

Consumer Impact

NCLC Survey Finds Lingering Foreclosure Problems

NCLC Stays on the Case with Donor Support

The worst foreclosure crisis in our nation's history continues to have profound effects in low-income communities, particularly communities of color. Despite years of reform efforts, vulnerable homeowners still lack adequate legal protection from foreclosures, devastating families and neighborhoods alike.

NCLC surveyed 100 attorneys and housing counselors from several states in February and March of 2015, and the results were troubling. "The survey shows that while the new CFPB rules have made a real difference, much more needs to be done," says NCLC attorney Alys Cohen. "Servicers still drag their feet or create obstacles to resolving hardships, resulting in increased costs to homeowners and unnecessary foreclosures."

Successors in Interest Threatened with Foreclosure

Imagine enduring the death of a spouse or the pain of divorce, only to be threatened with foreclosure and

eviction from your own home. NCLC's survey found that, unfortunately, this is a common scenario for many "successors in interest," people who inherit or are awarded ownership of a home, but were not on the loan. Most of these homes shouldn't be in foreclosure at all, based on current law. The widespread



Jo White with her son, Caleb, in Vermont. White has struggled to keep her home – and to communicate with her mortgage lender – after a divorce.

industry confusion results in stress and unnecessary expense for successor homeowners.

Newly widowed or divorced homeowners often qualify for loan modifications due to reduced income or other economic hardship, yet more than 61% of respondents reported that servicers refused to postpone foreclosure sales in order to review potential modifications, only stopping the process when the attorney or counselor escalated the case. And 74% said they had difficulty getting servicers to even communicate with their clients.

Servicing Errors Increase Arrears and Threat of Foreclosure

More than half of survey respondents reported that servicers asked for documents in error, then asked for the unnecessary documents over and over, dragging the process of loan modification review out for months. While time is wasted, the homeowner's debt grows

continued on page 8

Impact Update Hip Hip Hooray for the TCPA!

In a resounding victory for consumers, the FCC has issued a firm ruling to prevent unwanted robocalls and spam texts to cell phones. NCLC is a leading player in the fight to keep big business from taking away rights provided by the Telephone Consumer Protection Act (TCPA). "We applaud the FCC for upholding and strengthening the essential protections in this key consumer law," said NCLC attorney Margot Saunders. "The industry petitions would have exposed consumers

to a tsunami of unwanted robocalls and texts to their cell phones."

The Power of a Coalition

NCLC joined with a coalition of national and state civil rights, community, and consumer groups which urged the FCC to protect consumer and privacy protections. NCLC attorneys were particularly concerned about the impact of industry's requested changes to the TCPA on our low-income clients,

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Consumer Impact

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A Note From the Executive Director

Dear friends,

As always, let me thank you for your tireless work on behalf of low-income consumers, as well as for your support of NCLC. I can hardly believe it, but this will be the last issue of *Consumer Impact* before I retire at the end of the year. What a privilege it has been.

As you read this issue, I know you'll be as proud as I am of all the good that NCLC's advocacy does. On the cover, we celebrate a major victory for consumers – the FCC's firm ruling to uphold key protections provided by the Telephone Consumer Protection Act (TCPA). NCLC advocates led the charge on this issue, and their voices were heard.

On the cover, read what we learned by surveying 100 housing attorneys and counselors around the country. The foreclosure crisis is still very real for some vulnerable consumers.

We look at the CFPB's analysis of harmful forced arbitration clauses in consumer contracts, and fill you in on the proposed expansion of the Lifeline discount phone service program to include broadband, a necessity for conducting life and work in today's society.

There is so much more, and I hope you enjoy this issue. With your support, NCLC will continue to fight for economic opportunity for all families. I am so very grateful to all of you for allowing me to be a part of this good fight.

Sincerely,

Willard P. Ogburn, Executive Director



Bob Hobbs, Jon Sheldon, Rita Pereira, Will Ogburn (all current or former NCLC staff) and NCLC Partners Council members Bernard Brown and Kathleen Keest celebrate the formation of the National Association of Consumer Advocates in 1994.



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Letter of Appreciation



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Access all of our free reports at: nclc.org/special-reports.html

Cy Pres Awards Support NCLC's Advocacy

Akoundi v Angell & Blitzer, Esqs. Attorneys **Joseph K. Jones** and **Benjamin J. Wolf** of the Law Offices of Joseph K. Jones, LLC brought this class action case alleging that a New York City debt collection law firm violated various sections of the Fair Debt Collection Practices Act based on its attempt to collect a debt for the creditor, a private New York City school. Plaintiffs chose the National Consumer Law Center to receive a cy pres award from the class settlement funds due to NCLC's continued commitment to the rights of consumers.

Richard Noll and Rhythm Motor Sports, LLC v. eBay Inc. was filed by **Keith Verges**, **Parker Young**, and **Ray Walker** with Figari & Davenport, LLP on behalf of named plaintiffs and a class of sellers who paid recurring insertion fees and optional feature fees on their "Good 'Til Cancelled (GTC)" listings on eBay. The plaintiffs claimed that eBay did not adequately explain that fees for GTC listings would be

charged every 30 days. The settlement terms provided class members with an automatic reimbursement or the ability to file for reimbursement.

Thao v. Central States Health and Life Company of Omaha Vildan Teske and **Marisa Katz** (Teske Micko Katz Kitzer & Rochel), along with former NCLC Partners Council member **William Crowder** and **Eric Valen** (Valen Law Firm) represented plaintiffs in this class action suit, in which the credit insurance company was accused of breach of contract for not refunding unearned insurance premiums to consumers upon early termination of their underlying automobile leases or loans. A settlement was reached after years of litigation, including appeals to the Minnesota Court of Appeals and Minnesota Supreme Court, and a cy pres was directed to NCLC.

Thank you for your work in support of your clients, NCLC, and our mission.



Joseph K. Jones



Benjamin J. Wolf



Keith Verges



Former NCLC Partners Council member William Crowder, Marisa Katz and Vildan Teske.

Cy Pres Donors March – July 2015

Thank you to the following individuals and firms who have directed recent cy pres and other court awards to NCLC. The awards support greater impact through our shared work.

Nancy Barron and
Bryan Kemnitzer
Vera Brooks
Mark A. Chavez
William Crowder
Larry Eigel
Joseph Jones
Marisa Katz
William Krieg
Matthew LaMothe
Shawn Leuthold
Robert Mazow
Kevin McCullough
Richard Shevitz
Vildan Teske
Eric Valen
Keith Verges
Raymond Walker
Benjamin Wolf
John Yasi
Paul Yasi
Parker Young

Many of the cy pres awarded to NCLC come from multiple plaintiffs' counsel. We have endeavored to name all.

Cy Pres Awards Fuel NCLC's Advocacy

NCLC uses cy pres funds for our highest impact projects. Our advocacy helps protect low-income consumers from predatory lending, unfair debt collection, and much, much more.

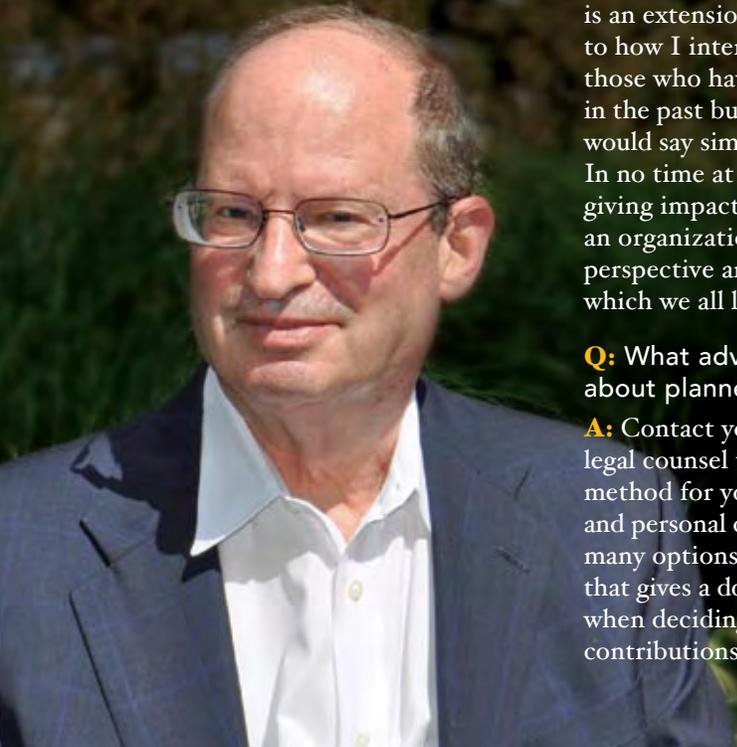
In a fast-moving policy landscape, cy pres funds allow us to refute industry misinformation and influence key decisions in Washington and state capitals alike. Attorneys like you make this work possible.

As a national organization with expert advocates and a successful track record, NCLC is well-positioned to use cy pres awards for maximum impact.

After making every effort to directly compensate members of the class, please consider supporting NCLC's advocacy through cy pres or other court awards. Make a difference!

Michael P. Malakoff Supports NCLC through Planned Giving

Michael P. Malakoff, an attorney with Malakoff Doyle & Finberg, PC in Pittsburgh, PA, joined NCLC's Partners Council in 2000.



Q: As a long-term donor to NCLC, what would you say to others about donating?

A: Giving is as much a part of my daily life as breathing, so donating to NCLC is an extension of who I am and integral to how I interact with the world. For those who have felt disposed to donate in the past but have hesitated to do so, I would say simply: Make giving a priority. In no time at all you will realize how giving impacts not only NCLC as an organization, but also your own perspective and the greater world in which we all live.

Q: What advice would you give about planned giving?

A: Contact your financial advisor or legal counsel to determine the best method for your particular financial and personal circumstances. NCLC has many options for planned giving and that gives a donor tremendous flexibility when deciding how best to structure contributions.

Q: How did you structure your planned giving?

A: Among other things, my wife and I chose to purchase a second-to-die life insurance policy, which, based on our wills, will fund reciprocal trusts for our children. That structure allows for a significant remainder of our estate to be directed to various charities, including of course, NCLC.

Q: How does it make you feel to support NCLC through a planned gift?

A: As a longtime defender of consumer rights, I believe that ensuring the invaluable work of NCLC continues is of paramount importance. NCLC programs and research have provided immeasurable aid to consumers over the years. I know that my donations through planned giving will lend future financial support to these critical initiatives. I can rest assured that my work as an advocate for consumer rights will continue to bear fruit, even long after my professional life has ended and for many years to come.

Impact Update

NCLC Report Spurs Tax Lien Reform in Baltimore

NCLC attorney John Rao's compelling report *The Other Foreclosure Crisis* (released in 2012) continues to be a catalyst for reform. The report detailed the disgraceful but legal practice of tax lien foreclosures, which allowed investors to buy the tax liens of homes with delinquent tax bills from municipalities, then try to collect the debt plus huge interest and penalty charges. If collection was unsuccessful, they could foreclose on the home. Many people, particularly elders, lost their homes and all their equity for as little as \$400 owed in back property taxes. Local studies have shown that property tax foreclosures are highly concentrated among low-income communities with large African American and Latino populations, groups also targeted by subprime lenders.

Fortunately, Baltimore has stepped in to help. Last April, the General Assembly passed a law making several changes intended to protect the rights of homeowners, including an increase in the minimum debt required to trigger a tax lien sale, more required notifications of homeowners at risk, and an extension of the time that must pass before a tax sale purchaser can move toward foreclosure.

The new law also gives the Baltimore Mayor and City Council the authority to develop installment payment plans to help

homeowners redeem their homes after a tax sale. "It's an important step in helping homeowners keep their homes," says Rao, "and we look forward to seeing how these payment plans will be implemented."

Advocates in Washington, D.C. have already successfully pushed for tax lien reform, and several U.S. Senators have asked the Justice Department and the CFPB to investigate tax lien sales and issue guidelines for state and local governments.

Thank you for your ongoing support of NCLC's work on this important issue.

Why Consider a Planned Gift to NCLC?

- **It's easy!**
- **You have flexibility.**
- **Every gift will have a profound impact.**

Gifts of any size help NCLC fight to protect the rights of struggling families.

To learn more about planned giving and NCLC, please contact:

Jerry Tuckman
(617) 542-8010
gtuckman@nclc.org

NCLC's Seligman Fights Anti-Consumer Forced Arbitration Clauses

Most of us, at one time or another, have had a dispute with a business. Perhaps we've been charged a fee in error by a credit card company, or paid for faulty construction work. If we can't resolve the dispute and find that legal action is necessary, is the court system available to us? Not necessarily.

Millions of consumers enter into transactions with all kinds of businesses – with credit card companies, banks, cell phone service providers, cable companies, among others – that contain **forced arbitration clauses**. Such clauses allow companies to force consumer complaints into a private arbitration rather than going to court. “And they almost always prevent consumers from banding together to seek justice through class action lawsuits,” says NCLC attorney David Seligman.

NCLC and Allies Sounded the Alarm

For years, NCLC and other consumer groups have warned that unscrupulous

businesses can use forced arbitration clauses to insulate themselves from liability for wrongdoing. A recent study by the Consumer Financial Protection Bureau (CFPB) established that arbitration isn't a cost-saving alternative to court, but rather a technique used by businesses to squelch claims. The CFPB examined the 1,060 arbitration cases filed in 2010 and 2011 and found that relief obtained by consumers was less than \$400,000, collectively. Yet companies obtained arbitration decisions requiring consumers to pay \$2.8 million during the same period of time. These numbers are not surprising given that the company chooses the arbitrator, who has an incentive to favor the company that gives them repeat business, not the consumer who they will never see again.

“The findings of the CFPB's study are crystal clear. These clauses are written by corporations to set up a secret and lawless process that prevents consumers from holding corporations accountable for unlawful conduct,” says Seligman. Indeed, often companies write clauses that dictate the choice of arbitrator, the rules of the arbitration, and the state in which it must take place.

Consumers Unknowingly Sign Away Rights

Three quarters of consumers surveyed by the CFPB didn't know whether any contracts they signed had an arbitration clause. And only 7% understood that the existence of such a clause meant that they could not sue the other party in court.

Supporters of forced arbitration clauses argue that they prevent frivolous and costly litigation, providing companies with savings that will ultimately be passed on to their customers. Yet the CFPB study found that very few



BEVERLIE SÖPLER

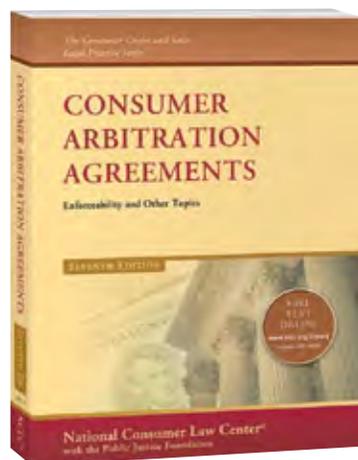
arbitration cases involve small claims, and no evidence that arbitration clauses lead to lower prices for consumers. In short, with arbitration clauses, businesses get a free pass to violate consumer rights without repercussions.

NCLC Continues the Fight

What can be done to protect consumers? As part of the Fair Arbitration Now coalition, NCLC and other consumer groups have encouraged the CFPB to act quickly on its 2015 report and ban the use of forced arbitration clauses and class action waivers in products within its jurisdiction. In an

effort to broaden our coalition, NCLC's David Seligman co-authored an opinion editorial for *Salon.com* calling for arbitration reform. But our advocacy doesn't end there.

“The harm caused to innocent consumers by forced arbitration should serve as a call to action,” says Seligman. Thanks to the support of our donors, NCLC is taking action. NCLC recently released a Model State Consumer and Employee Justice Enforcement Act, which provides statutory language that states can use to protect its citizens. According to Seligman, “The Model Law offers state-level solutions to some of forced arbitration's most brutal injustices.” NCLC will urge states to enact its provisions.



New! NCLC's Digital Library

For decades, new attorneys and seasoned veterans have used NCLC treatises to keep on top of the latest developments in consumer law. Now, all 20 NCLC treatises are online at www.nclc.org/library. Access and search the full text of chapters, appendices, additional pleadings, primary sources, and practice tools on your laptop, tablet, or smartphone!

The definitive consumer law library is now available for only \$1280/year! The option to receive all print revised editions released during your subscription period is just an additional \$200/year.

Last June, NCLC updated nine online titles, including 42 chapters and 34 appendices, with important rule and case law updates and new analysis. All changes are integrated into the text for easy reading. The best way to find out about these new developments? Simply click the “highlight updates” option at the top of the page.

Questions? Please email publications@nclc.org or call 617-542-9595.

Consumer Advocates Join Forces to Oppose Unfair Utility Pricing

NCLC Involvement Is Key

In a show of support for low-income consumers, the National Association of State Utility Consumer Advocates (NASUCA) has adopted a resolution – based largely on NCLC’s research and testimony – opposing electric and gas utility rate design featuring high, fixed monthly charges.

NASUCA is an association of consumer advocates from 40 states and the District of Columbia. Members include ratepayer advocates, consumer groups, and attorneys general. NCLC works closely with NASUCA to promote utility programs and policies that benefit low-income households.

Support for Low-Income Utility Customers

“NASUCA has taken an important step in adopting a resolution that opposes high, fixed monthly utility charges as unfair for low-income, elderly, and minority customers,” says NCLC Senior Energy Analyst John Howat.

Electric and natural gas utilities across the country, faced with flat or declining revenues in the face of sweeping technological and economic changes, are seeking to redesign their rates by shifting cost recovery from the usage-based portion of consumers’ bills to the fixed portion.

Fixed Monthly Fees are Unfair

Alternative energy resources, such as rooftop solar panels, allow some households to use considerably less electricity from the utility grid, but most low-income consumers lack access to such technologies. Yet in proposals to increase fixed monthly charges, they are being asked to absorb a disproportionate share of the costs of the grid.

NCLC opposes fixed monthly charges because these fees penalize low-income consumers, who tend to use less energy than higher income customers. Our advocates demonstrated to NASUCA that high, mandatory fees not based on usage contradict national recognized principles that utility rate structures should be both cost-based and fair. The resolution also recognizes that charging mandatory fixed charges unrelated to energy consumption reduces incentives for customers to conserve energy.

“Raising fixed monthly charges on all customers is a blunt instrument rather than a well-honed tool for addressing declining utility sales,” according to Howat. “While the utility industry is changing at breakneck speed, access to affordable and reliable home energy service remains a basic necessity of life.”

NCLC’s analysis has demonstrated that in regions across the country, African-American, Latino, and Asian households, along with the elderly and other low-income households, use less home energy than wealthier families. Low-income consumers tend to live in smaller dwellings and are often skilled at conserving energy to reduce costs.



FCC Moves to Include Broadband in Lifeline Program

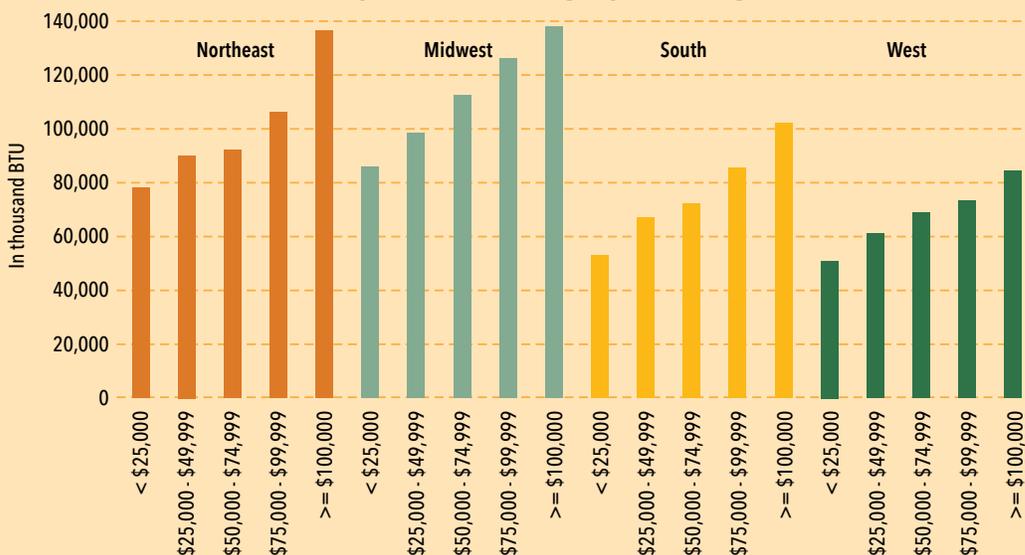
In a major development for low-income consumers, the FCC voted last June to open a proceeding that could modernize the federal Lifeline program to include broadband access. Lifeline, a \$2 billion discount program created in 1985, currently provides affordable phone service to more than 16 million low-income households. Expanding it to include broadband Internet service is critical to closing the digital divide for these families. Broadband access is now a necessity for finding work, accessing social services, engaging in the marketplace, and communicating with teachers and employers. “We all agree that we have entered the broadband era – except Lifeline has not,” said FCC Chairman Tom Wheeler. “The transformation from a voice-based service to a broadband-based service is key to Lifeline’s future.”

Chairman Wheeler’s statement pointed out that income is a major barrier to universal broadband access. While more than 95% of households with annual incomes of \$150,000 or more have broadband service, only 48% of those making less than \$25,000 can access the Internet from home.

NCLC’s commitment to advancing fairness in the marketplace for all makes the protection and expansion of Lifeline a clear priority, and NCLC attorney Olivia Wein has been a key advocate. “This is a critical first step to update Lifeline and bring affordable broadband to struggling households across the nation,” says Wein.

Your support allows us to fight for low-income families. Thank you!

Average 2009 Home Energy Usage by Income Category and Region



NCLC Seeks Debt Relief for Corinthian Colleges Students

Although for-profit chain Corinthian Colleges has shuttered its doors, the company leaves a legacy of thousands of student loan borrowers harmed by years of predatory lending and deceptive recruitment practices. Corinthian ceased operations in April 2015 after numerous lawsuits and investigations by state and federal agencies.

In February 2015, the CFPB announced \$480 million in private student loan relief for former and current students enrolled at Corinthian-owned schools. Last June, after consistent pressure by NCLC and our allies, the Department

of Education announced expansions to the debt relief measures already in place, broadening eligibility requirements, and opening the door to federal student loan relief for students defrauded by other for-profit colleges. This positive development came after NCLC and other groups gathered more

“Borrowers may face insurmountable procedural and evidentiary burdens to obtain relief.”

— Robyn Smith,
NCLC Counsel

than 70,000 signatures petitioning the Department to provide debt relief for students who had been defrauded.

Greater Reform Needed

NCLC welcomed the June announcement as an important step, but expressed concern about some aspects of the

announced reforms. We are troubled that many borrowers must apply for loan relief rather than having discharges automatically granted. “Borrowers may face insurmountable procedural and evidentiary burdens to obtain relief,” said NCLC counsel Robyn Smith, “and that relief may only be available to Direct Loan borrowers, when it should also be available to borrowers with other types of federal loans.”

Borrowers will need legal advice and guidance, and NCLC has urged the Department to fund the provision of free legal services. NCLC also called on the Department of Education to improve oversight of loan servicers and to ensure that they provide accurate information to borrowers about their options.

NCLC and Allies Urge Fairness

Last July, NCLC and several legal services organizations co-signed a letter to Joseph Smith, a Special Master appointed by the U.S. Department of Education. The letter recommends fair, accessible, and transparent procedures for individual borrowers as well as groups of borrowers.

We will continue to closely follow the Department’s development of new federal loan relief procedures and to advocate for student borrowers who were subjected to Corinthian and other post-secondary companies’ deceptive practices.

Foreclosure Problems... *continued from page 1*

ever larger, making it more difficult to qualify for a modification. Foreclosure action, if already started, cannot be halted until the application is complete,

yet 67% of respondents report being asked for additional documents after submitting everything the servicer required. Some respondents report that servicers initiate foreclosure even after telling the homeowner that the application is complete.

CFPB Allows Just One Hardship

The Consumer Financial Protection Bureau (CFPB) rules state that a homeowner can only apply for loss mitigation once. Yet many homeowners experience subsequent hardships, such as loss of income due to a spouse’s death, loss of a job, disability, or significant medical debt.

If the homeowner experiencing hardship still has enough income to maintain the home, loan modifications are often in the best interest of the loan owner.

Happily, NCLC’s survey found that in more than 50% of cases, servicers recognize this and already review subsequent applications. NCLC has urged the CFPB to require that all servicers do so.

Work Still to Do

In 2014, the CFPB proposed several changes to mortgage servicing rules, including offering better protections for widows, heirs, and homeowners going through divorce, and allowing homeowners to apply for subsequent loan modifications if they experience financial hardship after the loan has been brought current. NCLC applauded those and other proposed improvements in written comments, but urged the CFPB to do more to help distressed homeowners communicate with their loan servicers. *Read more survey results:* bit.ly/1frCSa7



Jo White with housing counselor
Melanie Gaier.



Left to right: Joshua Halpern, Shelby Walton (front), Alyssa Kutner, NCLC's Stuart Rossman, Mara Stewart, and NCLC's Jeremiah Battle

Meet NCLC's Summer 2015 Interns!

Joshua Halpern is in his second year at Harvard Law School.

Shelby Walton is in her second year at Boston University School of Law.

Alyssa Kutner was our first Greenfield Intern under a generous grant provided by our colleague Professor Michael Greenfield at the Washington University School of Law. Alyssa is in her third year at Washington University School of Law, and spent much of her time at NCLC working with attorneys John Van Alst and David Seligman on the issue of forced arbitration clauses (see page 6). She also worked with NCLC Associate Director Lauren Saunders on Federal Trade Commission issues, researching the problem of elders falling victim to electronic fraud. Alyssa found it informative and rewarding to watch litigators work together to form a cohesive case strategy.

Mara Stewart was the first recipient of the Robert J. Hobbs Fellowship established by NCLC's Board of Directors in honor of Bob Hobbs' many years of invaluable service to our organization. Mara is a third year student at Suffolk Law School in Boston, and enjoyed the collaborative atmosphere of NCLC during her internship. With a background in and passion for mortgage and foreclosure issues, Mara contributed valuable research for NCLC's legal treatises.



Andrea Lowe is in her third year at Harvard Law School.



Mark Thomson is in his third year at Harvard Law School.

Hip Hip Hooray for the TCPA

continued from page 1

many of whom rely on cell phones as their primary means of communication and cannot afford to purchase unlimited minutes.

NCLC and the National Association of Consumer Advocates (NACA) circulated a petition for consumers with the message, "No robocalls to cell phones without our consent." Additional petitions were circulated by other consumer advocacy groups, and in the end, more than 380,000 consumers signed on to send

a message to the FCC.

More than two dozen industry petitions had sought permission to robocall and text message cell phones without consent.

More than two dozen industry petitions had sought permission to robocall and text message cell phones without consent. But the FCC received more than 215,000 complaints last year about unwanted phone calls, more than any other issue.

FCC Sends Clear Message to Industry – No Robocalls Without Consent!

The ruling made clear that automated calling devices currently in use fall within the scope of the TCPA's prohibition against robodialing cell phones without consent. The FCC also rejected industry's claim that businesses have the right to make robocalls to a cell phone number that has been reassigned to a new consumer based on the former owner's consent. Although the FCC limited exemptions for robocalls and texts from financial institutions and health care providers, it required that they be sent at no cost to the called party. Further, the Commission stipulated that the exempt calls and texts must be made with strict, immediately effective opt-out rights for consumers.

Green Light to Robocall Blocking Technology

In other good news, the FCC also ruled that phone companies can legally offer robocall blocking technology to consumers. "Phone companies, please start letting your consumers request to have robocalls blocked," urged FCC Chairman Tom Wheeler.

We at NCLC are pleased that the FCC has stood by consumers and issued a clear message to industry: Placing multiple unwanted calls and sending spam texts will not be tolerated.

Thank you for your support which allows us to do this important work!

Please support our
work @ **NCLC.org**

Help us fight
economic injustice.

Donate today!

CHAD SORIANO PHOTOGRAPHY



*"This isn't a job or
a business, this is a
calling. I wouldn't be
the lawyer I am today
without NCLC."*

— Deepak Gupta,
Gupta Wessler PLLC

*"During my 26 years as
a staff and managing
attorney with legal
services, NCLC advo-
cates helped me many
times with my clients'
problems. Your good
work addresses legal
issues that affect anyone
and everyone who is
poor, and the quality
of the work NCLC does
is unsurpassed."*

— Larry Smith, Prairie
State Legal Services Inc.,
Waukegan, IL
(retired managing
attorney, current
volunteer attorney)

Thank You!

We appreciate the contributions made between August 1, 2014 and July 31, 2015 by the generous donors listed below. Your support for our work makes NCLC stronger.

If you have been left off the list unintentionally or there appears to be an error, please contact Jerry Tuckman (gtuckman@nclc.org).

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