) shall conform substantially to the form of notice under applicable nonbankruptcy law and the underlying agreement that would be given if the debtor were not a debtor in bankruptcy, and (2) shall be filed as a supplement to the holder's proof of claim.

(c) NOTICE OF FEES, EXPENSES, AND CHARGES. In a chapter 13 case, if a claim secured by a security interest in the debtor's principal residence is provided for under the debtor's plan pursuant to § 1322(b)(5) of the Code, the holder of such claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice containing an itemization of all fees, expenses, or charges incurred in connection with the security interest after the filing of the bankruptcy case that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be filed as a supplement to the holder's proof of claim and sent within 30 days of the date when such fees, expenses, or charges are incurred. On motion of the debtor or trustee filed no later than one year after service of the notice given pursuant to this subdivision, after notice and hearing, the court shall determine whether such fees, expenses, or charges

are required by the underlying agreement and applicable nonbankruptcy law for the curing of the default or the maintenance of payments in accordance with § 1322(b)(5) of the Code.

(d) NOTICE OF FINAL CURE PAYMENT. Within 30 days of making the final payment of any cure amount made on a claim secured by a security interest in the debtor's principal residence, the trustee in a chapter 13 case shall file and serve upon the holder of the claim, the debtor, and debtor's counsel a notice stating that the amount required to cure the default has been paid in full. If the debtor contends that the final cure payment has been made and the trustee does not file and serve the notice required by this subdivision within the specified time period, the debtor may file and serve upon the holder of the claim and the trustee a notice stating that the amount required to cure the default has been paid in full.

(e) RESPONSE TO NOTICE OF FINAL CURE PAYMENT. Within 21 days of service of the notice given pursuant to subdivision (d) of this rule, the holder of a claim secured by a security interest in the debtor's principal residence shall file and serve a statement indicating whether the debtor has paid in full the amount required by the underlying agreement and applicable nonbankruptcy law for the curing of the default and the maintenance of payments in accordance with § 1322(b)(5) of the Code. If applicable, the statement shall contain an itemization of any required cure or postpetition payments that the holder contends remain unpaid in connection with the security interest as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim.

(f) MOTION AND HEARING. On motion of the debtor or trustee filed no later than 21 days after service of the statement given pursuant to subdivision (e) of this rule, after notice and hearing, the court shall determine whether the debtor has cured the

default and paid in full all postpetition amounts required by the underlying agreement and applicable nonbankruptcy law in connection with the security interest.

(g) FAILURE TO NOTIFY. If the holder of a claim secured by a security interest in the debtor's principal residence fails to provide information required by subdivision (a), (c), or (e) of this rule, the holder may not present that information, in any form, as evidence in any hearing or submission in any contested matter or adversary proceeding in the case, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, after notice and hearing, may award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
SHELBY DIVISION**

**IN THE MATTER OF:**

**NAME:**

**Chapter 13 No.  
Our File No.**

**ADDRESS:**

**SSN:**

**DEBTOR(S).**

\_\_\_\_\_

**AFFIDAVIT OF CONTRIBUTION TO HOUSEHOLD OF**

\_\_\_\_\_

The undersigned, being duly sworn, deposes and says:

1. My name is \_\_\_\_\_.
2. I am over the age of 18 years and under no disability.
3. I am the father of the debtor.
4. I voluntarily provide my daughter with the sum of \$800.00 per month to assist her with her reasonable monthly living expenses.
5. I will continue to assist my daughter with the said funds for the duration of her bankruptcy proceeding and thereafter as necessary.
6. I understand that this assistance is necessary in order to provide the debtor with sufficient Net Monthly Income to fund her Chapter 13 repayment plan.

I certify that the foregoing is true and accurate to the best of my knowledge and belief.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
SHELBY DIVISION**

**IN THE MATTER OF:**

**NAME:**

**Chapter 7 No.  
Our File No.**

**ADDRESS:**

**SSN:**

**DEBTORS.**

---

**DECLARATION OF DEBTOR(S) REGARDING  
COMPLIANCE WITH 11 U.S.C. SECTION 521(e)(1)(2)(A)**

**COME NOW** the debtors, by and through their attorney of record in this case, and declare that the debtors have complied with the mandatory requirements of Section 521(e)(1)(2)(A) by providing the Chapter 7 Trustee with the debtors' income tax returns for the 2001 – 2004 tax years.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.



---

O. Max Gardner III  
Law Offices of O. Max Gardner III, P.C.  
Attorney for the Debtors  
NC State Bar #6164  
P.O. Box 1000  
Shelby, NC 28151-1000  
(704) 487-0616  
FAX (704) 487-0619  
Primary e-mail: [maxgardner@maxgardner.com](mailto:maxgardner@maxgardner.com)



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
SHELBY DIVISION**

**IN THE MATTER OF:**

**NAME(S):**

**CHAPTER 7 NO.  
OUR FILE NO.**

**ADDRESS:**

**SSN:**

**DEBTOR(S).**

---

**NOTICE OF STATEMENT OF INTENTION**

**COME NOW** the above-named debtor(s), by and through their attorney of record, and pursuant to Bankruptcy Rule 1007(b)(2) hereby give written notice of the Chapter 7 Statement of Intention to all creditors named in the statement.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



---

O. Max Gardner III  
Law Offices of O. Max Gardner III, P.C.  
Attorney for the Debtor(s)  
N.C. State Bar #6164  
P.O. Box 1000  
Shelby, NC 28151-1000  
(704) 487-0616  
FAX (704) 487-0619  
Primary e-mail: [maxgardner@maxgardener.com](mailto:maxgardner@maxgardener.com)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
SHELBY DIVISION

XX

IN THE MATTER OF:

PUBLIC, JOHN Q.  
PUBLIC, MARY E.

SSN:

STREET ADDRESS:

MAILING ADDRESS:

COURT NO:

FILE DATE:

OUR FILE NO:

XX

**1. NOTICE OF BANKRUPTCY FILING**

**2. NOTICE OF THE AUTOMATIC STAY**

**3. NOTICE OF CHAPTER 13 PLAN FILED BY DEBTORS**

**4. NOTICE OF RIGHT TO OBJECT TO PLAN AND FINAL DATE FOR FILING OBJECTIONS**

XX

**1. NOTICE OF BANKRUPTCY FILING**

PLEASE TAKE NOTICE that the above-named debtor(s) have filed a petition for relief under CHAPTER 13 of Title 11 of the United States Code. This petition has been filed with the United States Bankruptcy Court for the Western District of North Carolina.

**2. NOTICE OF AUTOMATIC STAY AND SANCTIONS FOR VIOLATION OF STAY**

***PLEASE TAKE FURTHER NOTICE that if this is the first bankruptcy filing for the debtor(s), pursuant to Section 362 of Title 11 of the United States Code all creditors and other legal entities including individuals are hereby AUTOMATICALLY STAYED AND ENJOINED from commencing or continuing any judicial, administrative or other proceeding against the debtor(s); from enforcing a judgment against the debtor(s) or their property; from creating, perfecting or enforcing against the debtor(s) any lien; from collecting or recovering a claim against the debtor(s); from setting off any debt owed by the debtor(s); or from taking any other form of adverse creditor action against the debtor(s) or property of the debtor(s) .***

***In the event that this is a case in which there is one prior dismissed bankruptcy case within the last year, there is a 30 day automatic stay as to the debtor which may be extended if granted by the Bankruptcy Court. However, the automatic stay as to property of the estate is not limited to the said 30 day period and and therefore any collection action as to property of the estate both before and after the 30 day period is enjoined as to any property of the estate for the duration of the bankruptcy proceeding or until the secured creditor secures relief from the stay after notice and a hearing or the case is dismissed prior to discharge.***

***In the event that this is a case in which there has been more than one prior dismissed bankruptcy case within the last year, there is no automatic stay both as to the Debtor and as to property of the estate in effect unless requested by a party and granted by the Bankruptcy Court after proper notice and a hearing.***

***PLEASE TAKE FURTHER NOTICE THAT ANY VIOLATION OF THIS AUTOMATIC STAY OR ANY OTHER BANKRUPTCY STAY WILL RESULT IN THE FILING OF A MOTION FOR SANCTIONS WITH THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA. IF SUCH A MOTION IS FILED, THE DEBTOR(S) WILL MOVE THE COURT FOR THE RECOVERY OF ACTUAL DAMAGES OF NO LESS THAN \$2,500.00, OF PUNITIVE DAMAGES OF NO LESS THAN \$10,000.00, AND OF LEGAL FEES AND EXPENSES IN AN AMOUNT NO LESS THAN \$2,500.00.***

## **2A. NOTICE OF 341 MEETING**

PLEASE TAKE FURTHER NOTICE that the notice of the first meeting of creditors in this case will be issued by the Standing Chapter 13 Trustee and you will receive a copy thereof. This notice will include the time, date and place for the first meeting of creditors in this case. This notice will also include a proof of claim form that may be used for filing any proof of claim form with the Trustee's Office.

## **2B. MASTER MAILING MATRIX OF ALL CREDITORS AND PARTIES**

PLEASE TAKE FURTHER NOTICE that all known creditors in this case are listed by name, address and account number (if known or assigned) on the master mailing matrix, a copy of which is attached to this notice.

## **2C. NOTICE OF CASE INFORMATION PROCEDURES**

PLEASE TAKE FURTHER NOTICE that you may call the telephone numbers noted herein for a computer-assisted voice confirmation (VCIS) of this filing from the United States Bankruptcy Court. The telephone numbers are: 704.350.7505 or 800.884.9868. In order to get information from this system, you must use a touch-tone telephone.

PLEASE TAKE FURTHER NOTICE that information about this case may also be obtained by use of the electronic public access system (PACER). This system allows any party to use a terminal or computer and modem to dial into the Bankruptcy Court's computer system, to connect to a special information computer, and to request information about a case. The Court's PACER telephone numbers are 704.350.7509 and 800.324.5614. The Clerk's office will provide

documentation on the use, restrictions, and capabilities of the PACER system, as well as a PACER registration form and user identification, upon request. All inquiries should be directed to the Court's Director of Automation or other systems staff at 704.350.7500.

PLEASE TAKE FURTHER NOTICE that you may obtain copies of any and all pleadings and schedules filed in this case from the court's web site, [www.ncwb.uscourts.gov](http://www.ncwb.uscourts.gov). This site is maintained by the United States Bankruptcy Court for the Western District of North Carolina and all documents filed in this case are public records available from this site with a PACER identification and password.

PLEASE TAKE FURTHER NOTICE that all inquiries regarding this case addressed to the attorney of record for the debtor must be made in writing and that copies of all pleadings filed with the court will be provided at the rate of \$1.00 per page, payable in advance.

### **3. NOTICE OF CHAPTER 13 PLAN**

***A COPY OF THE CHAPTER 13 PLAN SUMMARY IS ATTACHED HERETO AS AN EXHIBIT AND INCORPORATED HEREIN BY REFERENCE. YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. (IF YOU DO NOT HAVE ANY ATTORNEY, YOU MAY WISH TO CONSULT ONE).***

### **4. NOTICE OF TIME PERIOD FOR OBJECTIONS TO PLAN**

***Local Rule 3015-1 of the United States Bankruptcy Court for the Western District of North Carolina provides that "Parties shall have fourteen (14) days after the 341(a) meeting within which to file an objection to confirmation of the Chapter 13 plan. If no objection is filed within that time, the Court will enter an order confirming the plan." If you do not want the court to grant the relief requested by the debtor(s) in their plan summary, or if you want the court to consider your views on the plan, then you must timely file a written objection to confirmation and request for hearing with the Clerk of the Court. If a timely objection is filed, then all parties will receive notice of the time, date and place for the Court hearing.***

#### **4A. NOTICE OF FILING AND SERVICE OF OBJECTIONS**

File with the court a written request for a hearing and a written objection to confirmation if you desire to file one at:

United States Bankruptcy Court  
Western District of North Carolina  
P.O. Box 34189  
Charlotte, NC 28234-4189

You must also mail a copy to:

O. Max Gardner III  
Attorney for the Debtor(s)  
P.O. Box 1000  
Shelby, NC 28151-1000

and to:

Steven G. Tate  
Standing Chapter 13 Trustee  
P.O. Box 1778  
Statesville, NC 28687-1778

**4B. NOTICE OF CONSEQUENCES OF FAILURE TO FILE TIMELY OBJECTION TO PLAN**

**IF YOU OR YOUR ATTORNEY DO NOT TAKE THESE STEPS, THE COURT MAY DECIDE THAT YOU DO NOT OPPOSE THE RELIEF SOUGHT IN THE MOTION OR OBJECTION AND MAY ENTER AN ORDER GRANTING THAT RELIEF.**

**5. NOTICE OF YOUR ADDRESS**

**Please be advised that the filing or service of any Notice of Appearance by an attorney on behalf of any creditor, the filing of an address for service of court papers, and filing of the name and address of any designated party or agent for the receipt of court papers, shall be deemed the proper address for all such creditors for service of any notices, papers, motions or other process in this case and shall be deemed a waiver of the Notice provisions provided for by Section 342(c) of the Bankruptcy Code with respect to any notice required to be given by the debtor to a creditor. The address for notices filed in this case shall be "deemed" the exclusive notice address unless and until a written request or notice of a new address is filed by the creditor in this case and served on the Court, the Trustee, and the attorney for the Debtor(s).**

DATED THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

---

O. MAX GARDNER III  
LAW OFFICES OF O. MAX GARDNER III, P.C.  
ATTORNEY FOR THE DEBTORS  
NORTH CAROLINA STATE BAR NO: 6164  
403 SOUTH WASHINGTON STREET  
P.O. BOX 1000  
SHELBY NC 28151-1000  
704.487.0616 (VOICE)  
704.487.0619 (FAX)  
Primary e-mail: [maxgardner@maxgardner.com](mailto:maxgardner@maxgardner.com)

# 341 Meeting Questionnaire and Hearing Memo

403 S Washington Street  
PO Box 1000  
Shelby, NC 28151-1000



704.487.0616 (voice)  
704.487.0619 (fax)  
maxgardner@maxgardner.com

### **341 MEETING QUESTIONNAIRE**

1. State your name(s), social security number, and current address for the record.
2. Have you read the Bankruptcy Information Sheet provided by the Trustee? [ ] Yes [ ] No
3. Are you aware of the following:
  - a. the consequences filing bankruptcy may have on your credit history? [ ] Yes [ ] No
  - b. the ability to file a bankruptcy petition under Chapter 13? [ ] Yes [ ] No
  - c. the effect of receiving a Chapter 7 discharge of your debts? [ ] Yes [ ] No
  - d. the effect of reaffirming a debt? [ ] Yes [ ] No
4. Did you sign your petition and scheduled you filed with the Court? [ ] Yes [ ] No
5. Did you read your petition and schedules before you signed them? [ ] Yes [ ] No
6. Are you personally familiar with the information contained in your petition and schedules? [ ] Yes [ ] No
7. Is the information contained in your petition and schedules true and correct? [ ] Yes [ ] No
8. Are there any errors or omissions to bring to the Court's attention at this time? [ ] Yes [ ] No
9. Are all of your assets identified on the schedules? [ ] Yes [ ] No
10. Have you listed all of your creditors on the schedules? [ ] Yes [ ] No
11. Have you filed bankruptcy before? [ ] Yes [ ] No

### **OTHER QUESTIONS**

1. Do you own or have any interest whatsoever in any real estate or mobile home? [ ] Yes [ ] No
2. Have you transferred, sold or given away any property within the last 12 months? [ ] Yes [ ] No
3. Does anyone hold property belonging to you? [ ] Yes [ ] No
4. Do you have a claim against anyone or any business? [ ] Yes [ ] No
5. Are you entitled to life insurance proceeds or an inheritance as a result of someone's death? [ ] Yes [ ] No
6. Does anyone owe you money? [ ] Yes [ ] No
7. Have you made any payments totaling over \$600 to anyone in the last 90 days? [ ] Yes [ ] No
8. Tax return information: \_\_\_\_\_
9. When you filed your petition, did you have the following:
  - a. any cash on hand? [ ] Yes [ ] No
  - b. a checking account? [ ] Yes [ ] No
  - c. a savings account? [ ] Yes [ ] No
  - d. any US Savings Bonds? [ ] Yes [ ] No
  - e. any Certificates of Deposit? [ ] Yes [ ] No
  - f. any stocks? [ ] Yes [ ] No
  - g. a safe deposit box? [ ] Yes [ ] No
10. Do you own any vehicles? [ ] Yes [ ] No
11. Have you filed the Statement of Intent concerning retention or surrender of secured property? [ ] Yes [ ] No
12. Have you been self-employed in business during the last six years? [ ] Yes [ ] No
13. Why did you have to file bankruptcy? \_\_\_\_\_

NOTES:

Date: \_\_\_\_\_ By: \_\_\_\_\_



\*The Law Offices of O. Max Gardner III, P.C., designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States, has proudly assisted consumers seeking relief under the US Bankruptcy Code for over 30 years.

© Max Gardner's Bankruptcy Boot Camp

**NORTH CAROLINA  
BAR ASSOCIATION**  
SEEKING LIBERTY & JUSTICE

# 341 CASE MEMO

\*\*\*\*\*

341 MEETING DATE: February 15, 2011

\*\*\*\*\*

John Q. Public

Mary E. Public

100 Main Street

Anywhere, NC 28999

Chapter 13 No: 05-49999

SSN: --- -- 1234 & --- -- 5678

File Date: 02 January 2011

Our File No: 11999

\*\*\*\*\*

MONTHLY PLAN PAYMENT: \$125.00

Has debtor made next plan payment direct to Trustee? Yes / No

Driver's license & SS card? Yes / No

Phone Number: 704.487.1234 (home)

\*\*\*\*\*

HOME: First mtg arrears on residence to Countrywide in the sum of \$1,905.81 thru Jan 2006 to be pd thru plan. Did debtors resume direct pymts in Feb 2006? Yes / No

AVOIDANCES: MBNA (judgment)

ABANDONMENTS: Chrysler (04 Town & Country van)

LEASES: None

MODIFICATIONS OR AMENDMENTS:

CREDITORS PRESENT FOR 341 MEETING:

\*\*\*\*\*

MONTHLY PAYMENTS PER TRUSTEE:

CREDITOR

AMOUNT

SECURED/RESERVED

IRS

STATE REVENUE NC

COUNTY TAX (Cleveland)

\$8.36

\$233.29

-----

Countrywide (mtg arrears @ \$1,905.81)

CitiFinancial (hhgs @ \$100)

Ford Motor Credit (02 Ford F150 Supercab XLT @ \$12,500)

\*\*\*\*\*

RECOMMENDED FOR CONFIRMATION: YES / NO

PERCENT TO UNSECURED: \_\_\_\_\_%

FINAL PLAN PAYMENT: \$\_\_\_\_\_ for \_\_\_\_\_ months

\*\*\*\*\*

SPECIAL NOTES:



# Surrender of Vehicle Forms and Letters

403 S Washington Street  
PO Box 1000  
Shelby, NC 28151-1000



704.487.0616 (voice)  
704.487.0619 (fax)  
maxgardner@maxgardner.com

---

**VEHICLE INTAKE/RECOVERY FORM**

DEBTOR(S): \_\_\_\_\_ OUR FILE NO: \_\_\_\_\_

VEHICLE: YEAR: \_\_\_\_\_ MAKE: \_\_\_\_\_ MODEL: \_\_\_\_\_ VIN: \_\_\_\_\_

\_\_\_\_ IGNITION KEYS      \_\_\_\_ DOOR KEYS      \_\_\_\_ KEYLESS REMOTE DEVICES

CREDITOR: \_\_\_\_\_

PLEADING: \_\_\_\_\_ COURT NO: \_\_\_\_\_

DELIVERED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

***This will acknowledge that The Law Offices of O. Max Gardner III, P.C. secured possession of the motor vehicle listed above on the date noted.***

RECEIVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

---

***This will acknowledge that the undersigned secured possession of the motor vehicle and keys or devices as listed below from The Law Offices of O. Max Gardner III, P.C. on the date noted.***

VEHICLE: YEAR: \_\_\_\_\_ MAKE: \_\_\_\_\_ MODEL: \_\_\_\_\_ VIN: \_\_\_\_\_

\_\_\_\_ IGNITION KEYS      \_\_\_\_ DOOR KEYS      \_\_\_\_ KEYLESS REMOTE DEVICES

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

EMPLOYER: \_\_\_\_\_

DRIVER'S LICENSE NO: \_\_\_\_\_ STATE: \_\_\_\_\_

RELEASED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

403 SOUTH WASHINGTON STREET  
POST OFFICE BOX 1000  
SHELBY, NORTH CAROLINA 28151  
www.maxgardnerlaw.com

**O. Max Gardner III**  
maxgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1647

**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

American Honda Finance Corporation  
8601 McAlpine Park Drive  
Suite 230  
Charlotte, NC 28211

**In the Matter of:**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 No:  
SSN:  
File Date:  
Our File No:

Dear Sir or Madam:

The debtors have surrendered to this office your collateral, a 2006 Honda Accord EX, which was listed in their filed Chapter 13 Petition and Schedules. Please make arrangements to recover this vehicle from my office as soon as possible to avoid incurring storage fees. Please note that storage charges of \$25.00 per day will begin accruing on \_\_\_\_\_, and thereafter, until the vehicle is removed.

With best regards, I remain

Very truly yours,



O. Max Gardner, III  
OMGIII/djj  
cc: Clerk of Bankruptcy Court  
Trustee (via electronic filing)  
John and Mary Public

## GARDNER LAW OFFICES

**William S. Gardner**  
Managing Attorney  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644  
bgardner@maxgardner.com

403 SOUTH WASHINGTON STREET  
POST OFFICE BOX 1000  
SHELBY, NORTH CAROLINA 28151

**O. Max Gardner, III**  
Of Counsel  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1647  
maxgardner@maxgardner.com

DATE

### **Certified Mail – Return Receipt Requested**

To Car Creditor

In the Matter of:  
Debtor  
Case Number  
Collateral

### **Intent to Deem Car Abandoned**

Dear [name of owner]

You were a creditor in the above mentioned chapter \_\_ case that held a security interest in the above mentioned vehicle. Pursuant to the debtors' bankruptcy filing, they have surrendered the collateral to you. Your collateral is currently being stored on property owned by O. Max Gardner III and has been stored since \_\_\_\_\_. We have repeatedly contacted you to come and pick up your surrendered collateral but you have failed to do so. Such inaction on your part strongly implies that you have in fact abandoned any interest in the collateral.

If we do not hear from you within 5 days of receipt of this letter, we will be forced to file a report to the North Carolina Division of motor vehicles that your interest in this vehicle has in fact been abandoned. This is a statutory duty imposed on our office by North Carolina General Statute Section 20-77. Also, be advised that if the vehicle is deemed abandoned our office will proceed to auction the vehicle in order to recover our storage costs.

With best regards, I remain

Very truly yours,



William S. Gardner  
WSG/cjh

# Initial Case Letters and Notices

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

403 SOUTH WASHINGTON STREET  
POST OFFICE BOX 1000  
SHELBY, NORTH CAROLINA 28151  
www.maxgardnerlaw.com

**O. Max Gardner III**  
maxgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1647

**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999

**In the Matter of:**

Your Chapter 13 Case  
Court No: 07-49999  
SSN: --- -- 1234 & --- -- 5678  
File Date: 01 May 2007  
Our File No: 11999

**PETITION TRANSMITTAL LETTER**

Dear John & Mary:

I am enclosing a copy of your Chapter 13 petition, plan and schedules that was filed with the United States Bankruptcy Court by one of our computer systems on the date noted in the caption of this letter. I am also enclosing a written e-mail from the Court that confirms the receipt of these documents and includes your assigned Bankruptcy Case Number. Please read and review these papers and advise me of any errors or omissions. You should also keep these papers with your other documents in this case.

You should also check these papers to be certain that you understand the treatment of all debts under your repayment plan. For example, if you own residential real estate and occupy the same as your home, then your plan may only include the mortgage payments that were behind at the time the case was filed. If this is the case, then all FUTURE MORTGAGE PAYMENTS beginning the month after your filing must be made directly to the creditor. On the other hand, if your plan includes the mortgage arrears plus the future mortgage payments then you will not be making any future direct mortgage payments. Check your plan terms to be sure you are clear on these matters and call me if you have any questions.

If you have not done so, you must prepare and file all State and Federal income as soon as possible. We will need to have your last year's federal tax return at least 10 days before the first court meeting in your case and could possibly need your last 4 years of tax returns. Furthermore, If you fail to file any returns, then your bankruptcy case may be subject to an automatic dismissal and the taxing agencies may file a "Substitution for Return" which may impact the ability of any tax debt to be discharged upon completion of your case or in the event that you subsequently determine that you want to convert this case to a Chapter 7



\*The Law Offices of O. Max Gardner III, designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States, has proudly assisted consumers seeking relief under the US Bankruptcy Code for over 30 years.



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Gardner.Botes PLLC - National Consumer Bankruptcy Litigation Center  
403 South Washington Street, Shelby, North Carolina 28150  
mgardner@ncblc.com - (704) 481-1403 (voice) - (888) 870-1647 (fax)

bankruptcy case. In the alternative, they may also file an estimated claim which normally greatly exceeds any actual liability owed and which we are unable to dispute without the proper filing of your returns.

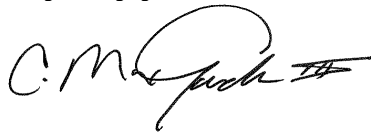
PLEASE NOTE THAT YOUR NEXT PLAN PAYMENT IS DUE BY THE 10<sup>TH</sup> OF THE MONTH FOLLOWING THE MONTH OF THE FILING OF YOUR PETITION AS NOTED IN THE CAPTION TO THIS LETTER. YOU SHOULD PURCHASE A MONEY ORDER, BANK CHECK, A CERTIFIED CHECK OR A CASHIER'S CHECK MADE PAYABLE TO THE TRUSTEE (STEVEN G. TATE) FOR THIS NEXT PAYMENT. THESE FUNDS MUST BE PAID BY THE 10<sup>TH</sup> OF NEXT MONTH (AND EACH MONTH THEREAFTER) TO THE FOLLOWING ADDRESS AND WILL BE CONSIDERED LATE IF RECEIVED AFTER THE 15<sup>TH</sup> OF THE MONTH:

Steven G. Tate  
Chapter 13 Trustee  
P.O. Box 613136  
Memphis, TN 38101-3136

If you have any questions, please call me.

With best regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to read "O. Max Gardner III", with a stylized flourish at the end.

O. Max Gardner III

OMGIII/mrg

enclosure:     Petition packet  
                     Notice of Bankruptcy Case Filing issued by Bankruptcy Court

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**O. MAX GARDNER III\***

*At Historic Webbely House*

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**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999

**In the Matter of:**

Your Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Our File No:

**POST 341 CONFIRMATION "RIGHTS AND  
RESPONSIBILITIES LETTER**

Dear John and Mary:

This letter will confirm that your Chapter 13 plan was recommended for approval and confirmation by the Trustee at your first meeting of creditors in Shelby. I am enclosing a copy of a memo I prepared for that meeting which basically summarizes your plan and what happened at the court meeting. If you have any questions about this meeting, please call me.

www.maxgardnerlaw.com

**Your next payment to the Trustee must be made on or before the 10th day of next month and will be considered late if not received by the 15th of the month.** All future payments will be made on a regular monthly basis. These payments must be in the form of a certified check, a cashier's check, or a Post Office or Bank money order to the Trustee at the following address:

Steven G. Tate  
Chapter 13 Trustee  
P.O. Box 613136  
Memphis, TN 38101-3136

YOUR FULL NAME, ADDRESS, AND BANKRUPTCY COURT NUMBER must appear on each such check or money order. This information will assist the Trustee in the proper application of your monthly payment to your case. You may ignore these instructions if your payment is being made by a direct wage deduction.

You should also carefully read the instruction form I gave you at the first meeting and call



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me if you have any questions about those instructions. Some important points for you to remember, however, are as follows:

1. You cannot incur any new credit of more than \$500.00 without court approval. In order to secure court approval, you need to contact your attorney who will prepare and file the necessary papers for you.
2. You cannot sell any property with a value greater than \$500.00 without court approval. In order to secure court approval, you need to contact your attorney who will prepare and file the necessary papers with the court.
3. You can have the Chapter 13 Trustee issue a Wage Deduction Order which will require your employer to automatically deduct your plan payments from each paycheck in an amount that will equal the monthly amount of your plan payments divided by your total number of pay periods per month.
4. You need to report any loss of employment or new employment to your attorney. Your attorney will need the name and address of your new employer, your gross pay, and the terms of your employment.
5. You need to report any increase in your monthly income of more than 15% to your attorney.
6. If you are not able to make your mortgage payments, or if you miss a mortgage payment, you need to contact your attorney before your mortgage company takes any legal action against you.
7. If you are not able to make your monthly plan payments, then the Trustee will issue a Wage Deduction Order to your employer. If you are having problems with your plan payments, contact your attorney.
8. You must report the receipt of any property or money by way of inheritance, life insurance or even the lottery to your attorney within 10 days of receipt of any notice of the payment of such benefits to you. All such property must be reported to the Bankruptcy Trustee by your attorney. You may not use any such money without prior court approval.
9. You must provide copies of your Federal Income tax return each year during the pendency of your case to your attorney. Your attorney in turn will forward these copies to the Bankruptcy Trustee for his review. You may also be required to file annual budgets of your current income and expenses. Your attorney will contact you if and when such amended budgets are requested by the Trustee.
10. You must notify your attorney at once of any change in any insurance on your home, car, truck, boat, etc. Under the law, you are required to provide proof of insurance on a regular basis to any creditor holding a lien on this type of property. In these situations, please provide your attorney with the name of your agent, his or her address and telephone number, the name of the new insurance company, and the policy number. If you change insurance companies, make sure all secured creditors are listed on the new policies.
11. If you are seeking a new mortgage loan to payoff your case, this is considered new credit that must be approved by the Court. The first thing you need to do is provide your attorney with written authority to discuss your case with your mortgage broker or real estate agent and then have your broker or real estate agent contact your attorney with the proposed terms of the sale and/or contract to purchase.
12. Under the law, you will receive a copy of any documents filed in your case. You do

not need to call your attorney each time you receive such a document. Your attorney receives email copies of every document that is filed in your case. If your attorney thinks any court document requires your attention, you will be contacted.

13. Please be sure to use the Mortgage Payment History form you previously received to record all of your direct mortgage payments. You need to record the date of the payment, the method of payment (check, money order, etc), and the amount of payment. It is also suggested that you make a copy of the check or money order before mailing. You should just keep a file at home entitled "Mortgage Payments" and keep all of these records in that file.

14. If you receive any form of written notice from your home mortgage creditor or creditors, please mail or bring them to your attorney for his review. These documents could include information about improper fees and charges. Any such fees and charges may violate the Bankruptcy Code and other consumer protection statutes. If your attorney finds such violations, he will take legal action on your behalf.

15. If any creditor contacts you by mail, then please save the envelope for proof of the post-mark date and bring or mail the envelope and letter to your attorney's office. Such letters could violate the Bankruptcy Code (and other laws) and if such violations occur then you have the right to sue for damages and your attorney fees. As you know, your attorney takes all of these cases on a contingency fee basis so if he does not win the case you never owe him any money.

16. If any of your creditors contact you by telephone, then be sure and answer the calls. Your attorney advises you to employ the "Hello I am Earl" technique for the purpose of getting information. For instance, you can tell the caller that your spouse is not at home and you will need to discuss the nature of the call with him or her. Ask for a return number, the caller's special extension number, and the name of the caller so that you can call them back later after you talk to your spouse. If they want money, advise them that you always pay by an Official Bank check and therefore need the name to put on the check, the amount of the payment, the exact mailing address, and the name of a person at that mailing address. If they want a check by phone, tell them you no longer have a bank account due to the bankruptcy. In short, play dumb and act nice and get information for your attorney. Every such call may be worth money to you if you do the right thing and follow these rules.

17. Never give your bank account number, your savings account number, or your Social Security number to any party who contacts you by phone, mail, or email.

18. It is lawful in North Carolina for you to record any telephone call between you and a creditor, a collection agency, or a collection lawyer. So, if you have a tape recorder, use it. If you have an answering machine, save the tape or record the digital message before you erase the tape. If you do not have an answering machine that captures calls or a digital recorder, then buy one. It could be the best investment you make.

19. If you are involved in an accident at work or a motor vehicle accident, or suffer any other form of an accidental injury, then call your bankruptcy attorney. Any settlement of these claims will require the approval of the Bankruptcy Court.

20. If you are not sure what to do about anything related to your bankruptcy case, then call your attorney. It is better to be safe than sorry.

You should continue making your monthly payments to the Trustee until you are notified to stop. Some plans run 1 or 2 months longer than projected due to debts being larger than initially reported or additional fees and expenses that may be added to the plan during your case. Likewise, some plans run a shorter time than projected for many reasons. The

primary thing to remember is that the Trustee will notify you when your plan is over and he will also refund any overpayment directly to you.

**Please note that if you fail to make your plan payments on a regular and a timely basis then the Trustee will file a motion to have the Court dismiss your case.** If such a motion is approved or granted by the Court, then you will no longer be protected from your creditors. And, keep in mind that it is much harder to file a new case under the Amended Bankruptcy Law than it was before this new law became effective.

My main goal in each and every Chapter 13 case is to do everything possible within the law to ensure that each client receives his or her Chapter 13 Discharge. This Discharge is entered upon the completion of your plan and it constitutes legal verification that you do not owe any of the creditors that have been listed in your plan and that you have satisfied all of your obligations to these creditors. In most cases, the only exception to this discharge would be things like your direct home mortgage payments (which generally continue through your plan) or student loans.

Accordingly, if you have any problems with your plan payments during the course of your case please call me. In many situations, we can modify plans or seek a temporary suspension of plan payments if warranted by the law and the facts. The main point is that we need to know if you are having problems so that we can try to avoid a dismissal of your case. No discharges are ever entered in dismissed cases.

With best regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to read "O. Max Gardner III", with a stylized flourish at the end.

O. Max Gardner III

OMGIII/mrg

enclosure: 341 memo

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

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bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999

**Letter to Debtor Regarding  
Mortgage Payments**

**In the Matter of:**

Your Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Our File No:

Dear John and Mary:

During my years as a consumer bankruptcy attorney there have been countless instances when a client has mailed a payment to his mortgage lender but the payment was either not credited to his account or not credited to his account in a timely manner. The burden of proof of said payment then fell on the client which, in most cases, required a trace on whatever form of payment was remitted. This process is both timely and costly.

I am therefore recommending that you make all of your mortgage payments by personal check and retain copies of the front and back of all images of those checks from your bank. Record the date of payment, amount and check number on the enclosed form.

Regardless of the form of payment you choose to use to remit your payment, always keep a record of the payment in the form of a receipt or copy which lists the date, amount of funds, payee's name, your account number, and receipt number. This would prove to be very useful if there is ever a dispute regarding a payment.

With best regards, I remain

Very truly yours,



O. Max Gardner III  
OMGIII/mrg

enclosure: Mortgage Payment Record



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## MORTGAGE PAYMENT RECORD

START WITH THE FIRST FULL MONTH AFTER FILING	Beside each month, write the date that you make the payment, the check or money order number or other identification of payment. KEEP ALL RECEIPTS WITH THIS RECORD FOR EASY RETRIEVAL.					
	2011	2012	2013	2014	2015	2016
JANUARY						
FEBRUARY						
MARCH						
APRIL						
MAY						
JUNE						
JULY						
AUGUST						
SEPTEMBER						
OCTOBER						
NOVEMBER						
DECEMBER						

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Facsimile: (888) 870-1644

DATE

IRS Special Procedures  
Attn: Insolvency III  
320 Federal Place, Room 327  
Greensboro, NC 27401

**In the Matter of:**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Our File No:

**362(a) Notice to IRS**

Dear Sir or Madam:

I represent the debtors in a Chapter 13 Case filed with the United States Bankruptcy Court for the Western District of North Carolina, Shelby Division, as evidenced by the enclosed Notice of Bankruptcy Case Filing. Please be advised that the debtors' tax liability is included in their filed Chapter 13 plan. As a result, all further direct collection efforts or notices to the debtors should be terminated. Thank you for your assistance in this matter.

With best regards, I remain

Very truly yours,



O. Max Gardner, III

OMGIII/cjh

enclosure: Notice of Bankruptcy Case Filing

cc: Steven G. Tate

John and Mary Public



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**N C B L C**

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PO Box 1000  
403 South Washington Street  
Shelby, North Carolina 28151

**Phone:** (704)418-2628  
**Fax:** (888) 870-1647

Date

ABC Mortgage Company  
Address  
City, State ZIP Code

**AUTHORIZATION TO COMMUNICATE WITH DEBTOR  
FOR LOAN MODIFICATION**

RE: Our Client: James Jones  
Client Address:  
Our File Number: 2009-0001  
Bankruptcy File No.:

Dear Sir or Madam:

Please be advised that representatives of ABC Mortgage Company have my specific authority to communicate directly with my client, James Jones, the debtor in the above referenced bankruptcy proceeding, solely for purposes of determining if he qualifies for a mortgage modification.

This letter also confirms that the debtor hereby waives the protections of the automatic stay for the purposes of these communications and for no other purposes.

If you have any questions, please contact me.

Very truly yours,

O. Max Gardner III  
OMGIII:lp

cc: James Jones, Debtor

**O. Max Gardner III**  
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Vice President-Litigation  
Management  
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Admitted in NC

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**John Mull Gardner**  
Of Counsel  
[jgardner@maxgardner.com](mailto:jgardner@maxgardner.com)  
Admitted in NC

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members and supporters of:*



# QWR Practice



## **Dodd-Frank Act: QWR Timelines Shortened and Other RESPA and TILA Changes**

by Kevin T. Dobie  
Usset, Weingarden & Liebo PLLP – USFN Member (MN)

The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law on July 21, 2010. The Act changes the timelines for qualified written requests (QWRs), prohibits various servicing practices, significantly raises the stakes for certain RESPA violations, and makes a few TILA changes. There is a dispute as to the effective date of these amendments.

### **Shorter QWR Timelines**

Servicers now have less time to acknowledge and respond to QWRs. The Act changes the acknowledgment deadline for QWRs from 15 days to only 5 days. The Act also changes the substantive response deadline from 60 days to just 30 days. It does allow a 15-day extension, if the borrower is notified of the extension and the reasons for the delay; but even with the extension, the time frames are still short enough that servicers must act quickly. Procedures for promptly responding to QWRs are now even more imperative.

### **Important QWR Practice Tip: Designated Address**

If a servicer has not already designated an address for QWRs, now is the time to do so. A servicer may set up a specific and exclusive address for QWRs by sending notice to the borrower in a notice of transfer, or a separate mailing. 24 C.F.R. § 3500.21(e)(1). Such an address should help servicers process these requests in a timely fashion. The address will also protect servicers from liability, if the borrower sends the QWR to the wrong address.

### **General Prohibitions & Requirements**

Servicers should also be aware of the new general RESPA prohibitions regarding force-placed insurance, as well as charging fees for responses to QWRs and general responses. The Act imposes new requirements for escrow accounts. For example, after receiving a full payoff, any escrow balance must be returned within 20 days. The Act also implements a 10-business day deadline to respond to a request for the identity and address of the owner, or assignee, of the loan.

### **Damages**

The Act raises the available damages for failing to respond to RESPA requests as required. The available damages for each violation under 12 U.S.C. § 2605 changed as follows:

- (1) Individuals: actual damages plus \$1,000 increased to actual damages plus \$2,000; and
- (2) Class Actions: the cap for class action lawsuits increased from the lesser of \$500,000 or 1 percent of the servicer's net worth to the lesser of \$1,000,000 or 1 percent.

### **TILA**

In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act changes a few sections of the Truth in Lending Act. Escrow accounts are now mandatory for many first mortgages, including all loans guaranteed by a state or federal government. The Act requires servicers to credit payments as of the date of receipt, unless a delay will not result in a charge or

negative credit report. Also, payoff statements must be sent within a reasonable time, but no more than seven days after a written request.

### **Conclusion**

The most important points are that servicers must speed up internal actions to meet response deadlines, and that the damages available for RESPA violations have increased. Servicers should take note that they can limit liability for potential QWR violations by requiring that certain requests be sent to a specific and exclusive address. If the borrower sends a QWR to the wrong address, the servicer may be able to avoid liability altogether.

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*September e-Update*

# NCLC REPORTS

Consumer Credit and Usury / Deceptive Practices and Warranties Editions

Volume 29  
July/August 2010

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## Special Double Issue on the Dodd-Frank Financial Reform Bill

### President Signs Financial Reform Bill

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank),<sup>1</sup> the most important change in consumer-protection law since the late 1960s, was signed into law on July 21, 2010. Most readers by now are familiar that it will create a new Consumer Financial Protection Bureau (CFPB) which will issue extensive new regulations and otherwise dramatically change lending practices for years to come.

Perhaps less well known is that Dodd-Frank makes scores of important changes to TILA, RESPA, HAMP, EFTA, HMDA, CLA, FCRA, and other consumer laws, particularly changes related to mortgage originations and servicing. Federal preemption of state consumer law is also restricted.

This double issue examines all aspects of Dodd-Frank relevant to a consumer law practice. NCLC is also presenting a webinar on the subject on Sept. 15 at 2 p.m. EST.<sup>2</sup>

### Effective Dates Vary

The most immediate question for practitioners is when these dramatic changes go into effect. The answer varies by provision and in some cases is unclear.

#### The Designated Transfer Date

The CFPB assumes full authority and takes over any authority transferred from other federal agencies on the "Designated Transfer Date." Virtually all other provisions of Title X of Dodd-Frank also either go into effect on that date or that date is key in computing the effective date.

The designated transfer date is an unspecified date to be determined (by Sept. 19, 2010) by the Secretary of the Treasury in consultation with other agencies. The date must be between January 21, 2011 and July 21, 2011, though it can be as late as January 21, 2012 if the Secretary justifies a later date in a report to Congress.<sup>3</sup>

#### Effective Dates for Title XIV: Mortgage-Related Provisions

Dodd-Frank Title XIV enacts a large number of significant mortgage provisions. The effective dates for these provisions depend on whether and when regulations are written

to implement them. If regulations are enacted to implement a section or provision, then the section or provision takes effect on the date that the final regulations take effect.<sup>4</sup> A rule required by the mortgage title must be prescribed in final form within 18 months of the transfer date and must take effect within 12 months of the rule's promulgation. If regulations have not been issued for a section by 18 months after the transfer date, then that section becomes effective at that point (sometime between July 21, 2012 and July 21, 2013).<sup>5</sup>

It is unclear if these dates apply to provisions for which no regulations are needed or expected.<sup>6</sup> If they do not, then Dodd-Frank's default effective date—July 22, 2010—applies.<sup>7</sup>

For example, no regulations are needed for Dodd-Frank's HAMP changes, and delaying their implementation until 2012 or 2013 would defeat their goal of reducing foreclosures, especially in light of HAMP's sunset date. Regardless of the technical effective date, in the case of HAMP, the Treasury Department, which controls HAMP, could adopt the new measures immediately as supplemental directives. But for other provisions, where Dodd-Frank does not require regulations and no regulations are issued, the provision's effective date may only be settled by litigation.

### TILA Coverage, Damages, and Class Action Limit Increased

Dodd-Frank raises from \$25,000 to \$50,000 the amount over which leases and non-mortgage, non-student loan credit are exempt from TILA and the Consumer Leasing Act.<sup>8</sup> This change is effective on the transfer date.<sup>9</sup> The CFPB also must adjust the limit in the future for inflation.<sup>10</sup>

The range of TILA statutory damages for closed-end, non-mortgage transactions, currently \$100 to \$1000, is raised to \$200 to \$2000.<sup>11</sup> TILA's class action cap is raised from \$500,000 to \$1 million.<sup>12</sup> See the Title XIV effective date discussion on page 1 for when these changes take place.

<sup>4</sup> *Id.* § 1400(c)(2).

<sup>5</sup> *Id.* § 1400(c)(3).

<sup>6</sup> Dodd-Frank § 1400(c)(3) states "A section of this title for which regulations have not been issued on the date that is 18 months after the designated transfer date shall take effect on such date." The confusion is whether the term "regulations" refers to the regulations mentioned in § 1400(c)(1), which are "the regulations required to be prescribed under this title..." If so, § 1400(c)(3) does not apply to sections where no regulations are required and the Act's default effective date applies. If § 1400(c)(3) is referring to all sections in the title, even sections for which regulations are not required, then the effective date will be 18 months after the transfer date.

<sup>7</sup> Dodd-Frank § 4.

<sup>8</sup> *Id.* § 1100E, to be codified at 15 U.S.C. §§ 1603(3), 1667(1). Student loan limits were eliminated in 2009 and there is no limit for mortgage credit.

<sup>9</sup> Dodd-Frank § 1100H.

<sup>10</sup> *Id.* § 1100E(b), to be codified at 15 U.S.C. § 1603

<sup>11</sup> *Id.* § 1416, to be codified at 15 U.S.C. § 1640(a)(2)(A)(ii).

<sup>12</sup> *Id.* § 1416, to be codified at 15 U.S.C. § 1640(a)(2)(B).

<sup>1</sup> Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010) [hereinafter Dodd-Frank].

<sup>2</sup> Contact [jhiemenz@nclc.org](mailto:jhiemenz@nclc.org) to join the webinar. Also go to [www.nclc.org](http://www.nclc.org) for the 2010 schedule and downloads of past webinars.

<sup>3</sup> Dodd-Frank § 1062.

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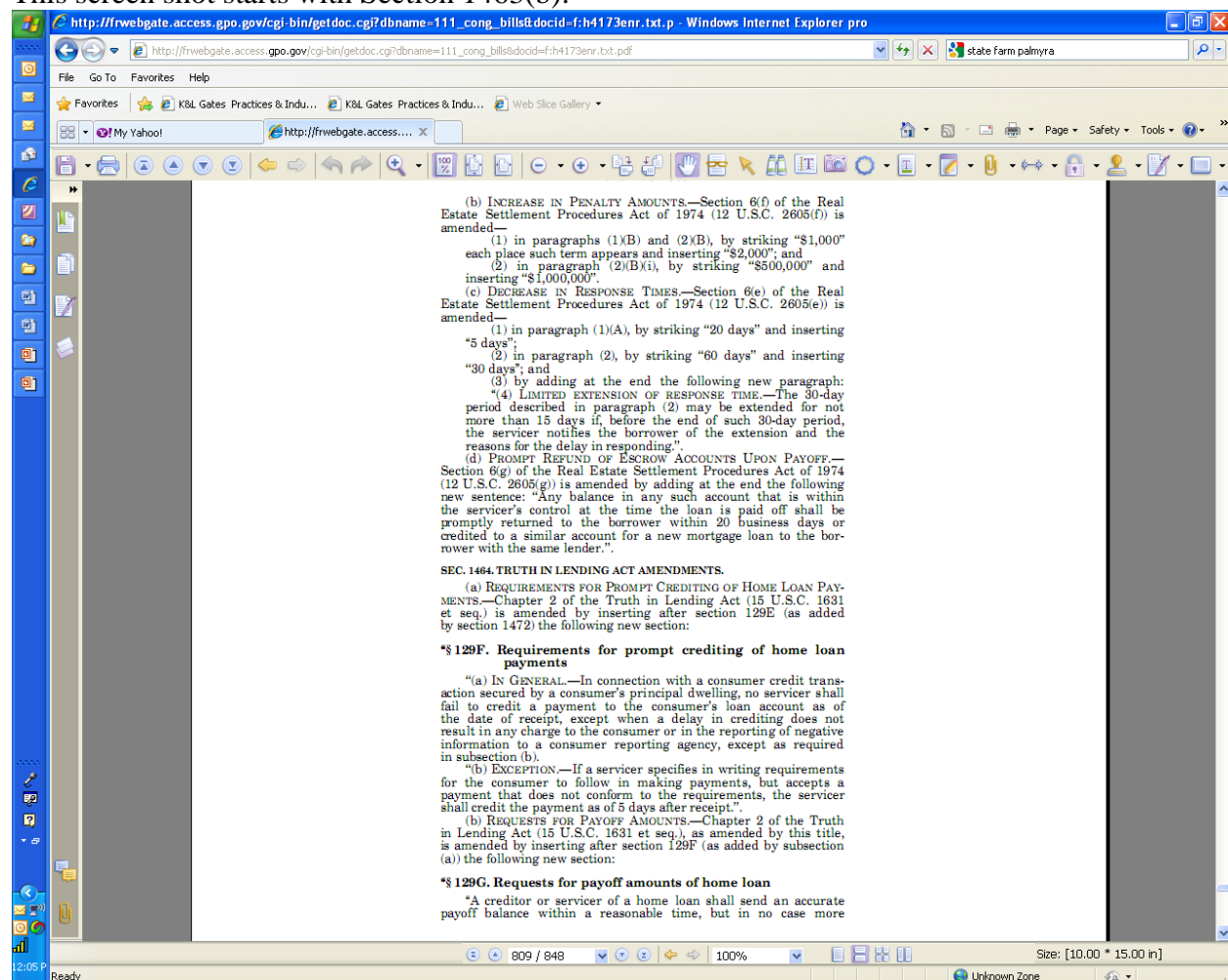
## Dodd Frank Act Full text

Only available on this web page:

This is a link to the official Library of Congress' site location for the full text of the bill as enacted.

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h4173enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf)

This screen shot starts with Section 1463(b):



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## **Loan Servicing Déjà Vu**

### *Financial Services Reform Alert*

by [Steven M. Kaplan](#), [Kerri M. Smith](#), [Jonathan D. Jaffe](#) . July 14, 2010

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Loan servicers that are reeling from ever changing state laws and HAMP requirements can breathe a sigh of relief that the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) left most of its ammunition for other segments of the financial services industry.<sup>[1]</sup> Title XIV of the Dodd-Frank Act, entitled Mortgage Reform and Anti-Predatory Lending Act (the “Mortgage Reform Act” or the “Act”), would impose new restrictions and requirements on the residential mortgage industry, but in many cases these changes piggyback the regulations issued by the Federal Reserve Board (“FRB” or “the Board”) in 2008. Nevertheless, there are changes that may have a material impact on loan servicers and open them up to a federal cause of action with a private right of enforcement.

In this Alert, we address the provisions of the Mortgage Reform Act that impose duties on mortgage servicers, which are found primarily in Subtitles E and G of the Act. Those Subtitles’ servicing provisions address:

- Qualified written requests
- Escrow accounts
- Force placed insurance
- Periodic statements
- Crediting of payments
- Payoff statements
- HAMP requirements
- Tenant protections following foreclosure

Other K&L Gates client alerts describe the abundant other provisions in the Mortgage Reform Act and the larger Dodd-Frank Act relating to residential mortgage lending, including the creation of the new gargantuan Consumer Financial Protection Bureau (“the Bureau”) within the Federal Reserve, the imposition of new mortgage loan origination requirements, the dilution of federal preemption of state laws for national banks (and the remaining entities with federal thrift charters) and their operating subsidiaries, the impact of the amendments to the Alternative Mortgage Transactions Parity Act, and the consequences of the new “skin in the game” requirements under the new risk retention rules. In addition, other alerts from K&L Gates will address other aspects of financial reform in the Dodd-Frank Bill on the [K&L Gates web site specially dedicated to Financial Services Reform](#).

A loan servicer reviewing these provisions may get a sense of déjà vu. In fact, many of the Act’s loan servicing provisions are duplicative of current federal requirements. Others represent standards set by highly publicized settlement agreements between some loan servicers and

federal and state governmental authorities. Yet others appear to legislate against what are common industry practices (but which will now be accompanied by a federal cause of action for failure to comply).

Another reason for a sense of déjà vu is that these servicing provisions were topics of the mortgage reform efforts of the 110<sup>th</sup> Congress and the FRB, on which we reported in a 2008 client alert.<sup>[2]</sup> And in fact, many of the servicer-related requirements found in the Mortgage Reform Act, such as timely crediting payments, promptly responding to payoff requests, and establishing escrow accounts on “higher risk” mortgages are currently law under Regulation Z, leading to potentially redundant (and sometimes inconsistent) requirements.

The few things the Act does not do are noteworthy. The Act does not set limits on specific servicing fees (except certain fees relating to qualified written requests (“QWRs”) and “high-cost” loans). Nor does the Act appear to fundamentally alter the nature of the loan servicing business, which is in contrast to some of the sea changes the Act imposes on the residential mortgage loan origination side of the business.

### **Effective Date**

Assuming the Mortgage Reform Act is signed into law, when will it become effective?

Unfortunately, the Act’s description of its effective dates is not a model of clarity. According to the Mortgage Reform Act, a section or provision of the Act will generally not take effect until any required rulemaking process is complete and final regulations implementing the pertinent section or provision are final. For those provisions that do not specifically require a regulator to issue implementing regulations, the effective date is unclear.

On one hand, the Act says that any section of the Mortgage Reform Act “for which regulations have not been issued on the date that is 18 months after the designated transfer date shall take effect on such date.” This would seem to say that those provisions of the Mortgage Reform Act that do not specifically require the applicable regulator to adopt implementing regulations do not become effective until 18 months after the designated transfer date, unless the applicable regulator decides to adopt regulations to implement the provisions anyway, and specifies an earlier effective date in those regulations. On the other hand, others have asserted that the foregoing effective date applies only to those provisions of Mortgage Reform Act for which the applicable regulator is required to issue regulations. This would mean that the provisions for which a regulator is not required to issue regulations (either because regulations are authorized, but not required, or the section is silent with respect to implementing regulations) would be subject to the Dodd-Frank Act’s default effective date—which is the day after the President signs the bill. This would be an alarming and unreasonable result given the time it would take to implement the many statutory requirements in an orderly manner. Hopefully, the Board will clarify the effective date of the provisions of the Mortgage Reform Act for which regulations are not expressly required.

### **Responding to Qualified Written Requests and Other Requests Under RESPA**

The Mortgage Reform Act would amend the Real Estate Settlement Procedures Act (“RESPA”) to shorten existing time frames for responding to QWRs. Section 6(e) of RESPA requires a loan servicer, upon receipt of a QWR, to take certain actions with respect to borrower inquiries

regarding “information related to the servicing” of a federally related mortgage loan. Such action includes providing information requested by the borrower, conducting an investigation of the borrower’s concerns, providing an explanation or clarification of the reasons the servicer believes the account is correct and, if necessary, making appropriate corrections to the borrower’s account. Upon a violation of Section 6 of RESPA, a borrower may recover actual damages if the loan servicer fails to comply with these provisions and statutory damages if there is a pattern or practice of noncompliance with RESPA by the loan servicer.

Loan servicers would be required to acknowledge receipt of a QWR within 5 days of receipt, versus the existing 20 day time frame. Actual responses to QWRs would be required within 30 days, versus the existing 60 days, with a possible 15 day extension if the servicer notifies the borrower of the delay and its reason. In addition, servicers would be prohibited from charging fees for responding to a “valid QWR.” A servicer may consider the Mortgage Reform Act’s contemplated shortened time frame burdensome, since many requests involve tracking down a particular document from storage or from a transferor servicer, or information from prior servicers. Indeed, for large servicers with large mail rooms, the risk of QWRs not arriving at the right desk within the right time frame could create material liability. The Mortgage Reform Act, however, would not amend the regulations made pursuant to RESPA that allow a servicer to establish a separate and exclusive office and address for the receipt and handling of QWRs. Because of the potential for substantial penalties for failing to meet the new QWR deadline, any timeline imposed by statute or regulation should be designed to accommodate the most difficult requests rather than the most simple requests. While RESPA provides remedies for violations of Section 6, discussed above, the Bureau would have the additional power under the Consumer Financial Protection Act of 2010 (“CFPA”) to order remedies such as rescinding or reforming contracts, civil money penalties of up to \$1 million per day in some cases, disgorgement for unjust enrichment, and restitution upon violations of federal consumer financial laws, which includes RESPA.

While many—probably the majority—of QWRs are reasonable, the mortgage industry believes that the QWR process sometimes is abused by gadflies who want to harass their servicers, or by attorneys for borrowers who use it as a discovery tool. In fact, servicers have had to expend considerable resources trying to respond to overbroad discovery-type requests that are delivered under the guise of QWRs. The industry had wanted Congress to clarify that a QWR is a request for an explanation concerning how an account has been serviced and why certain charges were imposed, rather than a vehicle for informal discovery, but Congress chose not to clarify the existing requirements.

The Bureau is expressly charged with further describing in regulations what qualifies as a valid QWR. Since the provision requires the Bureau to prescribe regulations, it would appear that this provision would become effective upon the date of the future regulations. Hopefully, the Bureau will address the industry’s legitimate concerns regarding QWRs.

The Mortgage Reform Act also imposes a set of new servicer requirements under Section 6(k) of RESPA concerning borrowers’ inquiries. According to the new provisions, a servicer of a federally related mortgage may not fail to take “timely action to respond to a borrower’s requests to correct errors relating to allocation of payments, final balances for purposes of paying off the



loan, or avoiding foreclosure, or other standard servicer's duties." Since RESPA currently requires a servicer to respond to a QWR within a specified time period, and since this new provision does not reference QWRs, the new "timely response" requirement appears to apply to all requests by the borrower, although this conclusion is far from certain. The requirement to respond to a request related to "other standard servicer's duties" is similarly ambiguous. Violations of this requirement, like others found in Section 6, could result in the recovery of actual damages and statutory damages if there is a pattern or practice of noncompliance with RESPA by the loan servicer.

In addition, Section 6(k) provides that a servicer (a) may not fail to respond within 10 business days to a request by the borrower to provide the identity, address, and other relevant information about the owner or assignee of a home mortgage loan, and (b) must comply with any other obligation established by the Bureau by regulation. Again, it is unclear whether the timely response to a borrower's inquiry about a loan's ownership is triggered by the servicer's receipt of a QWR, but the response time is clearly shorter than under the QWR process. This is duplicative of information assignees are already obligated to provide mortgage loan borrowers under the Truth in Lending Act ("TILA"). And considering that TILA permits the assignee to designate another person (e.g., the servicer) to respond to questions, this new requirement seems somewhat nonsensical. In short, it is unclear why this provision is necessary to protect the consumer, or why there are significant penalties for noncompliance when there is no harm to the borrower for noncompliance.

The Mortgage Reform Act permits (but does not require) the Bureau to issue regulations imposing obligations on loan servicers (in addition to those otherwise contemplated in Section 6(k)) as "appropriate to carry out the consumer protection purpose of [RESPA]."

### **Force Placed Insurance**

The Mortgage Reform Act will amend RESPA to prohibit a servicer from obtaining force placed insurance,<sup>[3]</sup> unless there is "a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance."

But don't let the open-ended "reasonable basis to believe" standard lull you into thinking that servicers have flexibility. The Act is extremely specific about the process that a servicer must follow before it can form a "reasonable basis to believe" that the borrower has let his or her insurance lapse:

- The servicer would need to send a written notice to the borrower, by first-class mail, containing a reminder of the borrower's obligation to maintain insurance on the property securing the federally related mortgage. This notice would need to state that the servicer is without evidence of insurance coverage on the property, and explain clearly how the borrower may demonstrate coverage on the property. The notice would have to state that the servicer may obtain the coverage at the borrower's expense if the borrower does not demonstrate existing coverage in the timely manner.
- Further, a servicer would need to send a second written notice by first class mail at least 30 days after the first notice, with the same required information as the first.



If by the end of the 15 day period after the second notice was sent the servicer has not received from the borrower any demonstration of insurance coverage, then the servicer may impose a charge for force placed insurance.

These requirements in our experience track the practices of most servicers (although some members of the industry have argued that providing second notices is costly, and unnecessary). What might be burdensome is the Mortgage Reform Act's requirement that a servicer accept any reasonable form of written confirmation from a borrower of existing insurance coverage, including the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent, or as otherwise required by the Bureau.

These new force placed insurance rules would further require that the premium charged to the consumer be "bona fide and reasonable." The Bureau is not given express authority under the Mortgage Reform Act to define these terms, but is given general authority to prescribe regulations to carry out the consumer protection purposes of RESPA. Again, we would hope that the Bureau would exercise appropriate discretion and issue regulations setting an objective standard for "bona fide and reasonable."

If the servicer receives confirmation of a borrower's existing insurance coverage, the servicer must terminate the force placed insurance within 15 days of receipt and refund to the consumer all force placed insurance premiums paid by the borrower during any period of double coverage, and any related fees charged to the borrower's account in connection with the force placed insurance. Some in the mortgage industry may assert that servicers should not be held responsible for insurance companies' failures to recognize that the property was doubly covered. Some in the industry also believe it is unfair for a borrower who failed to act on the notices to receive a mandatory refund, even though the force placed insurer was potentially at risk during the period of double coverage. Overall, the force placed insurance provisions appear to penalize servicers who merely seek to protect the note holder's interests in the security property.

Similar to above, the Bureau is given broad authority to issue regulations that carry out the consumer purpose of RESPA, and to specifically determine what constitutes a reasonable form of written confirmation of insurance to establish that the borrower maintains property insurance, but the Act does not require those regulations. It would be reasonable for the Bureau to ensure that similar provisions, such as the amendments to RESPA, would have common effective dates to allow systems and compliance processes to be modified by servicers in an orderly fashion.

### **Escrow Requirements**

Regulation Z currently requires the establishment of an escrow account for taxes and insurance for certain "riskier" first-lien loans. For example, under Regulation Z, an escrow account is required for "higher priced loans" (a first-lien loan if the annual percent rate is 1.5 percentage points above Freddie Mac's Primary Mortgage Market Survey ("PMMS") for first-lien loans). The Mortgage Reform Act extends this requirement to a broader range of loans, and also expands on it.

### **Applicability**

The new Section 129D of TILA will obligate borrowers of certain "riskier" first-lien loans to

escrow funds for the payment of taxes and insurance, and imposes certain requirements on servicers for the administration of these escrow accounts. An escrow account would be mandatory at loan consummation if: (1) required by federal or state law; (2) a loan is made, guaranteed, or insured by a state or federal governmental lending or insuring agency; or (3) a first-lien loan has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set: (a) by 1.5 or more percentage points, in the case of a first-lien residential mortgage loan having an original principal obligation amount that is equal to or less than the Freddie Mac conforming loan amount for a residence of the applicable size, as of the date the interest rate is set; (b) by 2.5 or more percentage points, in the case of a first-lien residential mortgage loan having an original principal obligation amount that is more than the Freddie Mac conforming loan amount for a residence of the applicable size, as of the date the interest rate is set.

Section 129D carves out from this requirement reverse mortgage loans, open-end loans, and any subordinate-lien loans. The Board (and upon transfer of authority, the Bureau) is authorized to exempt from the escrow requirement creditors that operate in rural areas, retain the mortgage in portfolio, or meet asset or origination size thresholds, as prescribed by regulation. The Board (or the Bureau, upon transfer) is given greater flexibility to revise, add to, or subtract from the types of loans that require mandatory escrows if it is in the interest of consumers and the public. Like Regulation Z, Section 129D also provides a limited exemption for loans secured by shares in a cooperative, or in which an association must maintain a master insurance policy for the property. For these and other loans where an escrow account is not mandated, the Mortgage Reform Act provides that the borrower and lender may mutually agree to escrowing funds for taxes and insurance. Further, the Mortgage Reform Act does not preclude a lender or servicer, at its discretion, from establishing an escrow account if authorized by the loan contract.

Interestingly, consumer advocates and legislators have historically complained that it is inherently unfair for lenders to require borrowers to establish escrow accounts for future tax and insurance obligations. The proposed escrow requirements reflect a marked and continuing shift in public policy to have lenders and servicers act as *parens patriae* for borrowers, rather than assume that borrowers have the ability and discipline to put funds aside to pay the taxes and insurance when they become due.

### **Duration**

There are, of course, legitimate reasons an informed borrower might not want an escrow account, such as the desire to manage cash flow (as might be the case with borrowers who receive bonuses at year end). The new Section 129D and Regulation Z each deal with this differently. Under Section 129D, the mandated escrow account would remain for at least five years unless and until the borrower: (1) has enough equity to no longer meet the requirements of maintaining private mortgage insurance; (2) is delinquent; (3) otherwise has not complied with the legal obligation, as established by rule; or (4) the underlying mortgage establishing the account is terminated. Under Regulation Z, a creditor is permitted, but not required, to offer the borrower the ability to opt out of escrowing funds after 12 months. Thus, a consumer with a mandated escrow account would not be able to opt out of escrow arrangements until, at the earliest, five years under the new law, subject to certain exceptions described above, and possibly never under Regulation Z, if the creditor disfavors the option.

## **Administration**

Under proposed Section 129D of TILA, there would be substantive regulation of mandated escrow accounts, including maintenance of the account in a federally insured depository institution, administration of the account in accordance with RESPA and the law of the state where the real property securing the loan is located, if applicable, and payment of interest to the consumer if prescribed by applicable federal or state law. So while TILA would not require servicers to pay interest to consumers on their escrow accounts, it would affirm the requirement to do so if required by other applicable federal or state law. Whether intended or not, the Mortgage Reform Act might be construed to subject servicers' noncompliance with state laws regarding the administration of accounts and the payment of interest on escrow accounts to a federal cause of action under TILA.

Finally, under Section 129D of TILA, lenders would be required to deliver to borrowers one type of disclosure if they are required to escrow funds (advising them of that fact), and another type of disclosure if no escrow is provided or if the borrower opts out (advising them of their responsibilities to pay taxes and insurance).<sup>[4]</sup> Regulation Z does not currently impose a similar disclosure requirement.

The Board (or Bureau) is authorized to issue regulations that would: exempt creditors from the escrow requirements; revise, add to, or subtract from the types of loans that require mandatory escrows; and require additional information in the disclosures that it deems necessary.

## **Payoff Statement**

Regulation Z currently requires a servicer to deliver "accurate" payoff statements within a reasonable time of a payoff request. Proposed Section 129G would impose the same requirement. However, the proposed new TILA section and Regulation Z differ as to the meaning of "reasonable" and how the borrower's request must be sent. For example, Section 129G requires the servicer to deliver a payoff statement within seven business days of a written request, while the Commentary to Regulation Z suggests that a reasonable time frame is generally five business days after *any* request, but permits a longer timeline when refinancing volume is high. Hopefully, the Board (or the Bureau) will use its authority in Section 105 in TILA to issue regulations or guidance addressing this inconsistency. Under the Mortgage Reform Act, the Board and Bureau are not expressly required to promulgate implementing regulations for Section 129G.

In addition, RESPA will be amended to require that a servicer credit or return to the borrower any balance in an escrow account that is within the servicer's control within 20 business days of payoff. The Mortgage Reform Act does not specifically require the Bureau to issue implementing regulations on this requirement.

## **Credit of Payments on Date Received**

Proposed Section 129F is identical to Regulation Z's requirements on prompt crediting of payments. They both provide that the obligation to credit a payment on the date received applies only when a delay in crediting would result in a charge or in the reporting of negative information to a consumer reporting agency. Both Section 129F and Regulation Z contemplate that if a servicer specifies in writing requirements for a consumer to follow in making payments,

but accepts a payment that does not conform to the requirements, the servicer must credit the payment as of 5 days after the receipt. There is a significant exception to the prompt payment posting rule. The Commentary to Regulation Z obligates a servicer to credit a consumer's full periodic payment as of the date received, but would not require an early payment to be credited before its due date. Significantly, the Commentary also provides that whether a partial payment must be credited depends on the legal contractual obligations between the parties. The combined effect of these various statutory and regulatory provisions is to prohibit servicers from holding a payment that would send a borrower into default or result in a late charge, unless the borrower fails to make that payment in accordance with the terms of the loan documents.

### **Periodic Statements and Other Servicer Disclosures**

The Mortgage Reform Act would amend Section 128 of TILA to require that the servicer, creditor or assignee provide a statement to a borrower of a residential mortgage loan for each billing cycle disclosing the following eight pieces of information (to the extent applicable) in a conspicuous and prominent manner: (1) the remaining principal; (2) the current interest rate; (3) the date of the next interest rate reset or adjustment; (4) the amount of any prepayment fee; (5) a description of any late payment fee; (6) a telephone number and electronic email address that the borrower may use to obtain information regarding the mortgage; (7) the names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Department of Housing and Urban Development or a state housing finance authority; and (8) any other information as the Board may prescribe in regulations. The Mortgage Reform Act requires the FRB to develop and prescribe a standard form for the periodic statement, taking into account that the statements may be transmitted in writing or electronically. The periodic statement requirement will not apply to any fixed rate residential mortgage loan where the servicer, creditor, or assignee provides the borrower with a coupon book that includes substantially the same information as required in the periodic statement, but would apply to adjustable-rate mortgages.

This provision requires the Board (and upon transfer, the Bureau) to prescribe regulations to implement the provision, and it appears that it would become effective upon the date of finalized regulations. Other amendments to TILA, however, do not require implementing regulations. We believe it would be reasonable for the Board (or the Bureau) to ensure that similar provisions, such as the amendments to TILA, would have common effective dates to allow systems and compliance processes to be modified by servicers in an orderly fashion.

New Section 128A of TILA would require additional disclosures with respect to the servicing of a "hybrid adjustable rate mortgage" (a consumer credit transaction secured by the consumer's principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period).<sup>[5]</sup> Under the Mortgage Reform Act, the Bureau is not expressly required to promulgate regulations on the "hybrid adjustable rate mortgage" disclosure, although the Bureau has general authority under Section 105 of TILA to issue regulations and publish model disclosure forms.

### **Penalties**

The Mortgage Reform Act will amend the penalty amounts for violations of Section 6 of

RESPA, which includes the provisions on force placed insurance, refunding escrow accounts upon payoff, QWRs and other borrower requests, by increasing (a) the maximum statutory damages from \$1,000 to \$2,000 in the case of a pattern or practice of noncompliance, for both individual and class actions, and (b) the ceiling on the total amount of damages in class actions from \$500,000 to \$1,000,000 (or one percent of the net worth of the servicer, whichever is less).

The Mortgage Reform Act provides penalty coordination with RESPA, stating that any action or omission that constitutes a violation of RESPA for which a person has paid any fine, or other damages, may not give rise to any additional penalty under the escrow provisions, unless the act or omission also constitutes a direct violation of the escrow requirements.

A servicer would also have liability for violations of the new TILA periodic statement (Section 128(f)), escrow account for higher-risk loans (Section 129D), prompt crediting of payments (Section 129F), and timely payoff statement (Section 129G) requirements, although it is not clear whether liability would be limited to administrative penalties. According to the civil penalty provisions of TILA, except as otherwise provided, Section 130 of TILA imposes liability on the creditor, which is defined as the named payee in the note. As such, a servicer who is not the named payee may not be considered to be a creditor. We note, however, that Section 130 would apply to a mortgage originator that is not a creditor if the originator fails to comply with the Mortgage Reform Act's new requirements (i.e., qualification requirements, unique identifier requirements, anti-steering, restructuring of compensation). A violation of these sections of TILA would not appear to subject the servicer to special enhanced damages (equal to the sum of all finance charges and fees paid by the consumer), as they are triggered by violations of Section 129, and, as amended by the Mortgage Reform Act, paragraph (1) or (2) of Section 129B(c), or Section 129C(a).

In addition to the remedies describe above, the Bureau will have the authority to enforce RESPA and TILA, and under the CFPA, may order remedies such as rescinding or reforming contracts, civil money penalties, disgorgement for unjust enrichment, and restitution upon violations of these federal consumer financial laws. The CFPA, however, does not appear to provide a private right of action.

#### Mortgage Resolution and Modification

##### **Home Affordable Modification Program**

The Mortgage Reform Act would impose new requirements on Treasury in connection with HAMP that will impact loan servicers. Treasury would be required to amend the HAMP supplemental directives and guidelines to implement these changes, but under no fixed deadline. The Act does not alter a participating servicer's contractual obligation to comply with HAMP, or the contractual remedies for its failure to do so. There is no private right of action under the Mortgage Reform Act for a servicer's noncompliance with HAMP.

In particular, the Mortgage Reform Act would require that Treasury establish and maintain an Internet site that provides a Net Present Value ("NPV") calculator, based on Treasury's methodology for calculating the NPV, that borrowers can use to input their information to determine whether the mortgage would be accepted or rejected for modification under HAMP. While the purpose of providing the NPV is to promote transparency, there is a concern that it

could be ripe for abuse and borrower fraud (assuming that borrowers may be tempted to use the NPV calculator to determine NPV positive scenarios, and modify their documentation accordingly). The website would also be required to disclose that each participating servicer may use a method for calculating NPV that is different from the method used by the calculator.

The Mortgage Reform Act would require Treasury to make reasonable efforts to include on a website with the NPV calculator a method for homeowners to apply for a mortgage modification under HAMP. In addition to the NPV test, Treasury would be required to include the methodology and computer model, including all formulae used in the computer model, used for calculating the NPV, and all non-proprietary variables used in the NPV analysis. Treasury has been apprehensive about providing the NPV calculator publicly, even to mortgage counselors, arguing that the sensitivity of the model to certain inputs such as LTV (a value which will likely be different for the borrower and the servicer and that can lead to dramatically different results) leads to a high rate of false positives and false negatives. For servicers, these “false” results may lead to upset borrowers who are more susceptible to sue. Further, although already required under HAMP, the Mortgage Reform Act provides that Treasury must revise its HAMP guidance to require servicers to deliver to each borrower who was denied a modification all borrower-related and mortgage-related input data used in any NPV calculation.

Under the Mortgage Reform Act, a borrower would not be eligible under HAMP if the borrower, in connection with a mortgage or real estate transaction, has been convicted within the last 10 years of any of the following: (a) felony larceny, theft, fraud, or forgery; (b) money laundering; or (c) tax evasion. The Secretary of Treasury must establish procedures to ensure compliance.

Lastly, the Mortgage Reform Act would attempt to ensure that the servicer’s HAMP data is publicly available. Not more than 14 days after each monthly deadline that a servicer is required to submit data to Treasury, Treasury would be required to make available to the public, via a report to Congress and the Internet, reports on each servicer regarding the number of modification requests the servicer received, processed, approved, and denied. The Mortgage Reform Act would also require Treasury to make “data tables” available to the public at the “individual record level,” which could subject servicers to more scrutiny, and potentially more criticism. Treasury must issue regulations prescribing the procedures for disclosing this data to the public, which may include deletions, as appropriate, to protect any privacy interest in any modification applicant.

### **Protecting Tenants At Foreclosure Act**

The Mortgage Reform Act would also amend provisions of the Protecting Tenants At Foreclosure Act of 2009 (“PTFA”) which was enacted as part of the Helping Families Save Their Homes Act of 2009. The PTFA created a 90 day, pre-eviction foreclosure notice requirement for tenants in foreclosed properties throughout the country. This section of the Mortgage Reform Act does not expressly require implementation by regulation.

First, in any foreclosure action on a federally related mortgage loan or involving a dwelling or residential real property, the PTFA requires the immediate successor in interest to provide a “bona fide” tenant 90 days’ notice prior to eviction. To be a “bona fide” lease or tenancy: (1) the tenant must not be the mortgagor or a family member thereof; (2) the lease or tenancy must

be the result of an arm's-length transaction; and (3) the lease or tenancy must require rent that is not substantially below fair market, unless it is reduced as the result of a federal, state, or local subsidy. The Mortgage Reform Act does not impact that requirement.

Second, the PTFA provides that a successor in interest of a property assumes interest subject to the rights of certain bona fide tenants. Thus, a new owner of residential rental property who takes title through foreclosure must honor existing "bona fide" leases entered into prior to the date on which notice of foreclosure was given, through the end of the lease term. (Exceptions are made if the tenancy is at will or is not pursuant to a lease, or if there is an existing term lease and (1) the new owner wants to occupy the foreclosed property as his or her personal residence before the end of the lease term; or (2) there are fewer than 90 days before the end of the lease term, such as in a month-to-month lease agreement.)

The Mortgage Reform Act would make two substantive changes to existing requirements. It would remove the qualifier that tenants be bona fide as of the date on which notice of foreclosure is given in order to be entitled to complete their lease terms. It also would clarify that the date on which notice of foreclosure is given is "deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed." The Mortgage Reform Act also would extend the effective repeal of the PTFA from December 31, 2012, to December 31, 2014.

## **Conclusion**

Loan servicing has long been the subject of customer complaints, many of which are actionable under RESPA, and more recently under Regulation Z. In recent years, however, many of the putative class actions involving servicing have been brought under state unfair and deceptive practices acts because of the lack of coverage under federal law. Generally speaking, these class actions address one of three common issues: the mishandling of payments, the permissibility and timing of specific fees, and the improper imposition of lender placed insurance. A fourth issue giving rise to servicing concerns is limited to the subprime world—namely, the need for tax and insurance escrow accounts to ensure that mortgagors have sufficient funds to pay these obligations. Not surprisingly, the Mortgage Reform Act (and Regulation Z) addresses many of the same issues, but does not generally impose restrictions on servicing fees. Overall, the changes required by the Mortgage Reform Act would not appear to fundamentally alter the nature of the loan servicing business, which is in contrast to the substantial changes the Act imposes on the residential mortgage loan origination side of the business.

## TILA §131(g): Notices of Sale, Transfer, or Assignment of Mortgage Loans

Section 404 of the The Helping Families Save Their Homes Act of 2009, enacted May 20, 2009 as Public Law 111-22, amended §131 of TILA to add a new §131(g) [15 U.S.C. §1641(g)] which provides that, with respect to any mortgage secured by the borrower's principal dwelling, not later than 30 calendar days after the date on which the mortgage loan is "sold or otherwise transferred or assigned to a third party", the "creditor that is the new owner or assignee of the debt" shall notify the borrower\*\* in writing of the transfer. The notice must include "the identity, address and telephone number of the new creditor; the date of the transfer; how to reach an agent or party having authority to act on behalf of the new creditor; the location of the place where transfer of ownership of the debt is recorded; and any other relevant information regarding the new creditor". Violations result in liability for statutory damages of \$4,000 per violation, plus actual damages and attorneys' fees under §130(a) of TILA.

Effective date: §131(g) is effective for sales, transfers, and assignments of principal dwelling-secured mortgages that occur after May 20, 2009.

Reg. Z Provisions: Exceptions to the Notice Requirement. The Federal Reserve Board has Reg. Z amendments implementing §131(g). Fed. Reg. Vol.74 No. 223, pg 60143, 11/20/2009. These amendments are codified at 12 C.F.R. 226.39, key provisions of which include:

- Ø Whenever the term "mortgage loan" is used in §131(g) or 12 C.F.R. 226.39 it means a mortgage secured by the borrower's principal dwelling. 12 C.F.R. 226.39(a)(2).
- Ø The notice requirement applies not only to "creditors", the word used by Congress in §131(g), which under TILA technically applies only to parties that actually extend credit directly to consumers. Instead, Reg Z extends the requirement to apply to any "Covered Person" and defines that term to mean. A "Covered Person" means any person or entity who becomes the owner of an existing mortgage loan by acquiring "legal title to the debt obligation" and who acquires more than one mortgage loan in any twelve-month period. 12 C.F.R. 226.39(a)(1).
- Ø Exception #1: "Administrative Convenience". The notice requirement does not apply to a servicer of a mortgage loan if the servicer "holds title to the loan or it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation". Such a servicer is not a "Covered Person". 12 C.F.R. 226.39(a)(1).
- Ø Exception #2: Holding for 30 or fewer days. A "Covered Person" is not required to provide the notice if such Covered Person, in turn, transfers ownership to another entity on or before the 30th calendar day after acquiring the mortgage loan. 12 C.F.R. 226.39(c)(1).

\*\* If there is more than one borrower, notice to any one of the borrowers that is "primarily liable" is sufficient. 12 C.F.R. 226.39(b)(2).

*For more information contact Richard D. Shepherd, Attorney at Law  
Telephone: (434) 242-0329 E-mail: Richard@centralvalaw.com*





[Date of Notice]

[Borrower One Name – First, Middle, Last]  
[Borrower Two Name – First, Middle, Last]  
[Property Address – Street Number, Street Name and Unit Number]  
[Property Address – City, State, Zip Code]

### **Notification of Assignment, Sale or Transfer of Your Mortgage Loan**

The purpose of this notice is to inform you that your mortgage loan was sold to Freddie Mac or to Freddie Mac as trustee for a trust holding your mortgage loan on [DATE]. This notice provides you with information on how to contact the servicer having authority to act on behalf of Freddie Mac or the trust holding your mortgage.

Selling mortgages to Freddie Mac is a standard part of the mortgage business for many of the nation's mortgage lenders. The sale of your mortgage loan to Freddie Mac does not affect any term or condition of the Mortgage, Deed of Trust or Note and this notice requires no action on your part. We recommend that you keep a copy of this notice with your other mortgage documents. The transfer of ownership of your mortgage loan has not been publicly recorded.

Freddie Mac provides funds to lenders by purchasing the mortgage loans they make, providing a continuous source of mortgage funds that allows homebuyers to obtain financing. Through our mortgage servicers, we maintain requirements for the mortgages we purchase that help keep borrowers in their homes whenever possible. These activities allow us to fulfill our mission of providing liquidity, stability and affordability to the nation's residential housing market.

Freddie Mac does not service your loan. It is important that you send your monthly payments directly to the servicer of your mortgage, at the address on your mortgage statement, and not to Freddie Mac. All correspondence and inquiries concerning your mortgage loan should be addressed to your servicer. We rely on mortgage servicers to manage your mortgage on our behalf and work directly with you. Your servicer has authority to act on behalf of Freddie Mac with regard to the administration of your mortgage loan and respond to any questions about your mortgage loan.

**As of the date of this notice, the servicer of your mortgage loan is [Name of Servicer]. You may contact your servicer by calling [Servicer's Customer Service Phone Number].** Your servicer may also have a website with information that will be helpful to you.

**Please do not send mortgage payments to Freddie Mac. Payments received by Freddie Mac may be returned to you and this may result in late charges and your account becoming past due. Freddie Mac is not responsible for late charges or other consequences of misdirected payments.**

In the event you find it necessary to contact Freddie Mac, you may telephone us at 1-800-Freddie (1-800-373-3343). Written inquiries should be addressed to 8200 Jones Branch Drive, McLean VA, 22102. Attention: Consumer Care Unit. Mail Stop C1K.

# SAMPLE



## FannieMae

13100 Worldgate Drive  
Herndon, VA 20170

June 19, 2009



061-000001 FM-BNL-0906A T1 P1  
Carlos Jones  
Jennifer M Jones  
123 Main Street  
Bethesda, MD 20816-0001

### Notification of Assignment, Sale or Transfer of Your Mortgage Loan

The ownership of your mortgage loan has been transferred by ABC Mortgage to Fannie Mae or Fannie Mae as trustee for a trust holding your mortgage loan. This transfer was effective as of 5/28/2009. Fannie Mae is a shareholder owned company with a public mission. We do not make mortgage loans but instead provide funds to lenders by purchasing the mortgage loans they make.

The assignment, sale or transfer of the mortgage loan does not affect any term or condition of the Mortgage, Deed of Trust or Note. The transfer of ownership of your mortgage loan to Fannie Mae has not been publicly recorded.

Fannie Mae does not service your loan. It is important that your monthly payments be sent directly to your servicer and not to Fannie Mae. All correspondence and inquiries concerning your mortgage loan should be addressed to your servicer. The servicer has authority to act on our behalf with regard to the administration of your mortgage loan and respond to any questions about your mortgage loan.

**The servicer of your mortgage loan is ABC Mortgage. You may contact your servicer by calling 1-888-123-4567.** Your servicer may also have a website with information that will be helpful to you.

In the unlikely event you find it necessary to contact Fannie Mae, you may write us at 13100 Worldgate Drive, Herndon, Virginia 20170, Attn: Single Family Operations, or you may telephone us at 1-800-7FANNIE (1-800-732-6643).

**Please do not send mortgage payments to Fannie Mae. Payments received by Fannie Mae may be returned to you and this may result in late charges and your account becoming past due. Fannie Mae is not responsible for late charges or other consequences of misdirected payments.**

Only the Westlaw citation is currently available.

United States District Court,  
E.D. Michigan,  
Southern Division.  
In re Lawrence CONLEY and Stephanie K. Conley,  
Appellants,  
v.  
CENTRAL MORTGAGE COMPANY, Appellee.  
**No. 08-CV-13432.**  
Aug. 11, 2009.

**Background:** In Chapter 13 proceeding, the Bankruptcy Court granted mortgage loan servicer's motion to quash qualified written request (QWR) under Real Estate Settlement Procedures Act (RESPA), and debtors appealed.

**Holding:** The District Court, [John Corbett O'Meara](#), J., held that debtors were not precluded by Bankruptcy Code or Rules from sending QWR to servicer pursuant to RESPA.  
Reversed.

#### West Headnotes

#### [1] Bankruptcy 51k0 k.

District court reviewing bankruptcy court's decision in core proceeding functions as appellate court, and bankruptcy court's findings of fact will not be set aside unless clearly erroneous, but district court reviews bankruptcy court's conclusions of law de novo.

#### [2] Statutes 361k0 k.

Absent clearly expressed congressional intention, repeals by implication are not favored, and implied repeal will only be found where provisions in two statutes are in irreconcilable conflict, or where latter act covers whole subject of earlier one and is clearly intended as substitute.

#### [3] Statutes 361k0 k.

Whether statute is impliedly repealed because of either irreconcilable conflict or substitution is question of legislative intent to be ascertained by application of accepted rules for ascertaining that intention.

#### [4] Statutes 361k0 k.

If two statutes are capable of co-existence, it is courts' duty, absent clearly expressed congressional intention to contrary, to regard each as effective.

#### [5] Bankruptcy 51k0 k.

Real Estate Settlement Procedures Act (RESPA) and Bankruptcy Code and Federal Rules of Bankruptcy Procedure were not in irreconcilable conflict, and thus Chapter 13 debtors were not precluded by Bankruptcy Code or Rules from sending qualified written request (QWR) to mortgage loan servicer pursuant to RESPA, even if confirmation of debtors' Chapter 13 plan was in dispute at time QWR was sent. [11 U.S.C.A. § 502](#); Real Estate Settlement Procedures Act of 1974, § 6(e)(1)(B), [12 U.S.C.A. § 2605\(e\)\(1\)\(B\)](#); [Fed.Rules Bankr.Proc.Rules 2004, 9014, 11 U.S.C.A.](#)

#### **ORDER GRANTING APPELLANT'S APPEAL AND REVERSING BANKRUPTCY COURT'S DECISION**

[JOHN CORBETT O'MEARA](#), District Judge.

\*1 This matter came before the court on appellants Lawrence Conley and Stephanie K. Conley's August 22, 2008 appeal of the bankruptcy court's Order Granting Motion to Quash "Qualified Written Request," issued May 6, 2008. Appellee filed its brief November 12, 2008. Appellants filed a reply brief on November 24, 2008. No oral argument was heard.

#### **BACKGROUND FACTS**

The Real Estate Settlement Procedures Act ("RESPA") is a federal consumer protection act enacted in 1974. RESPA requires any servicer of a federally related mortgage loan to respond to a Qualified Written Request ("QWR") for information by a borrower concerning the servicing of a loan. A QWR is "a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer that (1) includes, or otherwise enables the servicer to identify the name and account of the borrower; and (2) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower." 12 U.S.C. § 2605(e)(1) (B). Under RESPA, a servicer of a federally related mortgage loan must provide a written response acknowledging receipt of a QWR within twenty days. 12 U.S.C. § 2605(e)(1)(A). The servicer then has sixty days in which to make appropriate corrections and notify the borrower of those corrections, conduct an investigation and provide a written statement of the reasons the servicer believes the account is correct, or conduct an investigation and provide a written statement including information requested by the borrower or the reasons that information is unavailable. 12 U.S.C. § 2605(e) (2).

The Bankruptcy Code was enacted in 1978. The Bankruptcy Code provides that a claim may be filed and is deemed allowed (11 U.S.C. § 502(a)) unless a party objects (11 U.S.C. § 502(b)). A party may file an objection to a claim under the Federal Rules of Bankruptcy Procedure Rule 3007. However, "there must be some evidence present in order to overcome the *prima facie* case established by a proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure. *Figard v. PHH Mortgage Corp. (In re Figard)*, 382 B.R. 695, 711 (W.D.Penn.2008). Moreover, a party who objects to a properly filed proof of claim without any evidence may face sanctions. F.R. Bankr.P. 9011(c); *In re Figard*, 382 B.R. at 711. If there is an existing adversary proceeding, a party

may obtain information through the discovery provisions of Rule 7000. Parts of the discovery process under Rule 7000 are applicable in contested matters under Rule 9014. If a party requires more information and there is no existing adversary proceeding or contested matter, the court may order the examination of any entity on motion of any party in interest. F.R. Bankr.P. Rule 2004.

This Chapter 13 bankruptcy action was filed by Appellants on August 28, 2007. On January 3, 2008, Appellee filed an Objection to Confirmation, alleging that Appellants were two months in arrears on their mortgage payments. In response, on January 10, 2008, Appellants filed a Response to Objections to Confirmation Filed by Mortgage Electronic Registration Systems, Inc. In addition, on January 15, 2008, Appellants sent to Appellee a QWR pursuant to RESPA. Appellee filed a Motion to Quash "Qualified Written Request" on February 19, 2008. Following oral arguments on April 15, 2008, the bankruptcy court issued an Order Granting Motion to Quash "Qualified Written Request" on May 6, 2008.

\*2 Appellants' Motion for Reconsideration (To Alter or Amend the Judgment Under Rule 9023) was denied on July 14, 2008. Appellants subsequently filed this appeal.

### STANDARD OF REVIEW

[1] "A district court reviewing a bankruptcy court's decision in a 'core proceeding' functions as an appellate court, applying the standards of review normally applied by federal appellate courts." *In re H.J. Scheirich Co.*, 982 F.2d 945, 949 (6th Cir.1993). The bankruptcy court's findings of fact "shall not be set aside unless clearly erroneous." *Id.* at 949. However, a district court reviews the bankruptcy court's conclusions of law *de novo*. *Longo v. McLaren*, 3 F.3d 98 (6th Cir.1993); *White v. Lewis (In re Lewis)*, 392 B.R. 308 (E.D.Mich.2008).

### LAW AND ANALYSIS

The bankruptcy court quashed Appellants' QWR because the court found that Appellants are able to



obtain the same information through the Bankruptcy Code. Proceeding under the Bankruptcy Code would allow the court to supervise the process and, if necessary, impose stronger sanctions than RESPA allows. The court relied on *Ameriquist Mortgage Co. v. Nosek (In re Nosek)*, 354 B.R. 331, 339 (D.Mass.2006), which held that the Federal Rules of Bankruptcy Procedure preempt RESPA when the same result is sought through conflicting remedial vehicles.

At the outset, this court notes that federal statutes do not preempt other federal statutes. The preemption doctrine, which is based on the Supremacy Clause of the United States Constitution, applies where there are conflicting federal and state statutes. *L.A. Public Serv. Com. v. FCC*, 476 U.S. 355, 369, 106 S.Ct. 1890, 90 L.Ed.2d 369 (1986) ("Pre-emption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law.") (quoted in *Norfolk W.R. Co. v. Public Utilities Com.*, 926 F.2d 567, 570 (6th Cir.1991)). Because RESPA and the Bankruptcy Code are both federal statutes, one will not preempt the other. To the extent that *In re Nosak* improperly applies a preemption analysis, this court declines to rely upon it.

[2][3][4] The proper question is whether the Bankruptcy Code implicitly repeals RESPA. See *Randolph v. IMBS, Inc.*, 368 F.3d 726, 730 (7th Cir.2004) ("[w]hen two federal statutes address the same subject in different ways, the right question is whether one implicitly repeals the other ..."). The Supreme Court has stressed that, "absent a clearly expressed congressional intention, repeals by implication are not favored. An implied repeal will only be found where provisions in two statutes are in irreconcilable conflict, or where the latter act covers the whole subject of the earlier one and is clearly intended as a substitute." *Branch v. Smith*, 538 U.S. 254, 273, 123 S.Ct. 1429, 155 L.Ed.2d 407 (2003) (internal quotations omitted). See *Beckert v. Our Lady of Angels Apartments, Inc.*, 192 F.3d 601, 606 (6th Cir.1999) (holding that a general

statute prohibiting discrimination in provision of housing on the basis of a handicap was not clearly intended as a substitute for a statute providing a funding mechanism and standards for particular categories of housing). Whether a statute is impliedly repealed because of either irreconcilable conflict or substitution "is a question of legislative intent to be ascertained by the application of the accepted rules for ascertaining that intention." *Posadas v. Nat'l City Bank*, 296 U.S. 497, 504, 56 S.Ct. 349, 80 L.Ed. 351 (1936). If two statutes are capable of co-existence, "it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari*, 417 U.S. 535, 551, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974) (quoted in *Beckert*, 192 F.3d at 606).

\*3 [5] It is plain that Congress did not intend the Bankruptcy Code to substitute for RESPA. The Bankruptcy Code applies only to those in bankruptcy, not the larger class of consumers not necessarily in bankruptcy. Therefore, the Bankruptcy Code does not cover the "whole subject" of RESPA and cannot be a substitute for it.

Nor does the existence of methods of obtaining information under the Bankruptcy Rules establish an irreconcilable conflict with RESPA. Appellees contend that Appellants had the means of obtaining information through the Bankruptcy Rules because the confirmation of Appellants' Chapter 13 Plan was in dispute at the time the QWR was sent. An objection to confirmation gives rise to a contested matter or adversary proceeding. *First Savings and Loan Association of Saginaw v. Bennett (In re Bennett)*, 29 B.R. 380, 381 (Bankr.W.D.Mich.1981). Because there was a contested matter or adversary proceeding, Appellants had all available means of obtaining information under Rule 9014. Appellants contend that Rule 9014's detailed exposition of which provisions of the Bankruptcy Rules and the Federal Rules of Civil Procedure apply indicates Congress' intent to exclude all other means of gathering information. Furthermore, the requirements

--- F.Supp.2d ----, 2009 WL 2498022 (E.D.Mich.)

(Cite as: 2009 WL 2498022 (E.D.Mich.))

for responding to QWR's differ from [Rule 9014](#) in timing and other operational differences, which Appellants contend make the statutes irreconcilable. However, the detailed listing of rules applicable through [Rule 9014](#) only indicates Congress' intent that a party acting under [Rule 9014](#) must use only the methods explicated in [Rule 9014](#). It does not indicate any congressional intent that a party who acts outside of [Rule 9014](#) be barred from seeking information by means not explicated in [Rule 9014](#).

In other words, the issue is not whether a QWR differs from [Rule 9014](#)--it does--but whether the Bankruptcy Code and RESPA are irreconcilable. Whether statutes are irreconcilable depends upon whether there is conflicting congressional intent. [Posadas](#), 296 U.S. at 504. RESPA is intended to insure that consumers receive greater and timelier information. The intent of the Bankruptcy Code, and the corresponding Federal Rules of Bankruptcy Procedure, is to assemble all of the debtor's assets for the benefit of the creditors; in particular, 11 U.S.C. § 502 addresses proofs of claims and objections to claims. Nothing in RESPA addresses the allowance or disallowance of a claim in bankruptcy or deprives the bankruptcy court of the exclusive authority to make determinations concerning bankruptcy claims. Nor is there any reason to believe the Bankruptcy Code and Rules are intended to hinder consumers from receiving thorough and timely information. Therefore, the intents of the statutes are not in conflict.

Indeed, the two statutes may frequently complement each other. While Appellants in this case were arguably able to obtain the information they desired through [Rule 9014](#), other debtors may wish to gather information where there is no adversary proceeding or contested matter or where the debtor does not yet have enough information to know whether or not to object to the proof of claim. *In re Figard*, 382 B.R. at 711-12. RESPA provides a means of doing so.

\*4 In short, RESPA and the Bankruptcy Code and Rules are not in irreconcilable conflict because the

differences in how information is obtained under the statutes are operational, and the intents behind the statutes do not conflict. Nor, as discussed above, is the Bankruptcy Code intended as a substitute for RESPA. Therefore, the Bankruptcy Code does not repeal RESPA.

Appellee must consider both statutes effective. While this means that Appellants may obtain the same information through the Bankruptcy Code and Rules as through RESPA, the court cannot arbitrarily enforce one over the other. [Morton](#), 417 U.S. at 551 ("The courts are not at liberty to pick and choose among congressional enactments ..."). Enforcement of both statutes should not impose too great a burden on Appellee or the bankruptcy courts. It only requires that, if a creditor receives a QWR as defined in 12 U.S.C. § 2605(e)(1)(B), the creditor should respond according to the rules of RESPA. Conversely, a creditor should comply with the Bankruptcy Code and Rules if a debtor seeks information through that route. *See Randolph*, 368 F.3d at 731 ("Overlapping statutes do not repeal one another by implication; as long as people can comply with both, then courts can enforce both.").

#### ORDER

It is hereby **ORDERED** that the bankruptcy court's decision is **REVERSED** and the May 6, 2008 Order Granting Motion to Quash is **VACATED**.

--- F.Supp.2d ----, 2009 WL 2498022 (E.D.Mich.)

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**In the**  
**United States Court of Appeals**  
**For the Seventh Circuit**

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No. 09-2182

SAUL H. CATALAN and MIA MORRIS,

*Plaintiffs-Appellants,*

*v.*

GMAC MORTGAGE CORP.,

*Defendant-Appellee.*

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Appeal from the United States District Court  
for the Northern District of Illinois, Eastern Division.  
No. 05 C 6920—**George W. Lindberg**, *Judge*.

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ARGUED FEBRUARY 12, 2010—DECIDED JANUARY 10, 2011

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Before EASTERBROOK, *Chief Judge*, HAMILTON, *Circuit Judge*, and SPRINGMANN, *District Judge*.\*

HAMILTON, *Circuit Judge*. Plaintiffs Saul H. Catalan and Mia Morris sued defendants RBC Mortgage Company and GMAC Mortgage Company under the federal Real

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\* Hon. Theresa L. Springmann of the Northern District of Indiana, sitting by designation.

Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2601, *et seq.*, and under Illinois law for gross negligence, breach of contract, and willful and wanton negligence. The district court dismissed the plaintiffs’ gross negligence claim as merely duplicating the willful and wanton negligence claim. The court granted summary judgment to GMAC Mortgage on the plaintiffs’ RESPA, breach of contract, and remaining negligence claims. The plaintiffs appeal those decisions. We reverse the grant of summary judgment for GMAC Mortgage on the plaintiffs’ RESPA and breach of contract claims, and we affirm summary judgment on their negligence claims.<sup>1</sup>

### *I. The Real Estate Settlement Practices Act*

Before digging into the details of plaintiffs’ maddening troubles with their mortgage, we provide a sketch of the relevant RESPA requirements. RESPA is a consumer protection statute that regulates the real estate settlement process, including servicing of loans and assignment of those loans. See 12 U.S.C. § 2601 (Congressional findings). The statute imposes a number of duties on lenders and loan servicers. Most relevant here are the requirements that borrowers be given notice by both

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<sup>1</sup> Plaintiffs’ claims against RBC proceeded to trial. The jury found in favor of the plaintiffs on their RESPA and negligence claims, awarding them \$1,100 and \$10,000 for those claims, respectively. The jury found for RBC on the plaintiffs’ breach of contract claim. The plaintiffs’ claims against RBC are not part of this appeal, and RBC is no longer a party.



transferor and transferee when their loan is transferred to a new lender or servicer, 12 U.S.C. §§ 2605(b) and (c), and that loan servicers respond promptly to borrowers' written requests for information, § 2605(e).

The details of the requirement for responding to written requests will become relevant here. First, it takes a "qualified written request" to trigger the loan servicer's duties under RESPA to acknowledge and respond. The statute defines a qualified written request as written correspondence (other than notices on a payment coupon or similar documents) from the borrower or her agent that requests information or states reasons for the borrower's belief that the account is in error. 12 U.S.C. § 2605(e)(1)(B). To qualify, the written request must also include the name and account of the borrower or must enable the servicer to identify them. *Id.*

Within 60 days after receiving a qualified written request, the servicer must take one of three actions: either (1) make appropriate corrections to the borrower's account and notify the borrower in writing of the corrections; (2) investigate the borrower's account and provide the borrower with a written clarification as to why the servicer believes the borrower's account to be correct; or (3) investigate the borrower's account and either provide the requested information or provide an explanation as to why the requested information is unavailable. See 12 U.S.C. §§ 2605(e)(2)(A), (B), and (C). No matter which action the servicer takes, the servicer must provide a name and telephone number of a representative of the servicer who can assist the borrower.

See *id.* During the 60-day period after a servicer receives a qualified written request relating to a dispute regarding the borrower's payments, "a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency." 12 U.S.C. § 2605(e)(3).

RESPA provides for a private right of action for violations of its requirements. 12 U.S.C. § 2605(f). The provision for a private right of action includes a "safe harbor" provision, which provides in relevant part that a transferee service provider like GMAC Mortgage shall not be liable for a violation of section 2605 if, "within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid." 12 U.S.C. § 2605(f)(4).

## II. *The Facts*

Because the plaintiffs appeal the district court's grant of summary judgment, we review the trial court's decision *de novo*, viewing all evidence in the light most favorable to and drawing all reasonable inferences for the plaintiffs, as the non-moving parties. See Fed. R. Civ. P.

56(c); *Hukic v. Aurora Loan Services*, 588 F.3d 420, 432 (7th Cir. 2009); *Burnett v. LFW Inc.*, 472 F.3d 471, 477 (7th Cir. 2006). We trace the plaintiffs' problems with their original mortgage servicer, then with the transfer of the mortgage to GMAC Mortgage, as relevant to plaintiffs' claims that GMAC Mortgage violated RESPA by failing to provide notice of the transfer and by failing to respond to their qualified written requests, and by failing to correct erroneous information it had given to credit-reporting services.

*Plaintiffs' Problems with RBC Mortgage:* In June 2003, the plaintiffs bought a home in Matteson, Illinois. They obtained a Federal Housing Administration loan by executing a mortgage and note in favor of RBC. At the outset, theirs was a 30-year fixed loan at 5.5% annual interest with a monthly payment of \$1,598 that included principal, interest, and escrow.

Although the plaintiffs' first payment was not due until August 1, 2003, RBC incorrectly entered the plaintiffs' mortgage into its computer accounting system to show a first payment due date of July 1, 2003. Because of this error, when the plaintiffs made their first payment they were already behind—at least according to RBC's system. By the time the plaintiffs made their second payment, RBC had determined that their loan was in default, and it increased their monthly payment amount to \$1,787. The plaintiffs, at first unaware of the increase, and then, without receiving an explanation of the increase, continued to send their mortgage payments for the original amount. RBC returned those checks uncashed.

RBC filed for foreclosure on the plaintiffs' home on February 26, 2004. In May and June, the plaintiffs provided checks to RBC in an attempt to make up for the uncashed payments. However, the plaintiffs' May 2004 payment was still due even after this reconciliation of their account. RBC did not provide the plaintiffs with an account statement or otherwise inform them of that delinquency. Then, when the plaintiffs sent their August 2004 payment to RBC, RBC did not apply that payment to the loan.

*GMAC Mortgage Steps In:* In September 2004, RBC assigned the plaintiffs' loan to GMAC Mortgage. When GMAC Mortgage assumed the plaintiffs' mortgage, it did not send the plaintiffs a letter notifying them of the transfer. Plaintiffs, not knowing that GMAC Mortgage was their new mortgage holder, sent their September payment to RBC. RBC did not cash it but forwarded it to GMAC Mortgage.

At some point in this period, GMAC Mortgage sent the plaintiffs an account statement dated September 15, 2004, which they received. That account statement was based on information that GMAC Mortgage had received from RBC. It showed that the plaintiffs' account was past due in the amount of \$7,990 and that GMAC Mortgage had already assessed late fees totaling \$255. On September 23, 2004, GMAC Mortgage sent the plaintiffs a letter demanding proof of their homeowners' insurance coverage. Then, on September 27th, GMAC Mortgage returned the plaintiffs' September payment, which they had sent to RBC. The letter returning the

payment informed the plaintiffs that the payment represented only one of five payments that were then due (from May to September), and provided the plaintiffs with a phone number.

On October 6, 2004, the plaintiffs wrote to the United States Department of Housing and Urban Development ("HUD") detailing what they understandably described as their "nightmare" with RBC. They explained:

Despite admissions by RBC that they made errors, they feel no obligation to correct the grievance [sic] wrongs by supplying information necessary to bring closure to this situation, and they have cashed checks as if there was never any question raised or breach of obligation on their part. This is the same company that as of a few weeks ago was in hot pursuit of our home by means of foreclosure and had for months refused to accept our payments. The last message we received from RBC stated that there were updates on our account yet they have continually refused to operate in a professional manner by providing a written explanation that would offer us clarity and accountability on their part.

The letter provided a detailed outline of the plaintiffs' account history with RBC, including the fact that their first payment had been due in August 2003. It also recounted that RBC did not cash their August or September 2004 payments, and that on October 4th they received a letter from GMAC Mortgage returning their September 2004 payment and informing them that the payment was not enough to cover the past due balance

because five payments were then due. The plaintiffs wrote: "GMAC claims that they took over our mortgage in May 04. No information to that effect had ever previously been provided by RBC or GMAC." Finally, their letter asked several questions about RBC's and GMAC Mortgage's servicing practices, among them:

- Why did [RBC] cash checks in July for an account that they did not hold and according to GMAC had purportedly been sold in May?
- What happened to the funds that were taken in July?
- Why were previous checks not forwarded to the new company?
- Why would GMAC just now initiate contact?
- Why would GMAC purchase a "nonperforming" mortgage?

The plaintiffs sent their letter to HUD, which forwarded it to GMAC Mortgage, which received it on October 14, 2004.

In the meantime, on October 7th and again on October 15th, the plaintiffs wrote to GMAC Mortgage directly, requesting information concerning the transfer of their loan, including the date of the transfer, the amount transferred, confirmation of their monthly payment amount, and the payment address. The October 15th letter further sought "any information available about this account."

On October 13th, in response to the plaintiffs' October 7th letter, GMAC Mortgage advised the plaintiffs that

their account had been transferred on September 1, 2004 and that a monthly payment of \$1,661 had been due on May 1st. The response also listed plaintiffs' then-current principal balance. Then, under separate cover, when GMAC Mortgage did not receive the plaintiffs' October 2004 payment, the company demanded \$9,588 for payments on the plaintiffs' account since May 2004, plus \$255 in late fees. In that letter dated October 15, 2004, GMAC Mortgage informed the plaintiffs that they were in default and stated that they could cure by paying the total amount due within 30 days. Days later on October 20th, GMAC sent an odd letter informing plaintiffs that their monthly payment was \$1,598, their "next payment due date" was May 1, 2004, and that there was an escrow shortage in their account of \$7,022.

On October 21, 2004, GMAC Mortgage responded to the letter that it had received from HUD in a letter to HUD captioned "Re: Saul Catalan and Mia Morris . . . Payment Dispute." GMAC Mortgage informed HUD that there was no indication that the plaintiffs' funds were missing or misapplied based on the records that GMAC Mortgage had received from RBC. GMAC Mortgage also told HUD that those records reflected that the plaintiffs' first payment had been due in July 2003.

GMAC Mortgage sent a letter to the plaintiffs on October 25, 2004 to advise them that their mortgage had "reached an advanced stage of delinquency" and to offer alternatives, such as a repayment plan, loan modification, or deed in lieu of foreclosure, to avoid a completed foreclosure.

On November 15, 2004, the plaintiffs sent a letter to GMAC Mortgage, describing their history with RBC and enclosing a check for \$11,186 to cover seven payments of \$1,598. In that letter they informed GMAC Mortgage that “RBC received payments from us that were not applied promptly, other payments that were never applied and they never provided a clear explanation for their refusal to accept our payments, an action which resulted in our home being wrongfully placed in foreclosure.” They also set forth their “expectations” for how their account would be handled, advising GMAC Mortgage that they expected that “any request from us for information will be provided,” “any changes to our account or information that requires correspondence will be forwarded to us in writing,” and “all payments will be processed in a timely manner.” Finally, they advised GMAC Mortgage that “if you have any questions regarding this account I would appreciate them being asked in writing from the standpoint that documentation is clarity. It is an unsafe approach to take the word of RBC as fact because as a company they have proven to me that fact for them is evasive.”<sup>2</sup> On November 24, 2004, GMAC Mortgage commenced foreclosure proceedings. By December 2004, GMAC Mortgage

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<sup>2</sup> GMAC Mortgage suggests that the plaintiffs’ insistence on communication in writing equates to a failure to cooperate or to communicate with GMAC Mortgage. Given the history of the debacle, plaintiffs’ insistence seems at least reasonably prudent and should not be faulted. As will be seen, the plaintiffs’ insistence likely saved their claims under RESPA.



was reporting the plaintiffs' loan as delinquent to the credit bureaus.

On December 2, 2004, the plaintiffs sent GMAC Mortgage another letter to request that GMAC Mortgage apply the \$11,186 payment to their account, explaining that "it becomes a major disruption to have large sums of money unaccounted for." They wrote again on December 9th, again asking GMAC Mortgage to process the \$11,186 check and requesting "quick resolution of whatever issues remain since the transfer of this account to your company by processing and updating this and all future payments received immediately." The plaintiffs sent their December mortgage payment on the same date under separate cover. On December 13th, GMAC Mortgage returned the \$11,186 check, explaining that the funds did not represent the full amount required to bring the plaintiffs' account current and advising the plaintiffs that their account had been sent to an attorney to begin foreclosure proceedings. It then responded to the plaintiffs' December 2nd and 9th letters on December 23rd and 30th. In each of those letters, it stated, "thank you for your inquiry on your account. We are currently processing your request and will respond in writing within 20 days." The record does not contain these promised follow-up responses.

The plaintiffs then wrote GMAC Mortgage's outside foreclosure counsel a letter dated December 17th stating that they disputed GMAC Mortgage's attempt to collect on their account and that they had sent everything necessary to bring their account current. They also requested

an explanation for why, according to the letter they had received from foreclosure counsel, the balance of their account had been increased by \$19,200 between September and November 2004. That same day (and 23 days after it had filed for foreclosure), GMAC Mortgage dismissed the foreclosure proceedings. Then, inexplicably, on December 22nd, GMAC Mortgage sent another letter to the plaintiffs advising them that their account had been transferred to GMAC Mortgage's attorney for foreclosure proceedings and returning their December 2004 payment!

On January 25, 2005, HUD again intervened, requesting that, upon receipt of ten mortgage payments from the plaintiffs (for the months of May 2004 to February 2005), GMAC Mortgage reinstate the plaintiffs' loan as current and waive any and all extra charges and attorney fees. The plaintiffs sent a check for \$15,980 to GMAC Mortgage on February 3, 2005. That amount represented ten mortgage payments and included no account fees or costs, and thus amounted to what the plaintiffs would have otherwise paid in regular mortgage payments over ten months. Once it had received the plaintiffs' check, GMAC Mortgage brought their account current without charging them penalties or additional interest.

In April 2005, HUD contacted GMAC Mortgage on the plaintiffs' behalf to request that GMAC Mortgage stop reporting them as delinquent to the credit bureaus. On May 4, 2005, GMAC Mortgage complied, and in August 2005 it sent the plaintiffs a letter claiming that its records indicated that it had not reported any deroga-

tory credit information on the plaintiffs' account from September 2004 through July 2005.

*The District Court Proceedings:* GMAC Mortgage moved for summary judgment on all of the plaintiffs' claims. Without reaching the merits of the plaintiffs' RESPA claims, the court found that GMAC Mortgage qualified for RESPA's safe harbor provision and was therefore not liable for any violations under that statute. The court dismissed the plaintiffs' gross negligence claim, finding that it duplicated the plaintiffs' willful-and-wanton negligence claim. The court granted summary judgment for GMAC Mortgage on the plaintiffs' willful-and-wanton negligence claim after finding that GMAC Mortgage promptly corrected the errors relating to the plaintiffs' account when it received notice of the plaintiffs' payment dispute, so that its conduct could not be deemed willful or wanton. The court found that the plaintiffs could not recover for breach of contract because the plaintiffs had purposely withheld their October 2004 mortgage payment and were themselves in breach.

### III. *Plaintiffs' RESPA Claims*

Plaintiffs contend that GMAC Mortgage violated RESPA in a number of ways, including failing to give notice of the transfer of their mortgage, failing to respond promptly to qualified written requests for information, and failing to correct wrong information provided to credit-reporting agencies. The district court did not reach the merits of those claims because it found

that GMAC Mortgage was entitled to the protection of the RESPA safe harbor provision in 12 U.S.C. § 2605(f)(4). We address first the safe harbor provision and then the substantive claims.

A. *RESPA's "Safe Harbor"*

Although RESPA provides a private right of action for violations of its requirements, it also includes a non-liability or "safe harbor" provision, which provides:

A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

12 U.S.C. § 2605(f)(4).

GMAC Mortgage is not entitled to the protection of the safe harbor in section 2605(f)(4). Although the parties have debated other requirements in the safe harbor provision, GMAC Mortgage did not argue, and nothing in the record shows, that GMAC Mortgage

“notif[ied] the person concerned of the error,” as required to invoke the protection. On this basis alone, GMAC Mortgage was not eligible for protection in the RESPA safe harbor. The district court’s finding otherwise was error.

In the district court, GMAC Mortgage argued that it was protected by the safe harbor because, when all was said and done, the plaintiffs did not pay any money in excess of what they otherwise would have paid, and GMAC Mortgage corrected all errors in the plaintiffs’ account within 60 days after receiving the plaintiffs’ December 17, 2004 letter, and before the plaintiffs filed suit. Under this view of the statute, the defendant must have corrected the error only before plaintiffs filed suit, even if the defendant did not discover and correct the error before receiving written notice of it from the borrower. Plaintiffs contend that the safe harbor provision requires the defendant to have corrected the error both before suit was filed and before the defendant received written notice of the error from the borrower. Because GMAC Mortgage’s failure to provide notice keeps it out of the safe harbor in this case, we express no view on the district court’s reasoning on this point.

*B. The “Qualified Written Request” Issue*

The plaintiffs argue that the letters they sent on October 6, November 15, December 2, December 9 and December 17 were qualified written requests. They contend that GMAC Mortgage violated RESPA by re-

porting their account as delinquent to the credit bureaus within the 60-day window after each of those qualified written requests was received, and that GMAC Mortgage also failed to investigate properly or to take corrective action in response to the October 6, November 15, December 2 and December 9 qualified written requests.

RESPA defines a qualified written request as follows:

For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that—

- (i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and
- (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

12 U.S.C. § 2605(e)(1)(B).

GMAC Mortgage argues that the letters in question were not qualified written requests because the letters “do not identify an error in plaintiffs’ account or provide any statement of the reasons plaintiffs believe their account was in error.” GMAC Mortgage Br. 16.<sup>3</sup>

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<sup>3</sup> Although GMAC Mortgage conducted an investigation and corrected the plaintiffs’ account in response to their Decem-  
(continued...)

Relying on several district court decisions, GMAC Mortgage contends that letters that “merely dispute a debt or request information are not ‘qualified written requests,’ and do not trigger the obligations under section 2605.” *Id.*, citing *Moore v. Federal Deposit Ins. Corp.*, 2009 WL 4405538, at \*4 (N.D. Ill. Nov. 30, 2009) (plaintiffs’ letters requesting information regarding reinstatement of a defaulted mortgage loan and the amounts of delinquent mortgage payments due did not relate to “servicing” and thus were not qualified written requests), *Champlaine v. BAC Home Loans Servicing, LP*, 2009 WL 3429622, at \*7 (E.D. Cal. Oct. 22, 2009) (plaintiffs’ claim that lender failed to respond in violation of RESPA was dismissed because plaintiff did not allege that his written request for rescission of the loan related to the servicing of his loan and thus his communication was not a qualified written request), *Keen v. American Home Mortgage Servicing*, 664 F. Supp. 2d 1086, 1097 (E.D. Cal. 2009) (plaintiff’s demand to cancel trustee’s sale of home and for rescission disputed the validity of the loan but did not dispute the servicing of the loan and was not a qualified written request), *Pettie v. Saxon Mortgage Services*, 2009 WL 1325947, at \*2 (W.D. Wash. May 12, 2009) (plaintiffs’ “inquiry letter” disputing amount owed and requesting 26 sets of documents did not offer reasons for their dispute and thus was not a qualified written

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<sup>3</sup> (...continued)

ber 17th letter, it disputes whether that letter was a qualified written request under the technical requirements of the statute. GMAC Mortgage Br. 17.

request under section 2605(e)(1)(B)); *MorEquity, Inc. v. Naeem*, 118 F. Supp. 2d 885, 900-01 (N.D. Ill. 2000) (letter seeking information about the validity of a loan and mortgage documents but making no inquiry as to the account balance or credit for periodic payments did not relate to “servicing” and was thus not a qualified written request). By GMAC Mortgage’s argument, a lender would have no obligation to respond to a borrower who expressed her belief that her account was in error but was unable to provide specific reasons for that belief, an untenable result under the language of the statute.

RESPA does not require any magic language before a servicer must construe a written communication from a borrower as a qualified written request and respond accordingly. The language of the provision is broad and clear. To be a qualified written request, a written correspondence must reasonably identify the borrower and account and must “include a statement of the reasons for the belief of the borrower, *to the extent applicable*, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.” 12 U.S.C. § 2605(e)(1)(B) (emphasis added). Any reasonably stated written request for account information can be a qualified written request. To the extent that a borrower is able to provide reasons for a belief that the account is in error, the borrower should provide them, but any request for information made with sufficient detail is enough under RESPA to be a qualified written request and thus to trigger the servicer’s obligations to respond. See 12 U.S.C. §§ 2605(e)(1)(a), (e)(2), and (e)(3); see also *Garcia v. Wachovia Mortgage Corp.*, 676



F. Supp. 2d 895, 909 (C.D. Cal. 2009) (when construed in light most favorable to borrower, letter was a qualified written request even though it did not contain a statement of reasons for borrower's belief of error; letter provided sufficient detail regarding "other information" being sought); *Rawlings v. Dovenmuehle Mortgage, Inc.*, 64 F. Supp. 2d 1156, 1162 (M.D. Ala. 1999) (plaintiffs' claims survived summary judgment where court found that descriptions of payments made to a prior servicer sufficiently stated plaintiffs' reasons for their belief that their account was in error and were qualified written requests). We turn to the disputed letters.

1. *Letter of October 6, 2004*

The plaintiffs' October 6th letter included content that was clearly sufficient to be a qualified written request. The three-page letter described in great detail the difficulties the plaintiffs encountered at the hands of RBC. The letter recounted that their first payment was due in August 2003, but that RBC failed to process the plaintiffs' August payment in a timely manner, and that a discrepancy arose between the plaintiffs and RBC as to whether the plaintiffs had made their payments or not. The letter described how RBC raised the plaintiffs' monthly payment amount without informing them of the change, and that each of the plaintiffs' attempts to communicate with RBC was rebuffed until RBC at last acknowledged its error and dismissed its foreclosure action against the plaintiffs in July 2004. The letter then reported that RBC did not cash the plain-

tiffs' August and September 2004 payments, but that GMAC Mortgage returned the plaintiffs' September 2004 payment uncashed, even though that payment had been sent to RBC, and that GMAC Mortgage informed the plaintiffs that their September 2004 payment was insufficient to cover the amount they then owed on their mortgage account, which, according to GMAC Mortgage, was five months overdue. The plaintiffs, naturally, wrote this description of the history of their loan's servicing from their perspective, and without access to the (incorrect) information that GMAC Mortgage had acquired from RBC. But the letter was certainly a thorough statement of "the reasons for the belief of the borrower, to the extent applicable, that the account is in error" under section 2605(e)(1)(B).

The letter then continued, requesting very specific information. Plaintiffs asked that RBC explain why it had cashed the checks they had sent in July if, as they had been told by GMAC Mortgage, RBC had sold their account to GMAC Mortgage in May. The letter also sought an accounting of the funds plaintiffs had paid in July and sought information related to the transfer—specifically, why RBC had not forwarded their checks to GMAC Mortgage, why GMAC Mortgage had delayed initiating contact with them after purchasing their account, and why GMAC Mortgage would purchase a "nonperforming" mortgage. Some of this information might have been "unavailable or [unable] to be obtained by the servicer" under section 2605(e)(2)(C), but whether the information the plaintiffs sought was unavailable or whether their questions were unan-

swerable does not negate the fact that they had “provide[d] sufficient detail to the servicer regarding other information sought by the borrower” under section 2605(e)(1)(B). Their October 6th letter was a qualified written request, and GMAC Mortgage was obligated to respond.

Of course, the plaintiffs did not send their October 6, 2004 letter directly to GMAC Mortgage. They sent it to HUD, which forwarded it to GMAC Mortgage. The statute requires that qualified written requests be received “from the borrower (or an agent of the borrower).” 12 U.S.C. § 2605(e)(1)(A). We do not have difficulty interpreting that requirement, under the circumstances of this case, to include HUD’s intercession on the plaintiffs’ behalf. RESPA is a consumer protection statute, and on summary judgment we must view the facts in the plaintiffs’ favor. Here, the record amply demonstrates that the plaintiffs had exhausted every reasonable avenue in their communications with RBC, yet in the fall of 2004, they were back in the same nightmare with a different company. Again they were being accused of not paying their mortgage, and again they were being threatened with foreclosure. Their confusion and desperation at this point were palpable, and they reasonably sought help from HUD. Besides, when it received the plaintiffs’ letter, GMAC Mortgage tacitly acknowledged that the letter was a request for information and raised a dispute with their account. After all, in its response to HUD, GMAC Mortgage provided a detailed accounting of the history and transfer of the

plaintiffs' mortgage and captioned its letter as a response to the plaintiffs' "payment dispute." After the months the plaintiffs had spent writing to and getting nowhere with RBC, and due to the fact that GMAC Mortgage received the plaintiffs' October 6th letter and treated it as a payment dispute and as a request for information, the fact that GMAC Mortgage received the letter from HUD and not directly from the plaintiffs does not prevent the plaintiffs' October 6th letter from being a qualified written request under RESPA.

2. *Letter of November 15, 2004*

In the plaintiffs' November 15th letter, they explained their understanding that, based on information they had received from GMAC Mortgage, there were seven payments due on their mortgage of \$1,598 each, for a total of \$11,186. A check for that amount was enclosed with the letter. The plaintiffs also set forth their expectations for how GMAC Mortgage would handle their account going forward, including that GMAC Mortgage would provide any information they request, that any requested information and any changes to their account would be in writing, and that their mortgage payments would be applied in a timely manner. However, the plaintiffs did not raise any disputes or errors in their account, and their "expectations" were not requests for information. We cannot construe the plaintiffs' November 15th letter as a qualified written request under RESPA.

3. *Letter of December 2, 2004*

In the plaintiffs' letter of December 2nd, they explained that they sent a check to GMAC Mortgage for \$11,186 on November 26, 2004, which GMAC Mortgage had not yet cashed. Their letter requested that GMAC Mortgage cash their check and apply the funds to their account because "it becomes a major disruption to have large sums of money unaccounted for." Although this letter certainly pertained to the servicing of their account, the plaintiffs were not requesting information and were not stating a belief that their account was in error. The plaintiffs were requesting that GMAC Mortgage process their payment more quickly, but in and of itself, that request does not seem to be based on any belief that an underlying error was causing the delay. The plaintiffs' December 2nd letter was not a qualified written request under RESPA.

4. *Letter of December 9, 2004*

The plaintiffs' letter of December 9th was similar to their letter of December 2nd. They recounted how GMAC Mortgage returned their August and September 2004 mortgage payments and how they sent a check for \$11,186 in response to GMAC Mortgage's statement that \$9,843 was necessary to bring the plaintiffs' account current. They stated that GMAC Mortgage's "refusal to process this check when only having an association with the account for two months raises questions in our minds about your motivation for acquiring our account," and that:

the chaotic state that existed when you acquired the account was a direct result of the extreme mismanagement of our account by RBC. However your actions also give me pause to wonder if your interest is more in acquiring our home than servicing the account. Additionally, it is extremely questionable as to why your company would assume an account that appeared to be in as severe disarray as the one received from RBC.

The plaintiffs then asked for “quick resolution of whatever issues remain since the transfer of this account to your company by processing this and all future payments immediately.” Although the plaintiffs were understandably frustrated that GMAC Mortgage had not yet cashed their \$11,186 check and applied that amount to their account, we do not interpret the plaintiffs’ December 2nd letter as a statement of their belief that GMAC Mortgage’s servicing of their account was in error. Again, their letter expressed their desire that GMAC Mortgage process their payment more quickly, which is not a statement of error or a request for information. They also hinted at “issues” remaining since GMAC Mortgage acquired their account from RBC, but we cannot reasonably construe the plaintiffs’ use of the word “issues” as a statement of error, or as a request for information. The plaintiffs’ December 9th letter was not a qualified written request.

5. *Letter of December 17, 2004*

The plaintiff’s December 17th letter was unequivocally a qualified written request under RESPA. The first sen-

tence of the letter said: “I am disputing your attempt to collect on the above referenced account.” The plaintiffs stated that they had sent GMAC Mortgage the full amount required to bring the account current, but by then GMAC Mortgage had returned their \$11,186 check and had advised them that it was seeking foreclosure against them. Against this backdrop, the plaintiffs’ statement that GMAC Mortgage had “refused to process checks to alleviate any unnecessary actions or undue harm” was a statement of their belief that their account was in error.<sup>4</sup> They also very clearly requested specific information regarding their account—namely, an explanation of how their account balance increased from \$229,098 to \$248,298 over a two-month time span. The December 17th was also a qualified written request.

Having found that the plaintiffs’ October 6th and December 17th letters were qualified written requests under RESPA, we leave it to the district court to resolve on remand whether GMAC Mortgage satisfied its obligations to investigate and respond under 12 U.S.C. §§ 2605(e)(1)(A) and 2605(e)(2) and to refrain from reporting the plaintiffs as delinquent to the credit reporting bureaus under 12 U.S.C. § 2605(e)(3). On remand, the district court will also need to consider the plaintiffs’ claims that GMAC Mortgage violated

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<sup>4</sup> The context explains why this December 17th letter was a qualified written request and the plaintiffs’ December 2nd and 9th letters were not, even though all three expressed the plaintiffs’ belief that GMAC Mortgage had failed to process their payments in a timely manner.

RESPA by not sending them an appropriate notice that their loan had been transferred and by charging them late fees within 60 days of the transfer. See 12 U.S.C. § 2605(c) (requiring transferee servicer to notify the borrower of the transfer within 15 days of the effective date of transfer, with certain exceptions); 12 U.S.C. § 2605(d) (prohibiting transferee servicer from imposing a late fee if borrower's payment is received by the transferor servicer before the payment due date). Summary judgment for GMAC Mortgage on the plaintiffs' RESPA claims is reversed, and we remand to the district court for further proceedings.

#### IV. *Common Law Claims*

##### A. *Breach of Contract*

The plaintiffs also claimed that GMAC Mortgage breached the mortgage-and-note contract when it refused to accept the payments they sent on September 27, 2004 and November 15, 2004.<sup>5</sup> The district court dismissed the plaintiffs' breach of contract claim on summary judgment. The court found that the plaintiffs had purposely withheld their October 2004 payment and that this withholding was itself a breach. We agree with plaintiffs that this was an error.

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<sup>5</sup> On reply, the plaintiffs abandoned their argument that regulations of the Department of Housing and Urban Development were incorporated into their mortgage contract, and that those regulations provided an independent basis for their breach of contract claims. Pl. Reply 6, n. 6.



GMAC Mortgage does not dispute that it refused the plaintiffs' September 27th and November 15th payments and did not immediately apply those payments to the plaintiffs' debt. It argues instead that its failure to do so did not amount to a breach of the contract. Nothing in the contract required GMAC Mortgage to apply the payments according to any sort of schedule, it argues, and it attempts to reframe the plaintiffs' breach of contract claim as nothing more than a "gripe" that the payments "were not applied as plaintiffs would have liked," pointing out that in time, all of the plaintiffs' payments were applied properly. GMAC Mortgage Br. 25.

To swallow GMAC Mortgage's argument, we would have to accept, as a matter of law, that a lender is free to refuse a tendered payment and then to hold the borrower responsible for having failed to make the payment. We would have to accept, as a matter of law, that it does not matter if a holder of a promissory note without a specified time period for its own performance performs its obligations under the contract in a *reasonable* time, so long as the party performs its obligations . . . eventually. We do not accept that argument. It is a basic tenet of contract law, recognized in Illinois, that where no time for performance is specified, the law implies a reasonable time. See *In re Marriage of Tabassum and Younis*, 881 N.E.2d 396, 408 (Ill. App. 2007); *Rose v. Mavrakis*, 799 N.E.2d 469, 475 (Ill. App. 2003); *Meyer v. Marilyn Miglin, Inc.*, 652 N.E.2d 1233, 1239 (Ill. App. 1995). Whether or not GMAC Mortgage's delay in applying the plaintiffs' payments was reasonable—especially when GMAC Mortgage was claiming that plaintiffs

were in breach by failing to make those same payments—is an issue of material fact that precludes summary judgment for GMAC Mortgage on the claim.

GMAC Mortgage also argues that its breach should be excused because the plaintiffs breached the contract first when they failed to remit their October 2004 payment.<sup>6</sup> True, another general tenet of contract law is that plaintiffs cannot succeed on a breach of contract claim unless they demonstrate their own performance of the contract's requirements. See *Hukic v. Aurora Loan Services*, 588 F.3d 420, 433 (7th Cir. 2009); *Solai & Cameron, Inc. v. Plainfield Community Consolidated School Dist. No. 202*, 871 N.E.2d 944, 953 (Ill. App. 2007) (“‘under general contract principles, a material breach of a contract provision by one party may be grounds for releasing the other party from his contractual obligations’”), quoting *Mohanty v. St. John Heart Clinic, S.C.*, 866 N.E.2d 85, 95 (Ill. 2006); *Borys v. Rudd*, 566 N.E.2d 310, 315 (Ill. App. 1990)

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<sup>6</sup> GMAC Mortgage also contends that the plaintiffs had tendered some earlier payments to RBC that were returned for insufficient funds. GMAC Mortgage Br. 28, citing GMAC Mortgage Ex. 89, ¶ 3. It is unclear whether those checks bounced because the plaintiffs had insufficient funds to cover the checks or, as counsel for plaintiffs asserted at oral argument, whether the checks were not processed for some other reason related to RBC's servicing of the plaintiffs' account. We cannot resolve this issue on summary judgment, even if GMAC Mortgage had explained how the plaintiffs' alleged failure to remit payments to RBC would excuse GMAC Mortgage's subsequent breach.

(only material breach of a contract provision will justify non-performance by the other party). The plaintiffs were certainly obligated to make timely payments under the note-and-mortgage contract. But the servicers had their own obligations under the contract, one of which was to provide timely and accurate information about where and to whom those payments should be sent in the event of a transfer. Such notice was also required under RESPA. See 12 U.S.C. §§ 2605(b) and (c). On these facts, which party breached first is not a question with a clear answer. A reasonable jury could find that the plaintiffs' failure to submit their October 2004 payment in a timely manner was justified by earlier wrongs by RBC Mortgage and GMAC Mortgage.

In September 2004, GMAC Mortgage assumed the plaintiffs' mortgage from RBC, but the plaintiffs were not informed of the transfer. Not knowing that GMAC Mortgage was their new mortgage holder, the plaintiffs sent their September payment to RBC. That payment was later returned to the plaintiffs uncashed, not by RBC but by GMAC Mortgage, along with a letter informing them that they owed not one payment but five, relying on inaccurate information from RBC. When, on October 15th, GMAC Mortgage told the plaintiffs that they could bring their account current by paying \$9,588, the plaintiffs paid \$11,186—a check that GMAC Mortgage again returned, uncashed. (Why GMAC Mortgage did not accept the plaintiffs' September and November checks as partial payment of the total amount it believed the plaintiffs owed is not explained by the parties and remains a mystery.) A rea-

sonable jury could conclude that the plaintiffs were doing their best to hold up their end of the bargain—after all, they were not squandering their uncashed mortgage payments, and in November they were able to send GMAC Mortgage more than it asked for. A jury could also find that plaintiffs’ attempts were thwarted, first by RBC’s and then by GMAC Mortgage’s mismanagement of their account. Given the plaintiffs’ understandable confusion and frustration with the servicing of their loan in the fall of 2004 and GMAC Mortgage’s mixed messages regarding how they might fix the problems, a reasonable jury could conclude that the plaintiffs’ failure to submit their October 2004 payment to GMAC Mortgage was excused.

GMAC Mortgage cites our decision in *Hukic*, arguing that *any* misstep by a borrower in performance of the contract absolves a lender from liability for a later breach of the contract. We do not read *Hukic* so broadly. *Hukic* paid his property taxes and insurance directly, as his mortgage contract permitted him to do so long as he also submitted proof of payment to his mortgage company (or companies—*Hukic*’s mortgage was also transferred from one servicer to another several times). *Hukic*, 588 F.3d at 425. This he failed to do despite his servicers’ repeated requests for the required proof. Because they were unaware that *Hukic* had already paid those items, the mortgage servicers also paid them, which put *Hukic*’s mortgage account in arrears. *Hukic* brought suit against the servicers for breach of contract. We upheld summary judgment for the mortgage servicers, finding that *Hukic* had breached the contract by not informing the companies that he had

paid the property taxes and homeowner's insurance, as he was contractually obligated to do. *Id.* at 433. Hukic's failure to comply with his contractual obligations was material and absolved the servicers from liability because it directly caused the servicers' actions that were the basis of his own breach of contract claims. There was no issue in *Hukic* concerning whether or not Hukic's breach was excusable.

Here, even assuming that the plaintiffs delayed in making their October payment as GMAC Mortgage contends, that delay did nothing to exacerbate the already serious problems with GMAC Mortgage's servicing of the plaintiffs' mortgage account. Their delay in submitting their October 2004 payment, viewed in light of RBC's and GMAC Mortgage's repeated failures to provide them with information regarding their account or to conduct an investigation into the errors in transferring their account, is not comparable to Hukic's stonewalling. A reasonable trier of fact could find that the plaintiffs' failure to remit their October 2004 payment in a timely manner, although a breach of the contract, was excused due to the lenders' earlier breaches and errors and the resulting confusion surrounding their account. Summary judgment for GMAC Mortgage on the plaintiffs' breach of contract claim is reversed.

#### B. *Negligence*

Finding that GMAC Mortgage promptly corrected the errors in the plaintiffs' account, the district court held that GMAC Mortgage could not be found to have acted willfully or wantonly for its own financial gain, and the

court dismissed the plaintiffs' consolidated negligence claims on summary judgment. The plaintiffs appeal. They describe their negligence claims as "willful and wanton negligence or negligence based on willful or wanton misconduct." They argue that, however described, the issue of willfulness or wantonness is one for a jury and that the trial court erred in dismissing their negligence claims.

Plaintiffs are foreclosed from recovering on their negligence claims under the economic loss doctrine, which bars tort recovery for purely economic losses based on failure to perform contractual obligations. See *Moorman Mfg. Co. v. National Tank Co.*, 435 N.E.2d 443, 448-49 (Ill. 1982). In *Moorman*, the Illinois Supreme Court found that contract law protects the contracting parties' expectation interests and "provides the proper standard when a qualitative defect is involved," so a contracting party may not "recover for solely economic loss under the tort theories of strict liability, negligence and innocent misrepresentation." *Id.* at 448, 453. Illinois recognizes three general exceptions to the doctrine, which its Supreme Court recently set forth as follows: "(1) where the plaintiff sustained damage, *i.e.*, personal injury or property damage, resulting from a sudden or dangerous occurrence; (2) where the plaintiff's damages are proximately caused by a defendant's intentional, false representation, *i.e.*, fraud; and (3) where the plaintiff's damages are proximately caused by a negligent misrepresentation by a defendant in the business of supplying information for the guidance of others in their business transactions." *First Midwest Bank, N.A. v. Stewart Title Guaranty Co.*, 843 N.E.2d 327, 333-34 (Ill. 2006) (internal citations

omitted). These exceptions have in common the existence of an extra-contractual duty between the parties, giving rise to a cause of action in tort separate from one based on the contract itself.

The plaintiffs do not argue that their negligence claim falls into one of the three recognized exceptions, but they attempt to fashion a duty from the note-and-mortgage contract, from common law, and from GMAC Mortgage's obligations under RESPA. See Pl. Reply Br. 8-15. However, each duty that the plaintiffs identify has its root in the note-and-mortgage contract itself. No matter GMAC Mortgage's failings, the contract itself cannot give rise to an extra-contractual duty without some showing of a fiduciary relationship between the parties. See *Judd v. First Federal Sav. & Loan Ass'n of Indianapolis*, 710 F.2d 1237, 1241-42 (7th Cir. 1983) (holding under Indiana law that mortgage contract did not create a trust requiring the mortgagee to account to the mortgagors as beneficiaries, nor did it transform a traditional debtor-creditor relationship into a fiduciary relationship); *Ploog v. HomeSide Lending, Inc.*, 209 F. Supp. 2d 863, 874-75 (N.D. Ill. 2002) (denying lender's motion to dismiss borrower's negligence claim because lender's duty to manage escrow funds properly could give rise to fiduciary relationship between lender and borrower); *Choi v. Chase Manhattan Mortgage Co.*, 63 F. Supp. 2d 874, 885 (N.D. Ill. 1999) (same). The plaintiffs have made no such showing, and the trial court's dismissal of their negligence claims is affirmed.

#### V. *Damages*

We are not quite done yet. GMAC Mortgage argues in the alternative that even if plaintiffs' claims survive summary judgment on the issues already addressed, their RESPA and breach of contract claims cannot survive because they do not have competent evidence of damages. The district court did not address the question of damages. In doing so now, we conclude that the plaintiffs have raised disputed issues of material fact that bar summary judgment on this basis.

Plaintiffs must come forward with evidence sufficient to support an award of actual damages to pursue their RESPA and breach of contract claims. RESPA allows for damages in an amount equal to the sum of:

- (A) any actual damages to the borrower as a result of the failure; and
- (B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$1,000.

12 U.S.C. § 2605(f)(1). The plaintiffs do not contend that GMAC Mortgage engaged in a "pattern or practice" of noncompliance, and so to prevail under RESPA they must prove actual damages. Damages are also an essential element of their surviving breach of contract claim. See *Akinyemi v. JP Morgan Chase Bank, N.A.*, 908 N.E.2d 163, 169 (Ill. App. 2009) (dismissal of breach of contract claim upheld where plaintiff pled only that he "suffered damages in an amount to be proven at trial").



The plaintiffs contend that, as a result of GMAC Mortgage's conduct, they were denied home-equity lines of credit and a small business loan, and that they suffered emotional distress.<sup>7</sup> Keeping in mind the standard applicable for summary judgment, we review the relevant evidence in the light reasonably most favorable to plaintiffs as the non-moving parties.

*A. Denials of Credit Applications*

While the issues with plaintiffs' mortgage were still ongoing, they applied for four home equity lines of credit, three with LaSalle Bank and one with Quicken Loans. Plaintiff Morris also applied for a business loan with First American Bank. Each of these applications was denied. In response to the plaintiffs' contentions that they were denied loans and credit lines as a result of GMAC Mortgage's actions, GMAC Mortgage counters that no admissible facts support the plaintiffs' claim that they were denied credit as a result of GMAC Mortgage's report of negative information to the credit bureaus.

A representative of LaSalle Bank testified that the bank's decisions to deny the plaintiffs' applications of December 1, 2004, March 7, 2005, and October 14, 2005 would have been no different regardless of the issues between

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<sup>7</sup> The plaintiffs offer no response to GMAC Mortgage's argument that their damages claims relating to loans made by plaintiff Morris's mother should be dismissed. Accordingly, that damages theory is not available on remand.

RBC, GMAC Mortgage, and the plaintiffs. The plaintiffs presented contrary evidence. Morris testified that a LaSalle Bank loan officer told her that the plaintiffs' home-equity loan applications would not be approved until their foreclosure was removed.

GMAC Mortgage argues that the plaintiffs' evidence about what the LaSalle Bank loan officer said is not sufficient to avoid summary judgment because it is "classic" hearsay. We disagree. Hearsay, of course, is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Fed. R. Evid. 801(c). The loan officer's statement to Morris was not hearsay. It was not an assertion of a factual matter but a statement describing the bank's collective intentions: we won't approve a loan until you get the foreclosure issue resolved. There is also an exception to the exclusion of hearsay for "a statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)." Fed. R. Evid. 803(3); see *Citizens Financial Group, Inc. v. Citizens National Bank*, 383 F.3d 110, 133 (3d Cir. 2004) (bank tellers' statements regarding their personal experiences with certain customers were not hearsay because the tellers described the actions they took with regard to those customers and why); *United States v. Heath*, 970 F.2d 1397, 1404 (5th Cir. 1992) (statement by vice president and loan officer of bank that he was concerned a loan was a sham was not hearsay; his statement was offered not to show that the loan was a sham but to reveal whether the loan had aroused the witness's suspicions and whether

the witness had notified any other bank officer about it); *United States v. Visa U.S.A., Inc.*, 2007 WL 1741885, at \*9 (S.D.N.Y. June 15, 2007) (statements of bank employees regarding the banks' reasons for dealing with one supplier rather than another were not hearsay). Also, because the loan officer was speaking during the employment relationship concerning matters within the scope of her employment, her statement may be imputed to the bank. Thus, the LaSalle loan officer's statements to plaintiff Morris about the need to resolve the mortgage problem were expressions of the intentions of the bank made by its representative. The statements fall outside the definition of hearsay, and even if they amounted to hearsay, the Rule 803(3) hearsay exception would apply. The testimony from Morris about the bank representative's statements is admissible. The evidence presented by the parties presents a disputed issue of material fact that bars summary judgment on this issue.

The plaintiffs also applied for a fourth home equity loan with Quicken Loans in October 2005. The denial letter informed them that their application was rejected because of their poor credit scores. GMAC Mortgage argues that the denial of this loan cannot be attributed to its conduct because a different lender pulled the plaintiffs' credit report on the same day that Quicken did, and the report relied on by the other lender showed only positive information being reported by GMAC Mortgage on that date. However, without additional evidence to connect the dots, there is no way to conclude beyond

reasonable dispute that Quicken did not rely on the negative and erroneous credit information that GMAC Mortgage had reported to the credit bureaus only five months earlier. GMAC Mortgage's unbolstered assumption is speculative and insufficient to support summary judgment.

The plaintiffs support their claim that Morris was denied a business loan through First American Bank due to GMAC Mortgage's actions with an email sent by a representative of the bank to a First American loan officer expressing concern regarding Morris's "mortgage situation."<sup>8</sup> GMAC Mortgage argues that the representative who sent that email later testified that Morris's application was denied for reasons having nothing to do with GMAC Mortgage. GMAC Mortgage's argument goes to weight, not admissibility, and does not resolve this dispute of material fact. Taken in the light most favorable to the plaintiffs, a reasonable jury could conclude that GMAC Mortgage's actions resulted in

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<sup>8</sup> The plaintiffs also argue that a "former" First American loan officer told Morris that her business loan was denied due to the foreclosure. Although the plaintiffs disclosed this former First American loan officer to GMAC Mortgage as a potential witness, neither Morris's deposition testimony nor any other evidence in the record supports the plaintiffs' assertion of this statement. Even assuming that the loan officer made this statement to plaintiff Morris, there is no indication that she made the statement during the time she was an agent of the bank, so the statement has not been shown to be admissible.

plaintiff Morris's business loan application being denied.<sup>9</sup>

B. *Emotional Distress Damages*

Regarding the plaintiffs' claim of emotional distress, Plaintiff Morris's medical records indicate that she was under increased stress during this time period because of her "house situation." Also, both of the plaintiffs testified regarding their emotional distress. Plaintiff Morris explained:

It is hard to feel like people aren't listening to you, that they're ignoring you. It makes me nervous. It makes me shaky. It depresses me. It concerns me. It embarrasses me.

I can't sleep. I don't like people ringing my doorbell. Any and every way that you should feel in your own home, I don't feel, and only now are we really starting to do things in our house because I was concerned that it wasn't going to be my house. . . . It makes me sad because I've taken time away from my husband and from my child and from

---

<sup>9</sup> In the long run, of course, simply being denied a loan that would have to be repaid would not be sufficient by itself to prove damages; the plaintiffs would need to show further damages resulting from the loan denial. As the case comes to us, however, those issues are not before us. We focus only on the threshold step of whether the loans were denied as a result of GMAC Mortgage's actions.

myself because I have been consumed with this and dealing with this, and I'm angry about it.

I understand to an extent that [GMAC Mortgage] inherited an issue that was preexisting, but it seemed like [GMAC Mortgage] jumped on the bandwagon and didn't listen, ignored what was said to you.

I get headaches thinking about it and dealing with it. I'm just tired of it.

And, plaintiff Catalan testified:

If I see my wife upset, I can't let her know that I'm upset. So the whole time that we were going through this process, I had to deal with my wife every day crying and being upset, not being able to take care of my son the way she was supposed to. And I had to take care of my son . . . try to console my wife, and at the same time, I couldn't let anybody know how I felt about it.

. . . .

Every day I just felt useless. I couldn't do anything to help her. I couldn't resolve the situation. I couldn't fix her problem.

. . . .

It was killing me every day.

GMAC Mortgage concedes that emotional distress damages are available as actual damages under RESPA, at least as a matter of law, but argues that the plaintiffs's evidence is not sufficient to support a damages

award because it did not show “extreme” emotional distress and was “self-serving and conclusory.” GMAC Mortgage Br. 35, 36. We disagree. Although not extensive, the plaintiffs’ testimony is not conclusory. They described their emotional turmoil in reasonable detail and explained what they believe to be the source of that turmoil. Although also “self-serving,” most testimony by a party is, see, *e.g.*, *Payne v. Pauley*, 767, 772 (7th Cir. 2003) (reversing summary judgment), so that characterization does not assist GMAC Mortgage. So long as the statements were made with personal knowledge, which they certainly were, plaintiffs’ testimony on this point is admissible. GMAC Mortgage will be free to argue on remand that any such distress was minor and that other stressors in the plaintiffs’ lives were the true causes of their distress, but the plaintiffs’ testimony is sufficient to preclude summary judgment for GMAC Mortgage on the question of whether the plaintiffs suffered emotional harm as a result of GMAC Mortgage’s actions—and inaction.<sup>10</sup>

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<sup>10</sup> Before leaving the issue of damages, recall that plaintiffs already won a judgment for \$11,100 against RBC Mortgage. To the extent that plaintiffs are seeking damages against GMAC Mortgage for any of the same injuries, on remand the district court will need to ensure that plaintiffs do not recover twice for the same injury.

*Conclusion*

The district court's grant of summary judgment for GMAC Mortgage on the plaintiffs' RESPA claims and breach of contract claim is REVERSED and REMANDED for further proceedings. The court's grant of summary judgment to GMAC Mortgage on the plaintiffs' negligence claims is AFFIRMED.



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**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

Creditor  
Creditor Address  
City, State, Zip

**Re: Exclusive RESPA Address for a Qualified Written Request under HUD  
Regulation X, Section 3500.21(e)(1)**

As you are aware, HUD Regulation X, Section 3500.21(e)(1) states, "By notice either included in the notice of transfer or separately delivered by first-class mail, postage pre-paid, a servicer may establish a separate and exclusive office address for the receipt and handling of qualified written requests."

This letter will serve as a request for your exclusive RESPA address for the receipt and processing of all Qualified Written Requests. Please note that any failure on your part to provide my office with your exclusive address will be considered to constitute a waiver of the requirements under HUD Regulation X, Section 3500.21(e)(1), including, but not limited to, any defenses or claims related to alleged "insufficient notice."

Sincerely,



O. Max Gardner, III

**YOUR EXCLUSIVE RESPA ADDRESS FOR A QUALIFIED WRITTEN REQUEST:**

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\*The Law Offices of O. Max Gardner III, designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States, has proudly assisted consumers seeking relief under the US Bankruptcy Code for over 30 years.



O. Max Gardner III, CEO, Vice President of Litigation Management  
Gardner.Botes PLLC - National Consumer Bankruptcy Litigation Center  
403 South Washington Street, Shelby, North Carolina 28150  
mgardner@ncblc.com - (704) 481-1403 (voice) - (888) 870-1647 (fax)

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LITIGATION CENTERPO Box 1000  
403 South Washington Street  
Shelby, North Carolina 28151Phone: (704) 418-2628  
Fax: (888) 870-1647

DATE

Agent  
Creditor  
Address  
City, State Zip**In the Matter of:**John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case No.  
Your loan No:  
File Date:  
Our File No:**LONG QWR****O. Max Gardner III**Chief Executive Officer  
Vice President-Litigation  
Management  
[maxgardner@maxgardner.com](mailto:maxgardner@maxgardner.com)  
Admitted in NC**William S. Gardner**Vice President-Legal Affairs  
Secretary & Treasurer  
[wgardner@maxgardner.com](mailto:wgardner@maxgardner.com)  
Admitted in NC**John Mull Gardner**Of Counsel  
[jgardner@maxgardner.com](mailto:jgardner@maxgardner.com)  
Admitted in NC

Dear Sir or Madam:

Please treat this letter as a "qualified written request" under Section 6(e) of the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(e). This request is made on behalf of my Clients, the above-named debtors, based on the pending dispute in their Chapter 13 case about the proper application of payments from the Chapter 13 Trustee and from the debtors to interest, principal, escrow advances and expenses (in that order of priority as provided for in the loan instruments); about your use of suspense accounts in connection with your receipt of Trustee's and debtors' payments; about your use of legacy late charges with respect to post-petition mortgage payments; about your use of automatically triggered property inspections and broker price opinion charges and fees based on pre-petition legacy accounting for pre-petition arrears; and about legal fees and expenses that have been attached to this account in the form of corporate advances that have neither been applied for nor approved by the United States Bankruptcy Court. Specifically, I am requesting the following information:

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members and supporters of:*

1. A complete and itemized statement of the loan history from the date of the loan to the date of your response to this letter including, but not limited to, all receipts by way of payment or otherwise and all charges to the loan in whatever form. This life of the loan transactional history should include the date of each and every debit and credit to any account related to this loan, whether restricted or not restricted, the nature and purpose of each such debit and credit, and the name and address of the payee of any type of disbursement related to this loan.

1A. Please identify the mortgage servicing software you use in connection with this loan (MSP, LSAMS, etc).

2. A complete and itemized statement of all advances or charges against this loan, restricted or unrestricted, recoverable or non-recoverable, and for any purpose that are not reflected on the life of loan history transaction statement provided in answer to question #1.

3. A complete and itemized statement of the escrow account of the loan, if any, from the date of the loan to the date of your response to this letter, including, but not limited to, any receipts or disbursements with respect to real estate property taxes, fire or hazard insurance, flood insurance, mortgage insurance, credit insurance, purchase mortgage insurance, or any other type of insurance product.



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Shelby, North Carolina 28151

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**Fax:** (888) 870-1647

4. A complete and itemized statement from the date of the loan to the date of your response to this letter of the amounts charged for any forced-placed insurance, the date of the charge, the name of the insurance company, the amount of commission you received for each force-placed insurance event, and an itemized statement of any other expenses related thereto.
5. A description of the business relationships and corporate affiliations between you and the insurance company from which you obtained force-placed insurance and any other company involved in the force-placed insurance purchase,
6. A complete and itemized statement from the date of the loan to the date of your reply to this letter of any suspense account entries and/or any corporate advance entries related in any way to this loan.
7. A complete and itemized statement from the date of the loan to the date of your reply to this letter of any property inspection fees, property preservation fees, broker opinion fees, appraisal fees, bankruptcy monitoring fees, or other similar fees or expenses related in any way to this loan.
8. Identify the provision under the Deed of Trust and/or note that authorizes charging each and every such fee against the loan of the debtors.
9. Please attach copies of all property inspection reports and appraisals, broker price opinions of value, bills and invoices, and checks or wire transfers in payment thereof.
10. A complete copy of any **Key Loan Transaction report or reports** and any reports indicating any charges for any insurance, warranty protection, credit protection, or other product or service other than a mortgage loan sold to the debtors in connection with this loan from the date of the loan to the date of your reply to this letter.
11. A complete and itemized statement of any and all post-petition arrears including each month in which the default occurred, and the amount of each monthly default.
12. A complete and itemized statement of any late charges added to this loan from the date of this loan to the date of your reply to this letter.
13. A complete and itemized statement from the date of the loan to the date of your reply to this letter of any fees incurred to modify, extend, or amend the loan or to defer any payment or payments due under the terms of the loan.
14. An itemized statement of the current amount needed to pay-off the loan in full.
15. A full and complete plain-English definitional dictionary of all transaction codes and other similar terms used in any of the documents or records requested or referred to herein.
16. A complete and itemized statement of any funds deposited in any post-petition suspense account(s) or corporate advance account(s), including, but not limited to, the balance in any such account or accounts and the nature, source and date of any and all funds deposited in such account or accounts.
17. A complete and itemized statement from the date of this loan to the date of



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your reply to this letter of the amount, payment date, purpose and recipient of all foreclosure expenses, NSF check charges, legal fees, attorney fees, professional fees and other expenses and costs that have been charged against or assessed to this loan and whether or not such charge or fee is recoverable or non-recoverable.

18. A complete and itemized statement of the amount, payment date, purpose and recipient of all fees for the preparation and filing of the original proof of claim, any amended proofs of claim or any supplemental proofs of claim in this case.

19. The full name, address and telephone number of the current holder of the original mortgage note including the name, address and phone number of any Trustee under the Trust or other fiduciary. This request is being made pursuant to both RESPA and Section 1641(f)(2) of the Truth In Lending Act, which require the servicer to identify the holder of the debt.

20. The name, address and telephone number of any master servicers, servicers, sub-servicers, contingency servicers, back-up servicers or special servicers for this mortgage loan.

21. A copy of any mortgage Pooling and Servicing Agreement with respect to any mortgage-backed security trust related to or including this loan and any and all Amendments and Supplements thereto.

22. If a copy of the Pooling and Servicing Agreement has been filed with the SEC, provide a copy of the related SEC Form 8k and the Prospectus Supplement, SEC Form 424b5.

23. The name, address and telephone number of any Trustee under any pooling or servicing agreement related to or including this loan.

24. A copy of the Prospectus offered to investors in the trust related to or including this loan.

25. Copies of all servicing, master servicing, sub-servicing, contingency servicing, special servicing, or back-up servicing agreements with respect to this loan.

26. All written loss-mitigation rules and work-out procedures and loan modifications options or programs related to any defaults regarding this loan and similar loans.

27. A summary of all fixed or standard legal fees approved for any form of legal services rendered in connection with this loan.

28. Is this a MERS or MOM Mortgage Loan? If the answer is yes, then please provide the following documents:

(a) A copy of the MERS Milestone Report.

(b) A copy of the MERS MIN Summary.

(c) A copy of the MERS Member Agreement.

(d) A copy of all corporate resolutions that appoint any employee of the Servicer to an officer position with MERS or grant authority to sign documents on behalf of MERS.



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Shelby, North Carolina 28151

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29. Please state the full name and address of any attorney you have retained to provide any legal services in this case within six (6) months of the petition date or at any time post-petition.

30. To the extent not provided in response to a previous question above, a copy of your Key Loan Transaction history, bankruptcy work form, XLS spreadsheet, or any other manually-prepared spreadsheet or record of any and all accounts associated with this mortgage loan.

31. Copies of all collection notes, collection records, communication files or any other form of recorded data with respect to any communications between you and the debtor.

32. An itemized statement of the full amount needed to reinstate the mortgage as of the date of your response.

33. Copies of all written or recorded communications between you and any non-lawyer third parties regarding this mortgage.

34. All P-309 screen shots of the history all of the accounts (principal, interest, escrow, late charges, legal fees, property inspection fees, broker price opinion fees, statutory expense fees, miscellaneous fees, corporate advance fees, etc.) associated with this loan.

You should be advised that you must acknowledge receipt of this qualified written request within five (5) business days, pursuant to 12 U.S.C. Section 2605(e)(1)(A) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and Reg. X Section 3500.21(e)(1).

You should also be advised that the debtor(s) herein will seek the recovery of damages, costs, and reasonable legal fees for each failure to comply with the questions and requests herein. The debtor(s) also reserve the right to seek statutory damages for each violation of any part of Section 2605 of Title 12 of the United States Code in the amount of \$2,000.00 for each violation.

With best regards, I remain

Sincerely yours,

O. Max Gardner III  
OMGIII/cjh

cc: Steven G. Tate, Trustee  
John and Mary Public



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DATE

Agent  
Creditor  
Address  
City, State Zip

**Qualified Written Request under the Mortgage Servicing Act of RESPA and Request for Information Related to the Owner and Holder of Note under the Truth in Lending Act**

**In the Matter of:**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case No:  
File Date:  
Our File No:  
Your Account No:

**VERY SHORT QWR**

Dear Sir or Madam:

Please treat this letter as a "qualified written request" under Section 6(e) of the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(e). This request is made on behalf of my Clients, the above-named debtors, based on the pending dispute in their Chapter 13 case about the proper application of payments from the Chapter 13 Trustee and from the debtors to interest, principal, escrow advances and expenses (in that order of priority as provided for in the loan instruments); about your use of suspense accounts in connection with your receipt of Trustee's and debtors' payments; about your use of legacy late charges with respect to post-petition mortgage payments; about your use of automatically triggered property inspections and broker price opinion charges and fees based on pre-petition legacy accounting for pre-petition arrears; and about legal fees and expenses that have been attached to this account in the form of corporate advances that have neither been applied for nor approved by the United States Bankruptcy Court. Specifically, I am requesting the following information:

1. A complete and original life of loan transaction history to the date of your response to this letter prepared by the Servicer from its own records using its own system and default servicing personnel. Also, please identify the mortgage servicing software you use in connection with this loan (MSP, LSAMS, etc).
2. A copy of your **Key Loan Transaction history**, bankruptcy work form, XLS spreadsheet, or any other manually-prepared spreadsheet or record of all accounts associated with this mortgage loan (**this would include both recoverable and non-recoverable and restricted and non-restricted accounts**).
3. A full and complete plain-English definitional dictionary of all transaction codes and other similar terms used in the records requested above or any of the other documents or records requested or referred to herein.
4. If this is a MERS or MOM loan, please attach a copy of **all MERS Milestone Reports**
5. If this is a MERS or MOM loan, please attach a copy of **all MIN Reports**.

**O. Max Gardner III**

Chief Executive Officer  
Vice President-Litigation  
Management  
[maxgardner@maxgardner.com](mailto:maxgardner@maxgardner.com)  
Admitted in NC

**William S. Gardner**

Vice President-Legal Affairs  
Secretary & Treasurer  
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6. Please identify the full name, address and telephone number of the current holder of the original mortgage note including the name, address and phone number of any Trustee under the Trust or other fiduciary. This request is being made pursuant to Section 1641(f)(2) of the Truth In Lending Act, which requires the servicer to identify the holder of the debt.
7. Copies of all collection notes, collection records, communication files or any other form of recorded data with respect to any communications between you and the debtor.
8. An itemized statement of the full amount needed to reinstate the mortgage as of the date of your response along with an itemized pay-off statement.
9. Copies of all written or recorded communications between you and any non-lawyer third parties regarding this mortgage (including but not limited to LPS Desktop communiqués, NewTrak communications, NewInvoice transmittals, NewImage transmittals, electronic communications by email or otherwise, collection notes, and any other form of written or electronic document related to the servicing of or ownership of this loan).
10. All P-309 screen shots of the history all of the accounts (principal, interest, escrow, late charges, legal fees, property inspection fees, broker price opinion fees, statutory expense fees, miscellaneous fees, corporate advance fees, etc.) associated with this loan.
11. IF A CHAPTER 13 CASE NUMBER IS LISTED AT THE TOP OF THIS LETTER: To the extent that the servicer of this mortgage loan has charged the debtor's mortgage loan account, subsequent to the filing of their bankruptcy case, any appraisal fees, broker price opinion fees, property inspection/preservation fees, legal fees, bankruptcy/Proof of Claim fees, recoverable corporate advances and other fees or costs that were not disclosed to the debtor(s) and approved by the bankruptcy court, the debtor(s) dispute(s) any such fees and costs and specifically requests that the account be corrected.

You should be advised that you must acknowledge receipt of this qualified written request within five (5) business days, pursuant to 12 U.S.C. Section 2605(e)(1)(A) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and Reg. X Section 3500.21(e)(1).

You should also be advised that the debtor(s) herein will seek the recovery of damages, costs, and reasonable legal fees for each failure to comply with the questions and requests herein. The debtor(s) also reserve the right to seek statutory damages for each violation of any part of Section 2605 of Title 12 of the United States Code in the amount of \$2,000.00 for each violation.

With best regards, I remain.

Very truly yours,

O. Max Gardner, III  
OMGIII/cjh  
Cc: Debtors



NATIONAL CONSUMER BANKRUPTCY  
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403 South Washington Street  
Shelby, North Carolina 28151**Phone:** (704) 418-2628  
**Fax:** (888) 870-1647

DATE

Agent  
Creditor  
Address  
City, State Zip**In the Matter of:**John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
File Date:  
Our File No:**SHORT QWR**

Dear Sir or Madam:

Please treat this letter as a "qualified written request" under Section 6(e) of the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(e). This request is made on behalf of my Clients, the above-named debtors, based on the pending dispute in their Chapter 13 case about the proper application of payments from the Chapter 13 Trustee and from the debtors to interest, principal, escrow advances and expenses (in that order of priority as provided for in the loan instruments); about your use of suspense accounts in connection with your receipt of Trustee's and debtors' payments; about your use of legacy late charges with respect to post-petition mortgage payments; about your use of automatically triggered property inspections and broker price opinion charges and fees based on pre-petition legacy accounting for pre-petition arrears; and about legal fees and expenses that have been attached to or otherwise assessed to this account in the form of corporate advances that have neither been applied for nor approved by the United States Bankruptcy Court. Specifically, I am requesting the following information:

1. The amount of any **legal fees** added to the principal debt in this case or charged against the account or tracked for any purpose in any account for any post-filing legal services, paralegal services, accounting services, claim preparation services, case review services, plan review services, or for any other similar service, professional or otherwise.
2. The **amount of any property inspection fees, property preservation fees, broker price opinion fees, bankruptcy monitoring fees**, or other similar fees or expenses added to the principal debt or charged against the account or tracked for any purpose post-petition or associated with any account related to this loan.
3. The total amount of any **post-petition arrears** including a complete explanation of the months in which payments were allegedly missed, the aggregate late charges imposed for all such payments, the date and amount of all account payment postings post-petition, and the basis for the imposition of each late charge fee.
4. The current amount needed to **pay-off the loan** in full in the form of an itemized printed payoff report.

**O. Max Gardner III**Chief Executive Officer  
Vice President-Litigation  
Management[maxgardner@maxgardner.com](mailto:maxgardner@maxgardner.com)

Admitted in NC

**William S. Gardner**Vice President-Legal Affairs  
Secretary & Treasurer[wgardner@maxgardner.com](mailto:wgardner@maxgardner.com)

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Shelby, North Carolina 28151Phone: (704)418-2628  
Fax: (888) 870-1647

5. A complete life of loan payment and **transaction history** for this loan to the date of your response to this letter, including all entries of any nature in the form of a debit, a credit, a transfer or otherwise. A complete copy of all transaction codes associated with this loan and the plain English definitions for each such code. Also, please identify the mortgage servicing software you use in connection with this loan (MSP, LSAMS, etc).

6. The amount of any funds deposited in any post-petition **suspense accounts or corporate advance accounts or any other similar accounts** (including the amount and date of each transaction, the source of funds, and a description of the deposit account) and a description of all payments from any such accounts including the date of the payment, the purpose or nature of the payment, and the amount of each such payment.

7. A copy of any **pooling and servicing agreement**, servicing agreement, default servicing agreement, or sub-servicing agreement that the creditor or Servicer has with any party.

8. A copy of all of your **loss mitigation rules**, regulations, and protocols (**including any non-HAMP modification policies**) as the same apply to this loan, a description of your efforts to implement the same in connection with the servicing of this loan, and copies of all communications, records and servicing notes relating to evaluating or processing this loan for a HAMP or non-HAMP modification.

9. A copy of **statements or bills for services** submitted and paid by you to any attorney, law firm or third-party for any form of legal services rendered post-petition with respect to this mortgage loan.

10. A copy of the **most recent review of and report** on the Servicer, including its bankruptcy and default servicing departments by any rating agency such as Fitch, Moody's, Standard & Poor's, as well as by any internal audit unit.

11. A copy of your **Key Loan Transaction history, bankruptcy work form, XLS spreadsheet**, or any other manually-prepared spreadsheet or record of all accounts associated with this mortgage loan.

If this is a MERS or MOM loan, please provide the documents listed in items 12-15; otherwise, please skip to Item 16.

12. A copy of **the MERS Milestone Report**.

13. A copy of the **MERS MIN Summary**.

14. A copy of the **MERS Member Agreement**.

15. A copy of all corporate resolutions that appoint any employee of the Servicer to an officer position with MERS or grant authority to sign documents on behalf of MERS.

16. Copies of all **collection notes**, collection records, communication files or any other form of recorded data with respect to any communications between you and the debtor.

17. An itemized statement of the full amount needed to **reinstate the mortgage** as of

NATIONAL CONSUMER BANKRUPTCY  
LITIGATION CENTERPO Box 1000  
403 South Washington Street  
Shelby, North Carolina 28151**Phone:** (704)418-2628  
**Fax:** (888) 870-1647

the date of your response.

18. Copies of all written or recorded communications between you and any non-lawyer third parties regarding this mortgage.

19. All P-309 screen shots of the history all of the accounts (principal, interest, escrow, late charges, legal fees, property inspection fees, broker price opinion fees, statutory expense fees, miscellaneous fees, corporate advance fees, etc.) associated with this loan.

20. In accordance with Section 131(f)(2) of the Truth-in-Lending Act, 15 U.S.C. Section 1641(f), please provide me with the name, address, and telephone number of the owner of the promissory Note signed by my clients and secured by the deed of trust with respect to my clients' mortgage loan referenced above.

To the extent that the servicer of this mortgage loan has charged the debtor's mortgage loan account, subsequent to the filing of their bankruptcy case, any appraisal fees, broker price opinion fees, property inspection/preservation fees, legal fees, bankruptcy/Proof of Claim fees, recoverable corporate advances and other fees or costs that were not disclosed to the debtor(s) and approved by the bankruptcy court, the debtor(s) dispute(s) any such fees and costs and specifically requests that the mortgage loan account be corrected to remove any such fees that have not been approved by the Bankruptcy Court after the filing of a proper application for the same with notice and hearing and an order of approval.

You should be advised that you must acknowledge receipt of this qualified written request within five (5) business days, pursuant to 12 U.S.C. Section 2605(e)(1)(A) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and Reg. X Section 3500.21(e)(1).

You should also be advised that the debtor(s) herein will seek the recovery of damages, costs, and reasonable legal fees for each failure to comply with the questions and requests herein. The debtor(s) also reserve the right to seek statutory damages for each violation of any part of Section 2605 of Title 12 of the United States Code in the amount of \$2,000.00 for each violation.

With best regards, I remain

Very truly yours,

O. Max Gardner III  
OMGIII/cjh

Cc: Steven G. Tate, Trustee  
John and Mary Public

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

403 SOUTH WASHINGTON STREET  
POST OFFICE BOX 1000  
SHELBY, NORTH CAROLINA 28151  
www.maxgardnerlaw.com

**O. Max Gardner III**  
maxgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1647

**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

AMC Mortgage Services, Inc.  
Attn: Shelli Boehm  
P.O. Box 769  
Orange, CA 92866-9998

**In the Matter of:**

John Q. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Our File No:

**INFORMAL QWR**

Dear Shelli:

You filed a Proof of Claim (POC) regarding the above captioned case on behalf of AMC Mortgage Services, Inc. An "Addendum A" was attached to the POC listing the Principal Balance and Total Debt. I am requesting that you provide me with an itemized summary of all of the foreclosure fees, inspection fees, and appraisal fees that are listed on the aforementioned addendum. Please provide this in a way that is straightforward and easy to read or please provide an explanation of any codes, numbers, etc., that may mean something to you but to nobody else outside of your company. Also, I am requesting the same information on how you computed the amount of the pre-petition interest.

We are requesting you to produce this evidence on a voluntary basis so that we do not have to file a contested case and employ formal discovery. Thank you for your time and effort and anticipated cooperation.

With best regards, I remain.

Very truly yours,



O. Max Gardner III  
Cc: Debtors



\*The Law Offices of O. Max Gardner III, designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States, has proudly assisted consumers seeking relief under the US Bankruptcy Code for over 30 years.



O. Max Gardner III, CEO, Vice President of Litigation Management  
Gardner.Botes PLLC - National Consumer Bankruptcy Litigation Center  
403 South Washington Street, Shelby, North Carolina 28150  
mgardner@ncblc.com - (704) 481-1403 (voice) - (888) 870-1647 (fax)



PO Box 1000  
403 South Washington Street  
Shelby, North Carolina 28151

Phone: (704)418-2628  
Fax: (888) 870-1647

DATE

CitiMortgage, Inc.  
P.O. Box 9438  
Gaithersburg, MD 20898-9438

### TILA and Payoff Request 131(f)

Re: My Clients/Borrowers:  
Loan Number:  
Property Address:

**O. Max Gardner III**  
Chief Executive Officer  
Vice President-Litigation  
Management  
[mgardner@maxgardner.com](mailto:mgardner@maxgardner.com)  
Admitted in NC

**William S. Gardner**  
Vice President-Legal Affairs  
Secretary & Treasurer  
[bgardner@maxgardner.com](mailto:bgardner@maxgardner.com)  
Admitted in NC

Dear Madam or Sir:

In accordance with RESPA and Section 131(f) of the Truth-in-Lending Act, 15 U.S.C. Section 1641(f)(2), please provide me with the name, address, and telephone number of the owner of the promissory note signed by my clients and secured by the deed of trust in my clients' mortgage loan referenced above.

**John Mull Gardner**  
Of Counsel  
[jgardner@maxgardner.com](mailto:jgardner@maxgardner.com)  
Admitted in NC

This is also a request for a Payoff under the Truth-in-Lending Act.

By their signatures below, my clients authorize you to furnish me with the requested information, and any other information regarding their account and their mortgage loan.

*All Principals are proud  
members and supporters of:*

**You should be advised that you must acknowledge receipt of this request within five (5) business days; respond to the payoff request within seven (7) days; and respond with the owner of the promissory note within thirty (30) business days, pursuant to 12 U.S.C. Section 2605(e)(1)(A) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and Reg. X Section 3500.21(e)(1).**



Thanking you in advance, I am

Very truly yours,

O. Max Gardner III  
OMGIII/cjh  
cc: Client(s)

I authorize you to furnish the requested information regarding my mortgage loan to my attorney, O. Max Gardner III, at his office address as shown above, within thirty (30) days from the date of this request.

Signed this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Borrower)



NATIONAL CONSUMER BANKRUPTCY  
LITIGATION CENTER

PO Box 1000  
403 South Washington Street  
Shelby, North Carolina 28151

Phone: (704)418-2628  
Fax: (888) 870-1647

DATE

CitiMortgage, Inc.  
P.O. Box 9438  
Gaithersburg, MD 20898-9438

### TILA Request 131(f)

Re: My Clients/Borrowers:  
Loan Number:  
Property Address:

**O. Max Gardner III**  
Chief Executive Officer  
Vice President-Litigation  
Management  
[mgardner@maxgardner.com](mailto:mgardner@maxgardner.com)  
Admitted in NC

**William S. Gardner**  
Vice President-Legal Affairs  
Secretary & Treasurer  
[bgardner@maxgardner.com](mailto:bgardner@maxgardner.com)  
Admitted in NC

Dear Madam or Sir:

In accordance with RESPA and Section 131(f) of the Truth-in-Lending Act, 15 U.S.C. Section 1641(f)(2), please provide me with the name, address, and telephone number of the owner of the promissory Note signed by my clients and secured by the deed of trust in my clients' mortgage loan referenced above.

**John Mull Gardner**  
Of Counsel  
[jgardner@maxgardner.com](mailto:jgardner@maxgardner.com)  
Admitted in NC

By their signatures below, my clients authorize you to furnish me with the requested information, and any other information regarding their account and their mortgage loan.

You should be advised that you must acknowledge receipt of this request within five (5) business days, and respond within thirty (30) business days, pursuant to 12 U.S.C. Section 2605(e)(1)(A) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and Reg. X Section 3500.21(e)(1).

*All Principals are proud  
members and supporters of:*



Thanking you in advance, I am

Very truly yours,

O. Max Gardner III  
OMGIII/cjh  
cc: Client(s)

I authorize you to furnish the requested information regarding my mortgage loan to my attorney, O. Max Gardner III, at his office address as shown above, within thirty (30) days from the date of this request.

Signed this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Borrower)

## TILA Request 131(f) from Client

DATE

CitiMortgage, Inc.  
P.O. Box 9438  
Gaithersburg, MD 20898-9438

Re: Borrower:  
Loan Number:  
Property Address:

Dear Madam or Sir:

In accordance with Section 131(f) of the Truth-in-Lending Act, 15 U.S.C. Section 1641(f), please provide my attorney, O. Max Gardner III, with the name, address, and telephone number of the owner of the promissory Note signed by me and secured by the deed of trust in my mortgage loan referenced above.

I request that you forward the information to my attorney within twenty (20) days from the date of this request, addressed to:

O. Max Gardner III  
Gardner & Gardner PLLC  
Post Office Box 1000  
Shelby, NC 28150

Thanking you in advance, I am

Very truly yours,

---

(Borrower)

---

(Borrower)

cc: O. Max Gardner III

# The Bank of New York Mellon, N.A.

## MORTGAGE LOAN TRANSFER NOTICE

In this Notice, the terms "we", "us" or "our" mean the new creditor identified below. The terms "you" and "your" mean the mortgage loan borrower(s) identified below.

We are sending you this Notice because we are required by law to notify you that your mortgage loan identified below has been sold or transferred to us. We are the new creditor of your mortgage loan.

Date of this Notice: **December 07, 2009**

Mortgage Loan Borrower Name(s): [REDACTED]

Property Address: **1168 [REDACTED] Ct  
Chula Vista, CA [REDACTED]**

**Mortgage Loan Information:**

Date of Loan: **01/18/2007**  
Original Amount of Loan: **\$153,000.00**

Address of Mortgaged Property: **1168 [REDACTED] Ct  
Chula Vista, CA [REDACTED]**

Mortgage Identification Number (MIN): **1001337-000[REDACTED]-3**

Please note the following information regarding the transfer of your mortgage loan:

1. The identity (name), address and telephone number of the new creditor:

**The Bank of New York Mellon, N.A.  
5730 Katella Avenue  
Cypress, Ca 90630  
(888) 999-0615**

2. The date of the transfer of your mortgage loan: **12/03/2009**

3. How to reach an agent or party having authority to act on behalf of the new creditor:

The mailing address and telephone number to reach the mortgage company servicing your mortgage loan is:

**BAC Home Loans Servicing, LP  
1800 Tapo Canyon Road  
Mail Id #Ca6-914-01-43  
Simi Valley, Ca 93063  
(800) 669-6607  
(800) 669-2443  
<http://countrywide.com>**

4. The instrument representing the indebtedness of your mortgage loan (promissory note) is not a recordable document, but the promissory note is in our possession or held on our behalf by our custodian. The security instrument (mortgage or deed of trust) that secures the repayment of your promissory note is, however, recorded in the public land records for San Diego, CA.
5. Additional information:

**This Notice does not identify or otherwise change the address where you send your mortgage loan payments.**

If there is any change in the address for your mortgage loan payments, you will be notified of such change separately and apart from this notice.

You can also look up the current servicer of your mortgage loan by accessing MERS® Servicer ID at [www.mers-servicerid.org](http://www.mers-servicerid.org), or by dialing the toll-free MERS® Servicer Identification System at 888-679-6377.



**GMAC Mortgage****received**  
10-18-10

October 7, 2010

SAMPLE RESPONSE TO TILA REQUEST

Michael R McKinsey  
PO Box 2016  
Crested Butte CO 81224

RE: Account Number 0359394799  
Property Address 251 Lower Allen Road  
Crested Butte CO 81224

Dear Michael R McKinsey:

This letter is in response to your inquiry on the above-referenced account.

The current Master Servicer is: Wells Fargo Bank, NA. The loan is currently owned by: Deutsche Bank National Trust Company Americas, as Trustee, 1761 East St. Andrew Place, Santa Ana, CA 92705, phone number 714-247-6257. However, the loan is currently being subserviced by GMAC Mortgage, LLC and all legal inquiries should be directed to the subservicer.

The loan originated October 26, 2006 with Bank United, FSB and transferred to GMAC Mortgage, LLC for servicing on January 11, 2007. Any previous assignments are updated at the time the loan is paid in full and the release is sent for recording.

The foreclosure sale is scheduled for October 20, 2010. Unfortunately, we are unable to stop the foreclosure sale.

If you have any further general servicing questions, please contact Customer Care at 1-800-766-4622 between the hours of 6:00 am to 10:00 pm CT Monday through Friday and 9:00 am to 1:00 pm CT on Saturday.

Customer Care  
Loan Servicing

KT



## **MERS ID of Holder and Owner of Note**

MERS members have the option to disclose their investor contact information for all loans naming them as the investor on the MERS® System. If they elect to disclose this information it is made available to the public on MERS® ServicerID and the telephone Servicer Identification System.

If an investor has chosen not to disclose their information on the MERS® System, borrowers should contact the servicer. Under the Truth in Lending Act, borrowers may request the servicer to provide certain information regarding the owner of the mortgage loan. The applicable Federal Act states: "Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation..." 15 U.S.C. section 1641(f)(2). Furthermore, although MERS tracks transfers of servicing rights between MERS members, servicers are still required to notify homeowners in writing when loan servicing is transferred. This is known as the "hello/good-bye" letter. See Real Estate Settlement Procedures Act, 12. U.S.C. §2601 et seq.

Thank you.

Tiffany Toale

MERS Product Performance Specialist

Direct: (319) 334-7034

Corporate: (800) 646-6377

Fax: (703) 748-0183

[tiffanyt@mersinc.org](mailto:tiffanyt@mersinc.org) <<mailto:tiffanyt@mersinc.org>>

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

403 SOUTH WASHINGTON STREET  
POST OFFICE BOX 1000  
SHELBY, NORTH CAROLINA 28151  
www.maxgardnerlaw.com

**O. Max Gardner III**  
maxgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1647

**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

Creditor atty

**In the Matter of:**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Our File No:

**RETAIL INSTALLMENT ACT QWR**

**Contested Case: DaimlerChrysler v Public**

**Court Date: Friday, \_\_\_\_\_ at 9:30 a.m.**

**Location: Courtroom #5, Cleveland County Courthouse, Shelby**

Dear atty:

MAX GARDNER LAW

In order for the debtors to evaluate your motion for relief from stay in this case, we are submitting the following request for information under the applicable provisions of the North Carolina Retail Installment Sales Act, codified as Chapter 25A of the General Statutes:

1. The amount of any legal fees added to the principal debt in this case or charged against the account for any post-filing legal services.
2. The amount of any inspection fees, bankruptcy monitoring fees, or other similar fees or expenses added to the principal debt or charged against the account post-petition.
3. The amount of any post-petition arrears.
4. The current amount needed to pay-off the loan in full.
5. A post-petition payment history for this loan.
6. The amount of any funds deposited in any post-petition suspense accounts or corporate advance accounts.



\*The Law Offices of O. Max Gardner III, designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States, has proudly assisted consumers seeking relief under the US Bankruptcy Code for over 30 years.



O. Max Gardner III, CEO, Vice President of Litigation Management  
Gardner.Botes PLLC - National Consumer Bankruptcy Litigation Center  
403 South Washington Street, Shelby, North Carolina 28150  
mgardner@ncblc.com - (704) 481-1403 (voice) - (888) 870-1647 (fax)

7. A copy of the loan note, RISA, and any assignments for either document, if applicable.
8. The full name, legal title, and address of the party who actually owns the underlying loan debt.
9. A copy of the North Carolina certificate of title that indicates the name of the current holder of the debt, or if the lien holder has perfected its lien on the title by a proper assignment and notation of the new lien holder thereon.
10. A copy of any master servicing agreement, servicing agreement, or sub-servicing agreement that your client has with the actual owner of this debt.

With best regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to read "O. Max Gardner III", with a stylized flourish at the end.

O. Max Gardner III

OMGIII/cjh

Cc: Steven G. Tate, Trustee  
John and Mary Public

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

**O. Max Gardner III**  
maxgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1647

403 SOUTH WASHINGTON STREET  
POST OFFICE BOX 1000  
SHELBY, NORTH CAROLINA 28151  
www.maxgardnerlaw.com

**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

By Certified Mail, Return Receipt Requested

**ARTICLE 9 QWR**

Crassus Creditor  
c/o Edward Teach, Attorney for Crassus  
Creditor  
666 Pirate Way  
Tall Building  
City, US 98765-4321

Debtors' UCC Request for Explanation of  
Calculation of Deficiency or Surplus and  
Notice of Disposition

RE: Debtor: John Smith & Jane Smith  
Case No.:  
Chapter: 13

Dear Edward Teach:

The above Debtors were the owners of a 1999 Car, vehicle identification number MFD845MN498, which your client, Crassus Creditor, has, upon information and belief, repossessed and sold. Pursuant to N.C.G.S. § 25-9-616 (a), please send the following information, to the above address:

1. The amount of any surplus or deficiency;
2. Provide an explanation, in accordance with N.C.G.S. § 25-9-616(c), of how any surplus or deficiency was calculated, including:
  - a. The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of:
    - i. If your client took or received possession of the collateral after default, not more than 35 days before your client took or received possession; or
    - ii. If your client took or received possession of the collateral before default or has not taken possession of the collateral, not more than 35 days before the disposition;



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mgardner@ncblc.com - (704) 481-1403 (voice) - (888) 870-1647 (fax)

- b. The amount of proceeds from the disposition;
  - c. The aggregate amount of the obligations, after deducting the amount of proceeds;
  - d. The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;
  - e. The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the Debtors are known to be entitled and which are not reflected in the amount in number 1; and
  - f. The amount of the surplus or deficiency.
3. State, if applicable, whether future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses will affect the amount of the surplus or deficiency; and
4. Provide a telephone number or mailing address from which additional information concerning the transaction is available. By providing this alternate telephone number or mailing address, you are expressly authorizing us to contact your client directly.
5. Please also provide a copy of the Notice of Disposition sent, as required by N.C.G.S. § 25-9-611 (b), to the Debtors, that:
- a. Described the Debtors and the actual secured party;
  - b. Described the collateral that was the subject of the intended disposition;
  - c. Stated the method of intended disposition;
  - d. Stated that the Debtors were entitled to an accounting of the unpaid indebtedness and stated the charge, if any, for such an accounting; and
  - e. Stated the time and place of a public disposition or the time after which any other disposition is to be made;
  - f. Described any liability for a deficiency of the person to which the notification was sent;
  - g. Included a telephone number from which the amount that must be paid to the secured party to redeem the collateral under G.S. 25-9-623 is available; and
  - h. Included a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

If the 1999 Car has not yet been disposed of, please state when it is anticipated that such disposition will be made.

PLEASE NOTE: Pursuant to N.C.G.S. § 25-9-616(b)(2) and § 25-9-625(e)(6), failure to comply with this request within fourteen (14) days of receipt of this request may subject your client to statutory damages of \$500.00 and, pursuant to N.C.G.S. § 25-9-625(c)(2), not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price. Additionally, pursuant to N.C.G.S. § 25-9-625(b), your client may be required to pay actual

damages, including attorneys' fees and any loss resulting from the Debtors' inability to obtain, or increased costs of, alternative financing.

In addition to being sent to you by certified mail, return receipt requested, this request is being filed with the bankruptcy court for the Western District of North Carolina, in order to further establish the date of service.

With best regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to read "O. Max Gardner III". The signature is fluid and cursive, with a large loop at the beginning and a stylized "III" at the end.

O. Max Gardner III

OMGIII/mrg

# Demand Letters



THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

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**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Phil Fewster, CEO  
Debt Shield, Inc.  
9212 Berger Road, Ste 100  
Columbia, MD 21046

**In the Matter of:**

Mary Smith  
100 Main Street  
Anywhere, NC 28999  
Court No:  
SSN:  
File Date:  
Our File No:

**SECTION 542 TURNOVER DEMAND**

Dear Mr. Fewster:

Please be advised that I represent the above captioned debtor, who has filed a Chapter 13 bankruptcy petition with the United States Bankruptcy Court for the Western District of North Carolina, Shelby Division. As your firm may be aware, the debtor's Chapter 13 plan provides for the rejection of her credit counseling contract and the termination of the Limited Power of Attorney. The debtor has advised me that she paid your company \$675.00 per month from \_\_\_\_\_ to \_\_\_\_\_. These payments total \$5057.00. Your firm recently provided a refund check in the amount of only \$692.80. The debtor does not believe that your firm made any disbursements pursuant to her credit counseling contract, from the total amount of funds paid to you. Accordingly and pursuant to Sections 542 and 362(a)(3) of Title 11 of the United States Code, you are obligated to turnover all remaining funds (\$4,364.20) paid by the debtor to my office or to provide a detailed accounting of the use of the funds.

If you fail to take such action within ten (10) days of your receipt of this letter, then we will file appropriate papers with the Bankruptcy Court and will seek damages and legal fees against you or your company.

With best regards, I remain

Very truly yours,



O. Max Gardner III  
OMGIII/cjh  
cc: Mary Smith



\*The Law Offices of O. Max Gardner III, designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States, has proudly assisted consumers seeking relief under the US Bankruptcy Code for over 30 years.



**N C B L C**

O. Max Gardner III, CEO, Vice President of Litigation Management  
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**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

**CERTIFIED MAIL-RETURN RECEIPT**

President, General Agent or Managing Agent  
American Express  
P.O. Box 297879  
Fort Lauderdale, FL 33329-7879

**In the Matter of:**

**SECTION 547 PREFERENCE TURNOVER DEMAND**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Court No:  
SSN:  
File Date:  
Our File No.:

Dear Sir or Madam:

MAX GARDNER LAW

The records of the debtors in this case indicate that they paid the sum of \$758.00 within 90 days of the filing of their Chapter 13 case. These payments constituted unlawful preferences under the Bankruptcy Code and as a result the Chapter 13 Trustee has requested our office to take all necessary and appropriate legal steps to recover these funds for the benefit of creditors in this Chapter 13 Estate. In connection therewith, please be advised of the following:

1. In our District, the attorney for the debtor in a Chapter 13 proceeding may seek to recover a preferential payment for distribution under the Chapter 13 plan. If it becomes necessary to file an adversary proceeding under Section 547, then the Chapter 13 Trustee is named as an additional party. However, the preference action is filed by the attorney for the Chapter 13 debtor.
2. The 90 day period referred to herein does not include the petition filing date. See, e.g., **In re Grimaldi**, 3 B.R. 533 (Bankr. D. Conn. 1980).
3. For purposes of Section 547, a transfer made by check is deemed made when **the check is honored**. The date of issuance of the check and the date the payment was posted simply have no relevance. See, e.g., **Barnhill vs Johnson**, 503 U.S. 393, 112 S.



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Ct. 1386, 119 L.Ed. 2d 519 (1992).

4. Payments made to collection agents or agencies may be recovered directly from such agents or agencies. See, e.g., **In re Mill St., Inc.**, 96 B.R. 268 (Bankr. 9th Cir. 1989).

We will consider your failure to turnover the requested funds to constitute a violation of Section 547 of Title 11 of the United States Code. We will also view your conduct in this matter as actionable under Section 362(h) of Title 11 of the United States Code. I am sure that you are aware that Section 362(a)(3) of Title 11 provides that it is a violation of the automatic stay "to exercise control over property of the estate." Any willful refusal to turnover these funds violates this section.

Accordingly, unless these funds are received in my office within ten (10) days of your receipt of this letter, we will proceed with all necessary and appropriate court action. Such action will include a demand for the recovery of these funds, for actual damages, punitive damages and legal fees.

Sincerely yours,

A handwritten signature in black ink, appearing to read "O. Max Gardner III", with a stylized flourish at the end.

O. Max Gardner III

cc: Steven G. Tate, Trustee  
John and Mary Public

OMGIII/mrg

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

**O. Max Gardner III**  
maxgardner@maxgardner.com  
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POST OFFICE BOX 1000  
SHELBY, NORTH CAROLINA 28151  
www.maxgardnerlaw.com

**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

Agent  
Creditor  
Address  
City, State Zip

**In the Matter of:**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 No:  
SSN:  
File Date:  
Our File No:  
Your Account No: 1234567890

**SECTION 362(A) NOTICE LETTER**

Dear Sir or Madam:

Since the filing of this Chapter 13 case, the debtors have advised my office that they have received one or more demands for payment on a debt which is included in their bankruptcy proceeding. Since the debtors are protected from such debt collection efforts and other actions by virtue of his Bankruptcy case, you are hereby notified that this action is in willful violation of Section 362 of Title 11 of the United States Code. The contact itself may also violate the Federal Fair Debt Collection Practices Act and the North Carolina Unfair Debt Collection Practices Law.

Accordingly, THIS DEMAND FOR PAYMENT MUST BE WITHDRAWN, DISMISSED AND CANCELED WITHIN TEN (10) DAYS OF THE DATE OF YOUR RECEIPT OF THIS LETTER BY WRITTEN NOTICE TO MY LAW OFFICE or a motion for sanctions will be filed against you in the United States Bankruptcy Court for the Western District of North Carolina, Shelby Division. If it becomes necessary to file such a motion, then we will ask the Court to award damages, legal fees, and punitive damages.

You should also be advised that your failure to withdraw this demand for payment on a timely basis will be used as evidence in this case to prove, among other things, the following:

1. That your violation of the automatic stay is continuing in nature and is further



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403 South Washington Street, Shelby, North Carolina 28150  
mgardner@ncblc.com - (704) 481-1403 (voice) - (888) 870-1647 (fax)**

aggravated by your failure to withdraw the said demand for payment as requested herein;

2. That your failure to withdraw the demand for payment on a reasonable and a timely basis as requested herein enhances the claim of the debtor for the award of punitive damages for a willful violation of the automatic stay;
3. That your collection/bankruptcy system suffers from serious defects and flaws as evidenced by your total failure to respond to this special certified notice from my law office;
4. That you have failed to implement adequate procedures for the due and lawful receipt and processing of bankruptcy notices and for taking the necessary steps to terminate the collection process after the timely receipt of such notices;
5. That you have failed to implement any adequate procedures for the timely and proper review of "certified letters" from attorneys representing debtors in pending bankruptcy cases;
6. That you have failed to take timely, necessary, appropriate and proper actions in this case so as to avoid the filing of a motion for sanctions for an automatic stay violation;
7. That you have willfully failed to take timely and necessary actions in an effort to mitigate the damages you will suffer in this case;
8. That you have needlessly increased the legal fees and expenses that have been and will be incurred by the debtors in this case;
9. That you have waived any right to object to the admission of this letter and of your failure to submit a timely response thereto into evidence at any court hearing in this matter;
10. That you have admitted that the debtors are entitled to recover at least the amount of actual damages, punitive damages, and legal fees as set forth in this letter;
11. That this letter may be introduced into evidence at any hearing in this case under Rule 803(6) of the Federal Rules of Evidence; and
12. That your failure to respond on a timely basis as designated herein may be used against you as a Statement that this is contrary to your pecuniary or proprietary interest as provided for by Rule 804(b)(3) of the Federal Rules of Evidence.

Sincerely,

A handwritten signature in black ink, appearing to read "O. Max Gardner, III", with a stylized flourish at the end.

O. Max Gardner, III

OMGIII/cjh

cc: Steven G. Tate, Chapter 13 Trustee  
John and Mary Public

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

403 SOUTH WASHINGTON STREET  
POST OFFICE BOX 1000  
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**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

Agent  
Creditor  
Address  
City, State Zip

**In the Matter of:**

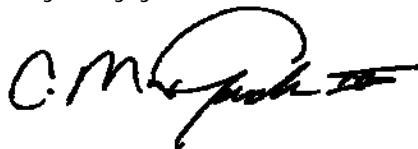
John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 No:  
SSN:  
File Date:  
Our File No:  
Your Account No: 1234567890

Dear Sir or Madam:

My office has received your withdrawal of demand for payment. This response resolves the matter referred to in our prior letter. Please be advised, however, that legal action will be taken if any further actions are undertaken to attempt to collect this debt.

With best regards, I remain

Very truly yours,



O. Max Gardner, III

OMGIII/cjh



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bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

**CERTIFIED MAIL – RETURN RECEIPT**

Wells Fargo NC2, Inc  
4143 121<sup>st</sup> Street  
Urbandale, IA 50323

**In the Matter of:**

**MOTOR VEHICLE LIEN RELEASE DEMAND**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Our File No:

Dear Sir or Madam:

The above-referenced debtor has completed the required payments under the terms of her confirmed Chapter 13 Plan. Pursuant to Section 20-58.4 of the North Carolina General Statutes, upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of the secured party, *the secured party shall within 10 days after demand execute a release of his security interest.* As a result, we are hereby making demand for you to release your lien on the title to the **1989 Oldsmobile** and deliver the title to the debtor or to my office within 10 days of the date of your receipt of this letter. If you fail to do so, then we will pursue the claim by way of an adversary proceeding before the United States Bankruptcy Court for the Western District of North Carolina for violation of the provisions of North Carolina General Statute Section 20-58.4, Section 25A-22(b) of the North Carolina Retail Installment Sales Act and the North Carolina Unfair and Deceptive Acts and Practices Laws, G.S. § 75-50 et seq. If it becomes necessary to file such a proceeding, we will also seek the recovery of all of our legal fees and expenses incurred in the court action.

Sincerely,



O. Max Gardner, III  
cc: John and Mary Public



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**N C B L C**

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Facsimile: (888) 870-1644

DATE

**CERTIFIED MAIL**

Beneficial North Carolina, Inc.  
961 Weigel Drive  
PO Box 8603  
Elmhurst IL 60126-0000

**In the Matter of:**

**SATISFACTION OF DEED OF TRUST DEMAND**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Discharge Date:  
Our File No:  
Your Account No.: 123456789

Dear Sir or Madam:

The above-referenced debtors have completed the required payments under the terms of their confirmed Chapter 13 Plan. On \_\_\_\_\_, the Bankruptcy Court entered an order requiring you to release the 2<sup>nd</sup> Deed of Trust upon discharge of the debtors' case (enclosed).

Furthermore, Section 45-36.3 of the North Carolina General Statutes provides in pertinent part as follows:

**"Notification by mortgagee of satisfaction of provisions of deed of trust or mortgage, or other instrument.**

(a) *After the satisfaction of the provisions of any deed of trust or mortgage, or other instrument intended to secure with real property the payment of money or the performance of any other obligation and registered as required by law, the holder of the evidence of the indebtedness, if it is a single instrument, or a duly authorized agent or attorney of such holder shall within 60 days:*

- (1) *Discharge and release of record such documents and forward the cancelled documents to the grantor, trustor or mortgagor; or*
- (2) *Alternatively, the holder of the evidence of the indebtedness or a duly*

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authorized agent or attorney of such holder, at the request of the grantor, trustor or mortgagor, shall forward said instrument and the deed of trust or mortgage instrument, with payment and satisfaction acknowledged in accordance with the requirements of G.S. 45-37, to the grantor, trustor or mortgagor." [emphasis added].

As a result, we are hereby making demand for you to cancel and mark paid the Second Deed of Trust to the property located at **100 Main Street, Anywhere, NC 28999** and deliver such to our office within 10 days of receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "O. Max Gardner, III". The signature is fluid and cursive, with a large initial "O" and a stylized "M".

O. Max Gardner, III

OMGIII/cjh

Encl: Order Dated \_\_\_\_\_

cc: John and Mary Public

# Discharge Letters

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

403 SOUTH WASHINGTON STREET  
POST OFFICE BOX 1000  
SHELBY, NORTH CAROLINA 28151  
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**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999

**In the Matter of:**

**FINANCIAL MANAGEMENT REQUIREMENT CH 7**

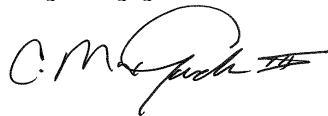
Your Chapter 7 Case  
Court No:  
SSN:  
File Date:  
Our File No:

Dear John and Mary:

This will serve as a reminder that you need to complete the Financial Management course as soon as possible and provide the certificate of completion to my office for filing with the Bankruptcy Court. This Statement must be filed within 45 days of the date set for your first meeting of creditors (on or before \_\_\_\_\_) or your case will be closed without the issuance of a discharge. Since the discharge is the objective of a Chapter 7 bankruptcy case, you do not want to risk the loss of this essential benefit. The discharge constitutes the legal cancellation of all claims and debts that are subject to such actions in a Chapter 7 bankruptcy case. Please contact my office to make arrangements to register to complete this requirement.

With best regards, I remain

Very truly yours,



O. Max Gardner III

OMGIII/mrg



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Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

John Q. Public  
100 Main Street  
Anywhere, NC 28999

**In the Matter of:**

**FINANCIAL MANAGEMENT REQUIREMENT CH 13**

Your Chapter 13 Case

Chapter 13 No:

SSN:

File Date:

Our File No:

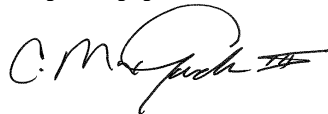
Dear John:

You are required to complete a financial management course prior to the end of your case. You will need to pay the fee to my office to register for the course and complete the course so that the certificate of completion can be filed by my office with the Bankruptcy Court. This certificate must be filed prior to the entry of a discharge in your case or your case will be closed without the issuance of a discharge. Since the discharge is the objective of a Chapter 13 bankruptcy case, you do not want to risk the loss of this essential benefit. The discharge constitutes the legal cancellation of all claims and debts that are subject to such actions in a Chapter 13 bankruptcy case. Please contact my office to make arrangements to register to complete this requirement.

If you have any questions, please call me.

With best regards, I remain

Very truly yours,



O. Max Gardner III

OMGIII/mrg



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bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

Continental Service Group, Inc.  
Attn: Mary Schmidt  
200 CrossKeys Office Park  
Fairport, NY 14450

**In the Matter of: CH 7 NO ASSET UNSCHEDULED, UNSECURED DEBT LETTER**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 7 Case No:  
SSN:  
File Date:  
Discharge Date:  
Our File No:

Dear Ms. Schmidt:

In reference to your phone call, please be advised that the debt that you are attempting to collect was inadvertently left unlisted in the schedules filed in this bankruptcy case. However, please be advised that the discharge did, in fact, as a matter of law, include even those debts that were not listed since this case was a "no asset" case. The following cases support this conclusion, Matter of Baitcher, 781 F.2d, 1529 (11<sup>th</sup> Cir. 1986); In Re Soult, 894 F.2d 815(6<sup>th</sup> Cir. 1990); In Re Beezley, 994 F.2d, 1433(9<sup>th</sup> Cir. 1993); In Re Madaj, 149 F.3d, 467(6<sup>th</sup> Cir. 1998); Judd v Wolfe, 78 F.3d 110 (3<sup>rd</sup> Cir. 1997).

The bottom line of the rule of law is that in a "No Asset" Chapter 7 case, all unsecured claims that come into existence prior to the filing of the bankruptcy case are discharged, regardless of whether or not they were listed in the schedules filed in the bankruptcy case. Furthermore, the bottom line is that you must quit attempting to collect this debt or else the debtor will be filing a motion seeking Sanctions for violating the discharge injunction entered in this case. Such a motion will also seek attorney fees and costs. This will be the last warning.

Sincerely,



O. Max Gardner III  
OMGIII/mrg



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**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

Date

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999

**In the Matter of:**

Your Chapter 7 Case  
Court No:  
SSN:  
File Date:  
Discharge Date:  
Our File No:

Dear John and Mary:

MAX GARDNER LAW

Congratulations on the official completion of your Chapter 7 Case! Enclosed for your information and records is a copy of the Discharge of Debtor issued by the United States Bankruptcy Court.

Also enclosed for your use are letters to the credit reporting bureaus, notifying them of your discharge and requesting specific actions pursuant to your credit record. Along with these letters, you must send copies of your driver's license and Social Security Card or Birth Certificate to the credit reporting bureaus as proof of your identity. Please mail the letters **via certified mail** and when you have received the green Return Receipt cards bring them to my office for filing.

I recommend that you secure a credit report from all three of the Credit Reporting Agencies (Equifax, Experian and TransUnion) in about six (6) months and provide the same for me to review. All of your creditors must report only a "0" balance on your credit report after discharge and if they fail to do so, then we could have a violation of the Bankruptcy Code and the Fair Credit Reporting Act and the most recent Fair and Accurate Reporting Act.

The final enclosure is a pamphlet entitled "Using Credit Wisely after Bankruptcy" published by the National Consumer Law Center. I believe this pamphlet contains much information



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mgardner@ncblc.com - (704) 481-1403 (voice) - (888) 870-1647 (fax)

which you may find useful as you begin life after bankruptcy.

With best regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to read "O. Max Gardner, III". The signature is fluid and cursive, with a large loop at the end.

O. Max Gardner, III

Enclosures: Discharge Order  
Letters to Credit Reporting Agencies (3)  
"Using Credit Wisely"

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

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DATE

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999

**In the Matter of:**

Your Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Discharge Date:  
Our File No:

Dear John and Mary:

Congratulations on the official completion of your Chapter 13 plan! Enclosed for your information and records is a copy of the Discharge of Debtor after Completion of Chapter 13 Plan issued by the United States Bankruptcy Court.

If any of your creditors hold liens on your motor vehicles, then they are required to release the liens and send you the titles within 30 days of the issuance of this Order. If you do not receive the titles within this time period, then please contact me as such action could provide grounds for legal action against such creditors.

Also enclosed for your use are letters to the credit reporting bureaus, notifying them of your discharge and requesting specific actions pursuant to your credit record. Along with these letters, you must send copies of your driver's license and Social Security Card or Birth Certificate to the credit reporting bureaus as proof of your identity. Please mail the letters **via certified mail** and when you have received the green Return Receipt cards bring them to my office for filing.

I recommend that you secure a credit report from all three of the Credit Reporting Agencies (Equifax, Experian and TransUnion) in about six (6) months and provide the same for me to review. All of your creditors must report only a "0" balance on your credit report after discharge and if they fail to do so, then we could have a violation of the Bankruptcy Code and the Fair Credit Reporting Act and the most recent Fair and Accurate Reporting Act.

The final enclosure is a pamphlet entitled "Using Credit Wisely after Bankruptcy" published by the National Consumer Law Center. I believe this pamphlet contains much information which you may find useful as you begin life after bankruptcy.



With best regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to read "O. Max Gardner, III". The signature is fluid and cursive, with a large loop for the "O" and a stylized "Gardner" followed by "III".

O. Max Gardner, III

Enclosures: Discharge Order  
Letters to Credit Reporting Agencies (3)  
"Using Credit Wisely"

DATE

**CERTIFIED MAIL – RETURN RECEIPT**

EQUIFAX INFORMATION SERVICES, LLC  
1550 Peachtree St NW  
Atlanta, GA 30309-2468

**In the Matter of:**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Discharge Date:  
Our File No:

Dear Sir or Madam:

For your reference I am enclosing a copy of the Order Discharging Debtor after Completion of Chapter 13 Plan entered on \_\_\_\_\_ in my bankruptcy case. Please update the subject credit file(s) to reflect the discharged status of the debts as indicated on the Final Report from the Trustee. It is my understanding that the Fair Credit Reporting Act and the Regulations implemented by the Federal Trade Commission under the Act requires you to report a current balance of "0" on all of these accounts that have been discharged in my bankruptcy case.

To the extent that any of the discharged debts are reporting anything other than a "0" balance, please consider this letter as a Dispute under the Fair Credit Reporting Act. Consequently, I am requesting you to immediately activate the Automated Dispute Resolution System program with respect to this written notice.

It is also my understanding that pursuant to the Fair Credit Reporting Act you are required to conduct an investigation or reinvestigation of each of the items in my report that are disputed by me and that you will promptly notify me of the results of your investigation. In addition, it is my understanding that each of the above creditors is required to investigate my disputes upon receipt of notification from you of this information. In order to facilitate those investigations I request that you forward this letter, and the enclosures, to each of the creditors listed above. If for any reason you decline to send a copy of my letter and the enclosures to any of the creditors, I request that you promptly advise me so that I can take additional steps to protect myself.

Thank you for your assistance with this matter.

Sincerely,

John Q. Public  
enclosures: Discharge Order  
Trustee's Final Report & Account  
Color copy of Driver's License  
Color copy of Social Security Card

DATE

**CERTIFIED MAIL – RETURN RECEIPT**

Experian  
P.O. Box 9701  
Allen, TX 75013-9701

**In the Matter of:**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Discharge Date:  
Our File No:

Dear Sir or Madam:

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Sincerely,

John Q. Public  
enclosures: Discharge Order  
Trustee's Final Report & Account  
Color copy of Driver's License  
Color copy of Social Security Card

DATE

**CERTIFIED MAIL – RETURN RECEIPT**

TransUnion Consumer Solutions  
PO Box 2000  
Chester, PA 19022-2000

**In the Matter of:**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
SSN: -  
File Date:  
Discharge Date:  
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Sincerely,

John Q. Public  
enclosures: Discharge Order  
Trustee's Final Report & Account  
Color copy of Driver's License  
Color copy of Social Security Card

# Ten Things to Think about ***Before:*** Getting a New Credit Card . . .

**1. Don't apply for a credit card until you are ready.** Unfortunately, bankruptcy may not have permanently resolved all of your financial problems. It is a bad idea to apply for new credit before you can afford it.

**2. Avoid accepting too many offers.** There is rarely a good reason to have more than one or two credit cards. Having too much credit can lead to bad decisions and unmanageable debts, and it will lower your credit rating. This can make it harder for you to get other lower interest rate loans. Avoid accepting a credit card just to get a discount at a store or a "free" gift.

**3. Remember that lenders are looking for people who run up big balances, because those consumers pay the most interest.** You may find that credit card companies are pursuing you aggressively by mail and phone even though you filed bankruptcy. Do not view this as a sign that you can afford more credit. The lender may have a marketing profile telling them you are someone who is likely to carry a big credit card balance and pay a good deal of interest. Or they may see you as a good credit risk because you cannot file a Chapter 7 bankruptcy again for quite a few years.

**4. Interest rate is important in choosing a card, but not the only consideration.** You should always try to get a card with an interest rate as low as possible. But it is rarely a good idea to take a new card just because of a low rate. The rate only matters if you carry a balance from month to month. Also, the rate can easily change, with or without a reason. Remember that even the best credit cards are expensive unless you pay your balance in full

every month. And other credit terms can add to your cost, like annual fees, late charges, over-the-limit fees, account set-up fees, cash advance fees, and the method of calculating balances. Sometimes a credit card that appears cheaper is actually more expensive.

**5. Beware of temporary "teaser" rates.** A teaser rate is an artificially low initial rate that applies only for a limited time. Most teaser rates are good only for six months or less. After that, the rate automatically goes up. Remember that if you build up a balance under the teaser rate, the much higher permanent rate will apply when you repay the bill. This means that the permanent long-term rate on the card is much more important than the temporary rate.

**6. If your rate is variable, understand how it may change.** Variable interest rates can be very confusing. Some variable rate terms can make your rate go up steeply over time. Read the credit contract to understand how and when your rate may change. And don't be misled by advertisements that claim "fixed rate", as this may mean the rate is fixed only until the lender decides to change it again.

**7. Check terms related to late payment charges and penalty rates of interest.** Most credit card contracts have terms in the small print for late charges or penalty interest rates that increase if you make even a single late payment. Try to avoid cards with late fees as high as \$25-35 or penalty interest rates of 21-24% or higher. Even if you are not having financial problems, these terms may become important, because they apply equally to accidental late payments.

**8. Get a card with a grace period and learn the billing method.** It is important to understand how

you will be billed. Look for a card with a grace period that lets you pay off the balance each month without interest. If the card does not have a grace period and interest will apply from the date of your purchase, a low interest rate may actually be higher than it looks. The terms of the grace period are also important, as it may not apply to balance transfers and cash advances. And look out for different interest rates that may apply depending upon the type of charge: these usually include a higher rate for cash advances.

**9. Don't accept a card just because you qualify for a high credit limit.** It is easy to assume that because a card offer includes a high credit limit, this means the lender thinks you can afford more credit. In fact, the opposite may be true. Lenders often give high credit limits to consumers hoping that they think will carry a bigger balance and pay more interest. You must evaluate whether you can afford more credit based on your individual circumstances.

**10. Always read both the disclosures and the credit contract.** You will find disclosures about the terms of a credit card offer, usually in small print on the reverse or at the bottom of the offer. Review these carefully. However, the law does not require that all relevant information be disclosed. For this reason, you must also read your credit contract, which comes with the card. This will include terms such as late payment fees, default rates of interest, and a description of the billing method. Since these terms are not easy to understand, you may want to call the lender for an explanation. Or better yet, refuse credit with too many complex provisions, because those terms are likely to work to your disadvantage.

# ... or Using One you Have

**1. Establish a realistic budget.** Before using a credit card after bankruptcy, try paying cash for a while. This will help you learn how much money you need each month to pay the basic necessities. Don't forget to budget for the payments on any debts you reaffirmed in your bankruptcy.

**2. It is important not to use credit cards to make up for a budget shortfall.** Credit card debt is expensive. Sometimes credit cards are so easy to use that people forget they are loans. Be sure to charge only things you really need and plan to pay the balance off in full each month. If you find you are constantly using your card without being able to pay the bill in full each month, you need to consider that you are using cards to finance an unaffordable lifestyle.

**3. If you get into financial trouble, do not make it worse by using credit cards to make ends meet.** If you find that you are using credit cards to get through a period of financial difficulty, it is likely that additional credit will only make things worse. For example, if you use cash advances on your credit card to pay bills, the interest due will only add to your debt burden sooner rather than later.

**4. Don't get hooked on minimum payments.** Credit card lenders usually offer an optional "minimum payment" in their monthly billing. These are usually set very low (usually 2% of the balance), barely covering the monthly interest charge. If you pay only the minimum, chances are that you will be paying your debt very slowly or not at all, and you may think you are managing the debt when you are really getting in over your head. For example, if you make only the monthly minimum payments to pay

off a \$1,000 balance at a 17% interest rate, it will take over 7 years to pay your debt! If you are also making new purchases every month while making minimum payments, your debt will grow and take even longer to pay off. This means that your monthly interest obligations will increase and you will have less money in the monthly budget for necessities.

**5. Don't run up the balance based on a temporary "teaser" interest rate.** Money borrowed during a temporary rate period of 6% is likely to be paid back at a much higher permanent rate of 15% or more. Also be careful about juggling cards to take advantage of teaser rates and balance transfer options. It takes a great deal of time and effort to take advantage of terms designed to be temporary. Remember that all teaser rate offers are designed to get you locked into the higher rate for the long term, because that is how the lender makes the most money.

**6. Avoid the special services and programs credit card lenders offer to bill to your card.** You are likely to get many mail offers and telemarketer calls from your credit card lender about special services such as credit card fraud protection plans, credit report protection, travel clubs, life and unemployment insurance, and other similar offers. These products are generally overpriced. It is best to throw out and refuse these offers, or at a minimum, treat them with a high degree of caution. And avoid "free trial" offers as you will be billed automatically if you forget to cancel the service.

**7. If you can afford to do so, always make your credit card payments on time.** Be careful to avoid late payment charges and penalty rates if you can do so while still paying higher priority debts. Bad

problems get worse fast when you have a new higher interest rate and late charge to pay during a time of financial difficulty. Most lenders will waive a late charge or default interest rate one time only. It is worth calling to ask for a waiver if you make a late payment accidentally or with a good excuse.

**8. Know exactly when the grace period ends.** The grace period usually ends on the payment "due date," which may change every month. Many lenders do not mail bills until late in the grace period, so your payment may be due quite soon after you receive the bill. This also means that the grace period may be less than a full month, usually about 20-25 days. Some lenders are slow in posting payments or have strange rules about deadlines (like payments received after 10:00 a.m. on the due date are considered late). Try to mail your payment well before the due date so there will be no question it gets there on time. Paying credit cards on time not only saves you interest and late fees but is a good way to improve your credit rating after bankruptcy.

**9. Beware of unsolicited increases by a credit card lender to your credit card limit.** Some lenders increase your credit limit even when you have not asked for more credit. Avoid using the full credit line as your debt can easily spiral out of control. And going over the credit limit even by a few dollars can be very costly as you will likely be charged an over-the-limit fee and a higher penalty interest rate.

**10. If you do take a credit card and discover terms you do not like: Cancel!** You can always cancel any credit card at any time. Although you will be responsible for any balance due at the time of cancellation, you should not keep using a card after you discover that its terms are unfavorable.

# Beware of Credit Offers Aimed at Recent Bankruptcy Filers

## “Disguised” Reaffirmation Agreement

Carefully read any credit card or other credit offer from a company that claims to represent a lender you listed in your bankruptcy or own a debt you discharged. This may be from a debt collection company that is trying to trick you into reaffirming a debt. The fine print of the credit offer or agreement will likely say that you will get new credit, but only if some or all of the balance from the discharged debt is added to the new account.

## “Secured” Credit Card

Another type of credit marketed to recent bankruptcy filers as a good way to reestablish credit involves “secured” credit cards. These are cards where the balances are secured by a bank deposit. The card allows you a credit limit up to the amount you have on deposit in a particular bank account. If you can’t make the payments, you lose the money in the account. They may be useful to establish that you can make regular monthly payments on a credit card after you have had trouble in the past. But since almost everyone now gets unsecured credit card offers even after previous financial problems, there is less reason to consider allowing a creditor to use your bank deposits as collateral. It is preferable not to tie up your bank account.

## Credit Repair Companies

Beware of companies that claim: “We can erase bad credit.” These companies rarely offer valuable services for what they charge, and are often an outright scam.

The truth is that no one can erase bad credit information from your report if it is accurate. And if there is old or inaccurate information on your credit report, you can correct it yourself for free.

## Avoid High Cost Predatory Lenders

Don’t assume that because you filed bankruptcy you will have to get credit on the worst terms. If you can’t get credit on decent terms right after bankruptcy, it may be better to wait. Most lenders will not hold the bankruptcy against you if after a few years you can show that you have avoided problems and can manage your debts.

Be wary of auto dealers, mortgage brokers and lenders who advertise: “Bankruptcy? Bad Credit? No Credit? No Problem!” They may give you a loan after bankruptcy, but at a very high cost. The extra costs and fees on these loans can make it impossible for you to keep up the loan payments. Getting this kind of loan can ruin your chances to rebuild your credit.

## Mortgage Loans

If you own your home, some home improvement contractors, loan brokers and mortgage lenders may offer to give you a home equity loan despite your credit history. These loans can be very costly and can lead to serious financial problems and even the loss of your home. Avoid mortgage lenders that:

- ▶ charge excessive interest rates, “points,” brokers’ fees and other closing costs
- ▶ require that you refinance your current lower interest mortgage or pay off other debts
- ▶ add on unnecessary and costly products, like credit insurance

- ▶ make false claims of low monthly payments based on a “teaser” variable interest rate
- ▶ include a “balloon” payment term that requires you to pay all or most of the loan amount in a lump sum as the last payment
- ▶ charge a prepayment penalty if you pay off the loan early
- ▶ change the terms at closing
- ▶ make false promises that the rate will be reduced later if you make timely payments
- ▶ pressure you to keep refinancing the loan for no good reason once you get it

## Small Loans

It is always best to save some money to cover unexpected expenses so you can avoid borrowing. But if you are in need of a small loan, avoid the following high cost loans:

**Payday loans** – Some “check cashers” and finance companies offer to take a personal check from you and hold it without cashing it for one or two weeks. In return, they will give you an amount of cash that is less than the amount of your check. The difference between the amount of your check and the cash you get back in return is interest that the lender is charging you. These payday loans are very costly. For example, if you write a \$256 check and the lender gives you \$200 back as a loan for two weeks, the \$56 you pay equals a 728% interest rate! And if you don’t have the money to cover the check, the lender will either sue you or try to get you to write another check in a larger amount. If you choose to write another check, the lender gets more money from you and you get further into debt. (Continued on back )

**Auto Title Loans** - For many years, pawn shops have made small high-interest loans in exchange for property. A new type of “pawn” is being made by title lenders who will give you a small loan at very high-interest rates (from 200% to 800%) if you let them hold your car title as collateral for the loan. If you fall behind on the payments, the lender can repossess your car and sell it.

**Rent-to-Own** - By renting a TV, furniture or appliance from a rent-to own company, you will often pay three or four times more than what it would cost to buy. The company may make even more profit on you because the item you are buying may be previously used and returned. And if you miss a payment, the company may repossess the item leaving with you no credit for the payments you made.

**Tax Refund Anticipation Loans** - Some tax return preparers offer to provide an “instant” tax refund by arranging for loans based on the expected refund. The loan is for a very short period of time between when the return is filed and when you would expect to get your refund. Like other short-term loans, the fees may seem small but amount to an annual interest rate of 200% or more. It is best to patient and wait for the refund.

## What You Can Do To Avoid Problems

- ❖ **If you don't want it, don't get it.** If you have doubts about whether you really need the loan or service, or whether you can afford it, don't let yourself get talked into it at the last minute by a salesperson using high-pressure tactics. You can always walk away from a bad deal, even at the last minute.
- ❖ **Shop around.** You may qualify for a loan with normal rates from a reputable bank or

credit union. Don't forget that high-cost lenders are counting on your belief that you cannot get credit on better terms elsewhere. Do not let feelings of embarrassment about your past problems stop you from shopping around for the best credit terms.

- ❖ **Compare credit terms.** Do not consider just the monthly payment. Compare the interest rate by looking at the “annual percentage rate,” as this takes into account other fees and finance charges added on the loan. Make sure you know exactly what fees are being charged for credit and why.
- ❖ **Read before you sign.** If you have questions, get help from a qualified professional to review the paperwork. A lender that will not let you get outside help should not be trusted.
- ❖ **If you give a lender a mortgage in a refinancing deal, remember your cancellation rights.** In home mortgage refinancings, federal law gives you a right to cancel for three days after you sign the papers. Exercise these rights if you feel you signed loan papers and got a bad deal. Don't let the lender talk you out of canceling.
- ❖ **Get help early.** If you begin to have financial problems, or you are thinking of consolidating unmanageable debts, get help first from a local nonprofit housing or debt counseling agency.

NCLC is a consultant for lawyers and others on consumer issues affecting low- and moderate- income Americans. This brochure was supported, in part, by a grant from the Consumer Protection and Education Fund.

# Using Credit Wisely After Bankruptcy

NATIONAL  
CONSUMER LAW  
CENTER INC



77 Summer Street, 10<sup>th</sup> Fl.  
Boston, MA 02110-1006



# Post Discharge Credit Reporting

THE LAW OFFICES OF  
**O. MAX GARDNER III\***

*At Historic Webbley House*

403 SOUTH WASHINGTON STREET  
POST OFFICE BOX 1000  
SHELBY, NORTH CAROLINA 28151  
www.maxgardnerlaw.com

**O. Max Gardner III**  
maxgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1647

**William S. Gardner**  
bgardner@maxgardner.com  
Telephone: (704) 487-0616  
Facsimile: (888) 870-1644

DATE

**CERTIFIED MAIL – RETURN RECEIPT**

Agent  
Creditor  
Address  
City, State Zip

**In the Matter of:**

John Q. Public  
Mary E. Public  
100 Main Street  
Anywhere, NC 28999  
Chapter 13 Case  
Court No:  
SSN:  
File Date:  
Discharge Date:  
Our File No:  
Your Account No: 1234567890

**ATTORNEY'S FCRA DISPUTE LETTER**

Dear Sir or Madam:

I represented the above captioned debtors in their Chapter 13 Bankruptcy Case and have been retained by the debtors to represent their interest in this matter. I have been advised by the debtors that you are continuing to report a negative payment history to the three consumer credit reporting agencies on the above-referenced account, as well as a current outstanding balance and a past due balance. This account was included in the above captioned Chapter 13 case and was legally canceled upon the entry of the Discharge Order on 02 August 2005. And, the debtors have provided me with evidence that they disputed this reporting in September of 2005 by sending proper dispute notices under the Fair Credit Reporting Act to you and to all three of the national Credit Reporting Agencies. The debtors have also informed me that this dispute notice included a copy of the Discharge Order in Bankruptcy and the relevant information on your claim.

As provided for under the Fair Credit Reporting Act, please consider this letter as a Second and Final Formal DISPUTE of the information you are currently furnishing to Equifax, Experian and TransUnion. We are requesting a complete reinvestigation of this matter and a correction of this trade line report within 30 days of your receipt of this letter. Since your debt has been discharged in Bankruptcy, you are only allowed to report a "0" balance to the consumer reporting agencies at this time. Please also notify this office in writing when you



\*The Law Offices of O. Max Gardner III, designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States, has proudly assisted consumers seeking relief under the US Bankruptcy Code for over 30 years.



O. Max Gardner III, CEO, Vice President of Litigation Management  
Gardner.Botes PLLC - National Consumer Bankruptcy Litigation Center  
403 South Washington Street, Shelby, North Carolina 28150  
mgardner@ncblc.com - (704) 481-1403 (voice) - (888) 870-1647 (fax)

send the Uniform Data Report notice to the credit reporting agencies requesting the correction of this improper reporting entry. I am also requesting written notification that this letter has trigger the Automatic Debt Resolution procedures mandated by the Fair Credit Reporting Act and the Regulations hereunder.

If you fail to comply with the applicable provisions of the Fair Credit Reporting Act, as requested herein, then the debtors will have no choice but to proceed with legal action against you for furnishing and reporting incorrect and inaccurate information to the consumer reporting agencies and for your failure to correct the same. The debtors will also pursue their legal remedies against the credit reporting agencies for these same violations. This legal action by the debtors will be implemented by the filing of a proceeding before the United States Bankruptcy Court for the Western District of North Carolina, Shelby Division, for your violation of the discharge injunction and other consumer protection statutes including but not limited to the Fair Credit Reporting Act.

Sincerely,

A handwritten signature in black ink, appearing to read "O. Max Gardner, III". The signature is stylized with a large, looping "O" and a trailing flourish.

O. Max Gardner, III

OMGIII/cjh

cc: John and Mary Public

Attorney for Creditor  
Attorney Firm  
Address  
City, State, Zip

TRANS UNION, LLC  
1561 E. Orangethorpe Ave.  
Fullerton, CA 92831-5210

EXPERIAN INFORMATION SOLUTIONS, INC.  
475 Anton Blvd.  
Costa Mesa, CA 92626-7037

EQUIFAX INFORMATION SERVICES, LLC  
1550 Peachtree St NW  
Atlanta, GA 30309-2468



## Credit Report for Mortgages

A recurring problem that we have is with clients complaining that since they didn't reaffirm a secured debt, that creditor isn't reporting their on-going payments to the credit bureaus, depriving them of those payments to help rebuild to their credit score.

This may not be such a big issue in the future with car loans, since we'll often file reaffirmations and because clients more easily grasp the risk of a repossession deficiency. It will continue to be an issue with mortgages, since ride-through is still the preferred option. The below steps will work for both personal property and real property, but I'll focus on mortgages.

The first thing when explaining this to a client is to make sure they understand the difference between the liability that the Deed of Trust creates against the house (i.e., if the mortgage isn't paid the house will be sold at foreclosure) and the client's personal liability (i.e., that they would owe any deficiency).

It is also important to explain that not only does our paperwork discuss the choices we'll be making regarding reaffirmation and ride-through, but that the bankruptcy judge generally won't approve reaffirmations for real property. This is to counteract the invariable statement made by the mortgage company that we should have had the client sign a reaffirmation.

The reason that a mortgage company might not report on-going payments is both out of spite on their part, but also out of an overabundance of caution. If, instead of making all of their post-discharge payments on time, the client had been delinquent, there is case law holding that reporting such delinquency to a credit bureau is a violation of a debtor's discharge, since the debtor wasn't personally delinquent. Since they can get burned for reporting bad information, mortgage companies often take the safe route chose to not report any information.

One of the key facts of the credit reporting laws is that creditors can only report accurate information. They are not, however, **required** to report accurate information. They can instead choose to remain silent.

It is possible, nonetheless, for a client to still get their payment history included in their credit report, as follows:

1. The client should request a payment history from the mortgage company. (The mortgage company is required by law to provide one every year free of charge.)
2. The client should then file a dispute with the three credit bureaus, attaching a copy of the payment history.
3. The credit bureau is required to verify the accuracy of the debt with the mortgage company within 30 days.
4. At that point, the mortgage company can either
  - a. Remain silent and then the credit bureau must accept the information provided by the client; or
  - b. Accurately report information. The mortgage company would be hard pressed to explain how a payment history it prepared was inaccurate.
5. The client will need to repeat this process on a regular basis, to update the information.
6. Additionally, the client should keep the payment history, since that can be provided to anyone they're applying to for new credit.

This process, while a headache for our client, at least gives them a route to accomplish their goals, whether they follow through or not is a different question.



## **POST-BANKRUPTCY CREDIT REPORTING VIOLATIONS**

- At discharge, debtor should send a certified letter (return receipt requested) to each of the 3 major credit reporting agencies:
  - EXPERIAN
  - EQUIFAX
  - TRANSUNION
- Debtor should check credit reports 60 to 90 days after bankruptcy discharge with all 3 credit reporting agencies.
- For each debt listed on bankruptcy (and not reaffirmed), credit reports should indicate that the debt was "included in bankruptcy", that the debt was "discharged", and that the "current amount due is '0'".
- If credit report erroneously shows any discharged debt as "in collection" or "charged off", or a "balance due" or "past due", dispute the errors **in writing** and send by certified mail (return receipt requested) to all 3 credit reporting agencies.
- Since the credit bureau may not send a copy of debtor's dispute to each bad creditor, the debtor should send a separate dispute letter by certified mail (return receipt requested) to each bad creditor – a copy of the dispute letter to the credit bureau is sufficient.
- If the bad creditor has a reputation for complaints of inaccuracy, include that in your letter.
- Be sure the bad creditor received the dispute letter by certified mail (USPS tracking: <http://www.usps.com/shipping/trackandconfirm>)
- Be absolutely sure that the dispute letter included the certificate of mailing properly noting the bad creditor(s). Check it again! And again!
- Be sure the bad creditors were properly listed in the bankruptcy. Check it again! And again!
- If bad creditor has misreported a discharged debt, sue the credit reporting agencies and the bad creditors (or furnishers) in state court alleging violations of the FCRA as well as defamation claims.
- Then, be ready for bad creditors' and credit reporting agencies' lawyers to seek removal to Federal court. (That's okay - let them earn a little spending money before they settle.)
- \$1,000 statutory damages (for each violation) for willful violations, PLUS punitive damages. Just sit back and watch them point fingers and fight over who dropped the ball.

This avoids bankruptcy court and provides a faster resolution.



## DEBTOR vs. CREDITOR

Violator	Violation	Reference	Damages
Creditors inaccurately reporting your credit history	Defamation, financial injury	<i>Nelson v. Chase Manhattan</i> , US Court of Appeals, Ninth Circuit, No. 00-15946, decided 03-01-2002	As proven in Court
Creditors pulling your credit report without permissible reason	Damage to your credit report and credit score	FCRA § 604(a)(3) <i>Andrews v. TRW Inc.</i> , US Court of Appeals, Ninth Circuit, 225 F.3d 1063, decided 10-04-2000	Statutory damages of \$2,500 for each proven violation
Creditors, Collection Agencies, Credit Bureaus 're-aging' your account by falsely updating the date of last activity on your credit report to retain negative information on your report	Consumer protection provided in FCRA	FCRA § 605(c)	Statutory damages of \$1,000 for each proven violation
Credit Bureaus failing to respond to your written disputes within 30 days (they will get a 15-day extension if they receive information from the creditor within the first 30 days)	Consumer protection provided in FCRA	FCRA § 611(a)(1) FTC Staff Opinion Letters	Statutory damages of \$2,500 for each proven violation
Credit Bureaus reinserting a deleted item from your credit report without notifying you in writing within 5 business days	Consumer protection provided in FCRA	FCRA § 611(a)(5)(B)(ii)	Statutory damages of \$2,500 for each proven violation
Credit Bureaus refusing to correct information after receiving proof of their error	Defamation, willful injury, consumer protection provided in FCRA	FCRA § 623 <i>Cushman v. TransUnion Corporation</i> , US Court of Appeals, Third Circuit, 115 F3d 220, filed D.C. No. 95-cv-01743, decided 06-09-1997	Damages incurred by injured party, as proven in court  Statutory damages of \$2,500 for each proven violation
Collectors calling after 9 p.m. or before 8 a.m.	Consumer protection provided in FDCPA	FDCPA § 805(a)(1)	Statutory damages of \$1,000 for each proven violation
Collectors calling you at work after being told that your employer prohibits you from receiving such calls	Consumer protection provided in FDCPA	FDCPA § 805(a)(3)	Statutory damages of \$1,000 for each proven violation
Collectors calling a third party, such as friends, neighbors, relatives, etc., about your debt, with the EXCEPTION of your attorney, consumer reporting agencies, creditor or attorney of the creditor, or attorney of debt collector	Consumer protection provided in FDCPA	FDCPA § 805(b) FTC Staff Opinion Letters	Statutory damages of \$1,000 for each proven violation

Collectors continuing to call or write after you have sent a STOP CONTACTING ME letter	Consumer protection provided in FDCPA	FDCPA § 805(c)	Statutory damages of \$1,000 for each proven violation
Collectors harassing or abusing you	Consumer protection provided in FDCPA	FDCPA § 806 (define prohibited harassment or abuse)	Statutory damages of \$1,000 for each proven violation
Collectors claiming they will garnish your wages, seize property, or have you arrested (i.e., pre-judgment garnishment, seizure)	Consumer protection provided in FDCPA	FDCPA § 807 FTC Staff Opinion Letter	Statutory damages of \$1,000 for each proven violation
Collectors (1) cashing posted check before the date on the check; (2) costing you money by making you accept collect calls or COD mail; (3) taking or threatening to take any personal property without a judgment	Consumer protection provided in FDCPA	FDCPA § 808	Statutory damages of \$1,000 for each proven violation
Collectors not validating your debt, yet continuing to pursue collection activity by filing suit, calling or writing	Consumer protection provided in FDCPA	FDCPA § 809(b) <i>Spears v. Brennan</i> , Indiana Court of Appeals, 745 N.E.2d 862, No. 49A02-0003-CV-169, decided 03-26-2001 FTC Staff Opinion Letters	Statutory damages of \$1,000 for each proven violation
Collectors not validating your debt, but continuing to report to the credit bureaus	Consumer protection provided in FDCPA	FDCPA § 809(b) FTC Staff Opinion Letters	Statutory damages of \$1,000 for each proven violation
Collectors trying to sue you in a county which is not your current residence or your residence at time of signing the original contract	Consumer protection provided in FDCPA	FDCPA § 811(a)(2) <i>Yu v. Signet Bank</i> , California Court of Appeal, First Appellate District, Division Four, 69 Cal.App. 4th 1377, decided 02-16-1999 FTC Staff Opinion Letter	Statutory damages of \$1,000 for each proven violation  Cases to have judgment obtained in violation of this provision vacated



# freecreditreport.com™

Know your Score.™

Credit Report Prepared For:

Report as Of: 10/19/2010

*Evidence of Zombie debt.*



**Personal & Confidential**

Please Keep In a safe place for your records.

## Bankruptcy & Court Judgments

Here you will find any court-related information, including bankruptcies, state and county court records, tax liens, monetary judgments, and in some states, overdue child support payments. Remember, bankruptcies remain on your report for 7-10 years.

### Bankruptcy chapter 7-discharged



**Date Filed** 5/2/2008  
**Reference #** [REDACTED]  
**Court** US BKPT CT CT HARTFORD  
**Plaintiff**  
**Liability** \$0.00  
**Asset Amount**

**Experian™**

**Equifax**

**TransUnion**

### Bankruptcy: Discharged CH-7



**Date Filed** 5/1/2008  
**Reference #** [REDACTED]  
**Court** US DIST CT  
**Plaintiff**  
**Liability**  
**Asset Amount**

**Experian™**

**Equifax**

**TransUnion**

## Credit Cards, Loans &amp; Other Debt

Here you will find specific information on each account you opened, including current status and any past due information. Positive credit information remains on your report indefinitely. Creditor contact information has been provided in order to make it easier for you to resolve any issues.

## BANK OF AMERICA



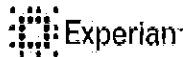
Current

800-421-2110

 PO BOX 17054  
 WILMINGTON, DE 19850

Included in ch7

**Account Name** BANK OF AMERICA  
**Account #** 9XXX  
**Account Type** Credit Card - Revolving Terms  
**Balance** \$2,713.00  
**Past Due**  
**Date Opened** 3/1/1999  
**Account Status** Open  
**Mo. Payment** \$61.00  
**Payment Status** Current  
**High Balance** \$4,162.00  
**Limit** \$15,500.00  
**Terms** Revolving  
**Comments**



## Equifax

**BANK OF AMERICA**  
**9XXX**  
**Revolving or Option**  
**\$2,370.00**  
  
**3/1/1999**  
  
**\$52.00**  
**Pays account as agreed**  
**\$4,162.00**

## TransUnion

**BK OF AMER**  
**9XXX**  
**Revolving account**  
**\$2,370.00**  
**\$0.00**  
**3/27/1999**  
**Open**  
**\$52.00**  
**Paid or paying as agreed**  
**\$4,162.00**  
  
**Minimum**

## 24/Mo Payment History

	2008				2009								2010											
Month	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG
Experian		OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Equifax	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
TransUnion	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

## SALLIE MAE



Current

No Phone Provided

 PO BOX 9500  
 WILKES BARRE, PA 18773

**Account Name** SALLIE MAE  
**Account #** [REDACTED]  
**Account Type** Education Loan  
**Balance** \$7,898.00  
**Past Due**  
**Date Opened** 7/1/2003  
**Account Status** Open  
**Mo. Payment** \$100.00  
**Payment Status** Current  
**High Balance**  
**Limit**  
**Terms** 174 Months  
**Comments**



## Equifax

**SALLIE MAE-FFELP**  
**[REDACTED]**  
**Installment**  
**\$7,898.00**  
  
**7/1/2003**  
  
**\$100.00**  
**Pays account as agreed**  
**\$14,148.00**  
  
**STUDENT LOAN**  
**FIXED RATE**

## TransUnion

**SALLIE MAE**  
**[REDACTED]**  
**Installment account**  
**\$7,898.00**  
**\$0.00**  
**7/4/2003**  
**Open**  
**\$100.00**  
**Paid or paying as agreed**  
**\$14,148.00**  
  
**174 Months**

## 24/Mo Payment History

	2008				2009								2010											
Month	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG
Experian	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Equifax	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
TransUnion	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

## Credit Cards, Loans &amp; Other Debt

Here you will find specific information on each account you opened, including current status and any past due information. Positive credit information remains on your report indefinitely. Creditor contact information has been provided in order to make it easier for you to resolve any issues.

HSBC BANK

discharged



Current Closed

800-947-1000

PO BOX 5253  
CAROL STREAM, IL 60197

Account Name  
Account #  
Account Type  
Balance  
Past Due  
Date Opened  
Account Status  
Mo. Payment  
Payment Status  
High Balance  
Limit  
Terms  
Comments

Experian

Equifax

TransUnion

HSBC BANK  
54664100XXXX  
Revolving account  
\$0.00  
\$0.00  
3/12/2004  
Closed

Paid or paying as agreed  
\$1,808.00  
\$2,000.00

Credit card lost or stolen

## 24/Mo Payment History

	2003												2004												2005												
Month	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	
Experian																																					
Equifax																																					
TransUnion																										OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

HSBC BANK

discharged



Current Closed

800-947-1000

PO BOX 5253  
CAROL STREAM, IL 60197

Account Name  
Account #  
Account Type  
Balance  
Past Due  
Date Opened  
Account Status  
Mo. Payment  
Payment Status  
High Balance  
Limit  
Terms  
Comments

HSBC BANK  
030453XXXX  
Credit Card - Revolving Terms  
\$0.00  
3/1/2004  
Closed  
Debt included in or discharged through Bankruptcy Chapter 7, 11, or 12  
\$5,431.00  
\$0.00  
Revolving  
Transferred to another lender or claim purchased

Experian

Equifax

TransUnion

HSBC BANK  
41030453XXXX

3/1/2004

INCLUDED IN BANKRUPTCY

BANKRUPTCY CHAPTER 7  
ACCOUNT CLOSED BY CREDIT GRANTOR

## 24/Mo Payment History

	2006						2007						2008											
Month	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
Experian					OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	30	60
Equifax	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
TransUnion																								

## Credit Cards, Loans & Other Debt

Here you will find specific information on each account you opened, including current status and any past due information. Positive credit information remains on your report indefinitely. Creditor contact information has been provided in order to make it easier for you to resolve any issues.

**WELLS FARGO BANK** *discharged*

Current Closed

800-642-4720

18700 NW WALKER RD  
BEAVERTON, OR 97006

Experian

**WELLS FARGO BANK**

Account #

Account Type Credit Card - Revolving Terms

Balance \$6,933.00

Past Due

Date Opened 8/1/2007

Account Status Closed

Mo. Payment \$221.00

Payment Status Current

High Balance \$10,062.00

Limit \$10,000.00

Terms Revolving

Comments Credit line closed-consumer request-reported by subscriber

Equifax

**WELLS FARGO**

Revolving account

\$6,933.00

\$0.00

8/21/2007

Closed

\$221.00

Unrated

\$10,062.00

\$10,000.00

Minimum

Account closed by consumer

**24/Mo Payment History**

	2008			2009			2010																	
Month	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
Experian	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Equifax																								
TransUnion	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

### Payment History Legend

OK Current	30 30 Days Late	KD Key Derogatory**
ND No Data*	60 60 Days Late	RF Repossession or Foreclosure
	90 90 Days Late	PP Payment Plan
	120 120 Days Late	

\*Sometimes the credit bureaus do not have information from a particular month on file.

\*\* For additional information on Key Derogatory, please see your Credit Report Guide.

### Account Status Legend

Current	Current Closed	Unknown
Potentially Negative	Potentially Negative Closed	

# TILA Worksheets

## TILA Analysis

- 1a. Do you have a copy of the Note? ☐ Yes ☐ No  
1b. Do you have a copy of the Mortgage? ☐ Yes ☐ No  
1c. Do you have a copy of the HUD-1 Settlement Statement? ☐ Yes ☐ No  
1d. Do you have a copy of the final TIL Disclosure? ☐ Yes ☐ No

2a. Were funds for purchase, refinance or other?

- ☐ Purchase  
☐ Refinance (Do you have a copy of the NRC? ☐ Yes ☐ No)  
☐ Other

2b. Settlement Date [from HUD-1]:

Date: \_\_\_\_\_

1-Year SOL Date: \_\_\_\_\_ 3-Year SOL Date: \_\_\_\_\_

- 2c. Is hazard insurance escrowed on the HUD-1? ☐ Yes ☐ No  
2d. Are real estate taxes escrowed on the HUD-1? ☐ Yes ☐ No  
2e. Is the loan subject to PMI? ☐ Yes ☐ No  
2f. Are any credit insurance products included? ☐ Yes ☐ No  
2g. Was there a loan broker for this transaction? ☐ Yes ☐ No ☐ Unk.  
2i. Total Broker Compensation: \_\_\_\_\_  
2j. Is there a YSP? ☐ Yes ☐ No  
2h. Amount: \_\_\_\_\_

3. Type of interest [fixed/ARM/other]

☐ Fixed [Go to #5] ☐ ARM [Go to #4b] ☐ Other [Needs review]

4a. Initial Note Rate: \_\_\_\_\_

4b. First change date: \_\_\_\_\_

4c. Margin: \_\_\_\_\_

4d. Change period thereafter[in months]: \_\_\_\_\_

4e. Index: ☐ CMT ☐ COFI ☐ LIBOR ☐ Other

4f. Lookback Period: ☐ 1<sup>st</sup> day month preceding CD ☐ 45 days

Other: \_\_\_\_\_

4g. First Change Date Cap: \_\_\_\_\_

4h. First Change Date Floor: \_\_\_\_\_

4i. Lifetime Cap: \_\_\_\_\_

4j. Lifetime Floor: \_\_\_\_\_

Go to #6

5. Note Rate: \_\_\_\_\_
- 6a. Note Principal Amount: \_\_\_\_\_  
6b. 1% of loan amount: \_\_\_\_\_
7. Prepayment Penalty: \_\_\_\_ Yes (Penalty: \_\_\_\_\_) \_\_\_\_ No \_\_\_\_ Unknown
8. Balloon Note: \_\_\_\_ Yes (Term \_\_\_\_ yrs. Bal. Amt \_\_\_\_\_) \_\_\_\_ No \_\_\_\_ Unk.
- 9a. Disclosed APR: \_\_\_\_\_
- 9b. APR Tolerance Range (Regular: +/- .125): \_\_\_\_\_ to \_\_\_\_\_
- 9c. Disclosed Finance Charge: \_\_\_\_\_  
9d. Amount of Interest (9c-9h) \_\_\_\_\_  
9e. Finance Charge Tolerance (9c + 6b): \_\_\_\_\_
- 9f. Disclosed Amount Financed: \_\_\_\_\_
- 9g. Disclosed Total Payments: \_\_\_\_\_
- 9h. Total Prepaid Finance Charges (6-9f): \_\_\_\_\_
- 9i. Does #9c + #9f = #9g?  
\_\_\_\_ Yes [Go to #10]  
\_\_\_\_ No [Needs review, possible violation]
10. Does the TIL Disclosure show payments of different amounts?  
\_\_\_\_ Yes [Go to #10b]  
\_\_\_\_ No [Go to #11]
- 10a. Multiply each payment amount by the number of payments and then add all products: \_\_\_\_\_
- 10b. Does 10a match 9f? \_\_\_\_ Yes [Go to #11e] \_\_\_\_ No [Needs review]
- 11a. Number of payments: \_\_\_\_\_
- 11b. Payment amount: \_\_\_\_\_
- 11c. Multiply #11a by #11b: \_\_\_\_\_
- 11d. Does 11c match 9f? \_\_\_\_ Yes [Go to #11e] \_\_\_\_ No [Needs review]
- 11e. Calculate APR based on figures provided by lender: APR \_\_\_\_\_
- 11f. Does 11e match 9a? \_\_\_\_ Yes [Go to #12] \_\_\_\_ No
- 11g. Is 11e within the tolerance range specified in #9b?  
\_\_\_\_ Yes [Go to #12]  
\_\_\_\_ No [Needs review]



## 12. CALCULATING THE FINANCE CHARGE

### A. Fees and Costs Excluded from the Finance Charge

Appraisal Fee (line 803): \_\_\_\_\_

Credit Report (line 804): \_\_\_\_\_

Hazard Insurance (line 1001)[#mos.\_\_\_\_]: \_\_\_\_\_

City prop taxes (line 1003) [#mos.\_\_\_\_]: \_\_\_\_\_

County prop taxes (line 1004) [#mos.\_\_\_\_]: \_\_\_\_\_

Annual Assessments (line 1005): \_\_\_\_\_

Aggregate Adjustment (line 1008): \_\_\_\_\_

Settlement or closing fee (line 1101): \_\_\_\_\_

Title or abstract fee (line 1102): \_\_\_\_\_

Title Examination (line 1103): \_\_\_\_\_

Title Insurance Binder (line 1104): \_\_\_\_\_

Document Preparation Fee (line 1105): \_\_\_\_\_  
(paid to closing agent)

Notary Fees (line 1106): \_\_\_\_\_

Attorney Fee (line 1107): \_\_\_\_\_

Title Insurance (line 1108): \_\_\_\_\_

Recording Fees (line 1201): \_\_\_\_\_

City/county tax/stamps (line 1202): \_\_\_\_\_

State tax/stamps (line 1203): \_\_\_\_\_

Survey (line 1301): \_\_\_\_\_

Tax Service Fee: \_\_\_\_\_

Endorsement Fee: \_\_\_\_\_

Flood Certification: \_\_\_\_\_

Other Fees Excluded

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12a. Total Part A: \_\_\_\_\_

B. Fees and Costs Included in the Finance Charge

Loan Origination Points (line 801): \_\_\_\_\_

Loan Discount Points (line 802): \_\_\_\_\_

Administration Fee \_\_\_\_\_

Loan Processing Fee \_\_\_\_\_

Underwriting Fee \_\_\_\_\_

Document Preparation Fee \_\_\_\_\_

Pre-paid Interest \_\_\_\_\_

Other Fees Included in Finance Charge

_____	_____
_____	_____
_____	_____
_____	_____

Part A Fees (not reasonable and bona fide)

_____	_____
_____	_____

12b. Total Part B: \_\_\_\_\_

Total PMI: \_\_\_\_\_

12c. Calculate Actual Amount Financed (#6-#12b): \_\_\_\_\_

12d. Calculate the Actual Finance Charge: (#9d+#12b) \_\_\_\_\_

12e. Calculate Actual APR \_\_\_\_\_

12f. Does 12e match 9a? \_\_\_\_\_ Yes [Analysis Complete] \_\_\_\_\_ No [Go to #12g]

12g. Is 12e within the tolerance range specified in #9b? \_\_\_\_\_ Yes \_\_\_\_\_ No

12h. Is 12e greater than 9a? \_\_\_\_\_ Yes \_\_\_\_\_ No

12i. Is 12d greater than 9c? \_\_\_\_\_ Yes [Go to #12j] \_\_\_\_\_ No [Analysis Complete]

12j. Difference between 12d and 9c? \_\_\_\_\_

**Mandatory  
Loan Package Documents Needed**

Note(with all endorsements, modifications, attachments, riders, addendums, etc.)  
Mortgage / Deed of Trust / Security Instrument  
Second Lien Documents / Subordination Agreement(s)  
Mortgage Insurance Certificate  
HUD-1 Settlement Statement and Addendums (Estimate and Final)  
Rescission Notice (if applicable)  
FEMA Standard Flood Hazard Determination  
Hazard Insurance Documents (include flood, wind, other applicable policies)  
Final Truth in Lending Disclosure  
Initial Truth in Lending Disclosure  
Section 32 Disclosures  
Mortgage Application (FNMA 1003)  
Good Faith Estimate  
Sales Contract with all Addendums  
Appraisal  
Survey or Platt  
Title Commitment and/or Title Policy  
All State Disclosures