

# Law and Life Newsletter

## Legal Lead Story: How the new Financial Reform Act Affects You

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The United States economy has seen a serious downturn in the past three years. Foreclosures are up, unemployment is up, consumer spending is down, and consumer confidence is down. Some of the current economic problems will have to work themselves out over time and without governmental correction. There is, however, a role for government to play in helping to prevent future financial calamity on a large scale. On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act which is intended to further clean up the financial industry. Most of the provisions of the Act deal with the establishment of federal agencies and positions which will oversee various aspects of the financial industry in an effort to prevent future large-scale economic collapses. Some provisions, however, have a more direct affect on the everyday consumer. Here are some of the features of the Act that pertain to consumers:

- Stores and other retailers now have the right to require a minimum charge of \$10 in order for a consumer to be able to use a credit card.
- If a mortgage lender refuses a potential borrower's loan, that lender would be required to let the applicant know their credit score for free. REMEMBER: you are already entitled to get one free credit report per year from each of the 3 major credit reporting agencies. Go to [www.annualcreditreport.com](http://www.annualcreditreport.com) or call 1-87-322-8228 for your report.
- Lenders are prohibited from refinancing an existing mortgage unless the new mortgage offers a net benefit to the borrower, and they may not coerce or induce an appraiser to make a faulty appraisal of a property's value. Loan applicants must receive a copy of the appraisal on the property no later than three days prior to the closing.
- Mortgage lenders must verify a borrower's credit history, income, and employment status. This will particularly affect loan applicants who are self-employed or receive undocumented income.
- Mortgage lenders must disclose the maximum a consumer could pay on a variable rate mortgage, with a warning that payments will vary based on interest rate changes.
- Mortgage loan pre-payment penalties are prohibited.
- Now required: Truth in Lending Act disclosures on all monthly mortgage statements.
- Mandatory arbitration provisions on mortgage loans are prohibited.

Also the Act creates a new Consumer Financial Protection Bureau to consolidate duties now charged to various federal agencies. It would have a consumer hot line, for questions on things like mortgages, and a new office of financial literacy.

In today's economic client it is even more important to be vigilant of your accounts. Follow these tips for your credit cards, charge cards, and mortgage loans: (Act, continued on pg. 2)

## Healthful Hints: Fall Foods

I know it may be a bit difficult to visualize right now in the midst of another hot summer but fall is on the way. The signs are here. High school football has begun another season, the days are getting a bit shorter, and the calendar is moving us toward the final quarter of another year. As we move toward fall, here are just a few healthy and hearty foods to put on your shopping list. Variety is the spice of life so explore and enjoy!

**Tomatoes**--Rich in lycopene which has been linked to reduced risk of heart disease, breast, lung and prostate cancer. Also have vitamins A, C, E and potassium. (Fall, continued on pg. 3)

Act (continued from page 1)

- Keep all credit card and charge card receipts and compare them to your monthly statement.
- Read your monthly statements carefully and ask about any unusual charges or postings.
- Make your payments on time. One late payment can cause a huge increase in your interest rate or the imposition of other seemingly punitive measures.
- Call your company with any questions or issues that you believe are not your responsibility. Failure to contest an inappropriate charge on your account may lead to a waiver or other undue difficulty.

In the face of the Act, credit card companies and lending institutions have found other ways to maintain or increase their profits. Minimum balances for credit cards and charge accounts have already increased. Existing card fees have increased and new fees have been created. For example, some credit card companies are implementing annual fees on cards that previously had no annual fees. Banks, credit card companies, lenders, and other financial institutions have tightened their purse strings and it is harder to get loans and credit than ever before. In today's changing financial times follow the rule of buyer beware and keep an eagle's eye on your accounts and account statements. -OLO

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Question & Answer

**Q: Should I pay that old debt?**

A: Possibly but be careful in doing so. If the debt is too old, it may be outside of the applicable statute of limitations meaning the creditor can no longer file legal action against you to recover on the debt. Once a debt is outside of the statute of limitation you have some leverage to negotiate an advantageous resolution of the debt. Certain actions by you could "reset" the statute of limitations period. If you send a payment on an account or make a charge to the account or even provide written acknowledgement of the debt you may be renewing the creditor's ability to file suit on a delinquent debt thereby giving away some of your leverage.

Even if a debt is outside of the statute of limitations the creditor can still seek to collect on the debt and make reports to the three major credit bureaus. This can go on forever and if you value your credit rating it behooves you to resolve the debt. Generally speaking, the older the debt the better the chance of you working out a full and final settlement amount that is less than the current amount due.

While the O'Neal Law Office does not handle debt consolidation or bankruptcy issues, the Office does represent consumers who are being harassed by aggressive debt collectors. The Office also represents consumers who are being contacted about a debt that they have already settled or a debt that does not belong to them (i.e. mistaken identity). When faced with collection activity on a debt take the appropriate action to protect yourself and achieve the best resolution possible. -OLO

**Spartan Spotlight---Homecoming Returns and Free Sports!**

This fall UNCG brings back Homecoming! Well..not really. Allow me to explain. Homecoming never left, it just had a different name. For the past few years the fall extravaganza of UNCG events for students, families, alumni, and friends was called Fallfest.

Homecoming 2010 runs from September 20<sup>th</sup> to September 26<sup>th</sup>. For the complete Homecoming schedule of events and more info, visit

<http://www.uncg.edu/ure/homecoming/>.



For the 2010-2011 season most UNCG sporting events will be free. Men's and women's basketball games will still require paid admission but you can check out soccer, baseball, wrestling, and many other games free of charge. Take this opportunity to cheer for the Spartans and help build an even larger fan base. Bring the family to a game and make it a family outing. Most of all, UNCG athletics provides yet another way to reconnect with your alma mater. For schedule information visit

<http://www.uncgspartans.com>. Go Spartans!--OLO

**REMEMBER:** Visit the UNCG Alumni webpage (<http://www.uncg.edu/ala>) so you can stay in the loop on alumni activities in your area.

Fall (continued from pg. 2)

**Bell peppers**—Three times the vitamin C found in oranges.

Try all colors of the rainbow; red bell peppers may help boost your immune system.

**Green beans**—Great source of vitamins A and C. Buy fresh if you can.

**Apples**—Low in calories, high in fiber, featuring antioxidants and no cholesterol. Good source of vitamin C, calcium, and potassium. Can be used in recipes or eaten raw.

**Pecans**—Loaded with protein these gems have heart-healthy fat and antioxidants. -OLO

## Settlement

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Virtually any case involves discussion of settlement. In litigation, it is almost assured that parties have opposite perspectives on and interests in the resolution of a case. Litigation is usually commenced because one party is willing to place the dispute before a judge or jury for a final decision if a settlement cannot be reached beforehand.

In deciding whether to settle a case and on what terms, one should consider the eventual alternative to a settlement: trial. Going to trial means incurring more costs, more preparation time and work time, the uncertainty of rulings by the judge regarding evidence and witness testimony, and, ultimately, the uncertainty of a jury's verdict. Weighing these risk factors in your case should sharpen your decision as to whether to settle and on what terms. One key benefit of consulting with an experienced attorney is that you should get an assessment of the relevant pros and cons of your case and the relative likelihood of a positive result. Attorneys have access to jury verdict and settlement information and can even contact colleagues to discuss their experiences in cases such as yours. Attorneys with trial experience can explain the litigation process so you have a better idea as to what it entails. If you are contemplating undertaking legal action, the best time to consult with an attorney is *before* you file your petition or lawsuit.

While there is nothing inherently wrong with fighting a case on principle, it can cost a lot of money to do so. It is unrealistic to expect a lawyer or her firm to expend money or its time and resources to fight a battle just on principle. Practicing law is a business and if lawyers took too many cases on principle without the client taking stake in the case (i.e. advancing money to be used to handle the case) lawyers would go out of business. Moreover, how many people are actually willing to spend their time and money trying to prove a point? From a legal standpoint, the Bar association in most states (North Carolina is one of these states) requires the client, not the lawyer, be financially responsible for all costs incurred in handling a case.

Settlement can occur at any time even in the midst of trial. In most cases the court will order the parties to participate in mediation (see March 2010 Law and Life Newsletter) while in other cases court rules require the parties to engage in arbitration (see June 2010 Law and Life Newsletter). Settlement is a preferred alternative to the relative uncertainty of a trial result. If the parties reach a settlement, it provides the freedom to discuss and decide on terms such as payment amount, duration of payments, security interest/collateral, confidentiality provisions, tax implications and structuring of the settlement, secondary considerations (ex: apology letter, changes to one's credit report) and remedies for breach of the settlement agreement.

At the outset be sure to engage in a meaningful review of the issues in your case and seriously explore the prospects for settlement. It may be the best result for you. -OLO



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