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# Outlook

NATIONAL CONSUMER LAW CENTER

## Antiquated State Foreclosure Laws Need Reform NCLC Urges Immediate Action to Help Stem Crisis

Over the next four years more than eight million American families are expected to lose their homes to foreclosure. Public attention and outrage have properly been focused on the unaffordable subprime mortgages that created the crisis. But another, little-noticed factor has accelerated the crisis: arcane state foreclosure laws that push homeowners into complicated legal proceedings that lack basic due process protections.

NCLC has analyzed all 50 state foreclosure laws in a groundbreaking report,

*In many states,  
it's actually easier  
to foreclose on a  
homeowner than  
to evict a renter.*

JOHN RAO

"Foreclosing a Dream: State Laws Deprive Homeowners of Basic Protections." Written by staff attorneys John Rao and Geoffry Walsh, the report urges states to overhaul their antiquated foreclosure systems.

"In many states, it's actually easier to foreclose on a homeowner than to evict a renter."  
*continued on Page 12*

## A New Administration, New Challenges Financial regulatory system needs overhaul

*Lauren Saunders, Managing Director of NCLC's Washington Office, comments on a changing Washington.*

As the Obama Administration and the new Congress settle in, NCLC is working hard to establish new connections and seize new opportunities to improve protections for low-income consumers. While the mood in Washington is more sympathetic to our cause than it has been in a while, we still clearly have our work cut out for us.

Immediately after the election, then-President-elect Barack Obama created a series of transition teams focusing on review of the work of different agencies. NCLC attorneys met with the teams reviewing

the Treasury Department, Department of Housing and Urban Development, Federal Trade Commission, Department of Education, Department of Energy, and others, and presented a wide array of options for addressing the foreclosure crisis and predatory lending, oppressive consumer debt, and the burdens that energy inefficiency and climate change proposals place on low-income and struggling moderate-income consumers.

But transition is now a distant memory, as the real work begins. President Obama's first major effort was to pass an economic stimulus package. The final package included some elements from NCLC's energy agenda, including a monumental

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# Outlook

is a biannual publication of the National Consumer Law Center intended to inform our supporters about the Center's advocacy and fundraising activities.

For additional information or to be placed on the Outlook e-mail list contact us at:

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OUTLOOK

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CONSUMER LAW  
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## **NCLC PARTNERS COUNCIL Leadership for NCLC**

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## **BUILDING CAMPAIGN SOARS OVER GOAL**

"It's time to say thank you," said Bryan Kemnitzer, chairman of the NCLC Building for Marketplace Justice Campaign, in announcing the successful end of NCLC's three-year building campaign. "I applaud all of you who so generously supported NCLC's new building."

The campaign was a huge success, coming in way over its original goal of \$3.5 million, with a final tally expected to be well over \$5.5 million. "NCLC and the Partners Council undertook the campaign believing building ownership will give NCLC the long-term financial strength to ensure it will be around for years to come. I'm proud that we, and hundreds of other supporters, have helped NCLC achieve that worthwhile goal," added Kemnitzer.

NCLC moved into its roomy new home in August 2008. There are still a few pictures to hang, new video conferencing equipment to set up, etc., but our to-do list is shrinking. Built in the late 19th century, our new office is really not new at all, but thanks to a complete interior gutting and rehabbing, it's now a very efficient, well laid out space the entire staff is enjoying.

"We couldn't be happier in our new home," said Willard P. Ogburn, NCLC executive director. "The space itself couldn't be any better, and the financing of the building has been very favorable, giving us some very enviable financial security."

"I'm very aware we wouldn't be enjoying this new space if it weren't for many of you," added Ogburn. "Thank you for your gifts and your generous support. And thanks especially to Bryan Kemnitzer, Mark Chavez, Jim Sturdevant, Tim Eble and the rest of our Partners Council which did such a magnificent job of raising money for NCLC. We are in your debt."

An open house for friends in the greater Boston area is planned for June 2009. A larger event is planned for November 2010 during our annual Consumer Rights Litigation Conference which is being held in Boston with the express purpose of showing off our new home to those in our greater community of consumer attorneys.

### **NCLC STAFF**

*Administrative/Technical Assistant*

John Beck

*Development Assistant*

Claire Bolton

*Deputy Director for Advocacy*

Carolyn Carter

*DC Office, Attorney*

Alys Cohen

*Administrative Assistant*

Eleanna Cruz

*Development Director*

Suzanne Cutler

*Attorney*

Charles Delbaum

*Director of Development and*

*Project Planning*

Richard DuBois

*Assistant to Director of Finance*

Toni Fisher

*Publisher's Assistant*

Shannon Halbrook

*Attorney*

Charles Harak

*Deputy Director*

Robert Hobbs

*Energy Advocate*

John Howat

*Editorial Assistant*

Katherine Hunt

*Consumer Advocate*

Rick Jurgens

*Director of Finance*

Margaret Kohler

*Operations Manager*

Svetlana Ladan

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Olivia Wein

*Office Administrator, DC Office*

Shirlron Williams

*Attorney*

Odette Williamson

*Publications Director*

Donna Wong

*Attorney*

Chi Chi Wu

# CREDIT REPORTS ARE RIFE WITH ERRORS

## Reporting Agencies Have Little Incentive to Fix Mistakes

A new NCLC report exposes shocking business practices in the credit reporting industry that can devastate consumers' financial records. *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports* details how the three major credit bureaus—Equifax, Experian and TransUnion—use an inadequate, automated system to handle credit reporting disputes, one that clearly violates consumer protections mandated by the Fair Credit Reporting Act.

“The credit reporting dispute system is the definitive example of how an industry has automated the handling of consumer complaints to the point of absurdity,” said Chi Chi Wu, a staff attorney and principal author of the report. “This is voicemail hell with a potentially devastating impact,” she said.

The report includes several examples of consumers whose financial lives were ruined by unresponsive handling of serious errors in their credit reports. A large problem is that credit bureaus have little incentive to satisfy consumers by conducting disputes properly, because

*This is voicemail hell with a potentially devastating impact.*

**CHI CHI WU**

creditors, not consumers, are the bureaus' paying customers.

“Unlike almost all other business relationships, consumers who are unhappy with a credit bureau can't vote with their feet—they can't take their business elsewhere,” noted Evan Hendricks, a report contributor and editor of *Privacy Times*. “They are trapped in a relationship with a company that has so much power over their financial lives and so little regard for their financial well-being.”

For a complete copy of *Automated Injustice* see [www.nclc.org](http://www.nclc.org).

Excerpted from  
*Automated Injustice:*

Kenneth Baker needed approval for a mortgage. It shouldn't have been too hard—Kenneth had always paid his bills on time. Unfortunately his credit history had become “mixed” with that of another “Kenneth Baker” who had racked up numerous black marks on his credit score. Kenneth made enormous efforts to fix these errors but was never successful. The ongoing anxiety of the situation led Kenneth to take his life in 2006, citing in a letter to Experian that his battle to fix his credit report had “destroyed his life.”

## ***NCLC Documents Home Repair Fraud and Abuse after Katrina***

In the chaotic period following Hurricane Katrina, weak state laws allowed predatory home repair contractors to pocket millions of dollars from unsuspecting homeowners.

An eye-opening report, “Avoiding Home Repair Fraud: Lessons from Hurricane Katrina,” relates how thousands of desperate, low-income homeowners were swindled at a time of their greatest vulnerability.

The report was written by NCLC's Rick Jurgens, a former journalist. He gathered the facts by traveling to the Gulf Coast to meet with residents. “Advocates, victims and people from all walks of life invited me into their homes and offices and spent time explaining what they had experienced in Katrina and afterward as they sought to rebuild,” he said.

“I was touched by how hospitable and welcoming so many people were to a

stranger who could do nothing to help with their immediate problem, and struck by the widespread desire to make sure that others don't forget what happened in New Orleans and Mississippi,” says Jurgens. “We can learn from their traumatic experiences to help others avoid being ripped off in the future.”

For the full report, please see our website at [www.NCLC.org](http://www.NCLC.org).

# NEW GRANTS

Following are special project grants received by NCLC since Fall 2008:

## ANNIE E. CASEY FOUNDATION

- \$13,000 for the Fueling Fair Practices Project, to finish an auto policy guide, set up a new e-mail list serve, and offer webinars for advocates on important auto issues. John Van Alst is project director.

## THE BOSTON FOUNDATION

- \$60,000 for Project Stay Connected, which helps low-income families in Massachusetts address utility arrearages and avoid shutoffs. Charles Harak is the project director.
- \$45,000 to support legal services programs in their work with low-income utility consumers in Massachusetts. Charles Harak is project director.

## FORD FOUNDATION

- \$525,000 for the Reforming the Consumer Financial Services Marketplace initiative, to advocate for strong consumer protections at the federal and state levels, and to support the National Mortgage Data Repository and the Americans for Fairness in Lending campaign. Carolyn Carter is the project director.

## OPEN SOCIETY INSTITUTE

- \$500,000 over two years for the Fighting Discrimination in the Subprime Mortgage Industry initiative, which supports impact litigation on behalf of African-American and Hispanic consumers against discriminatory mortgage lending practices and strengthens the community of lawyers and advocates who are fighting mortgage lending and other types of credit discrimination. Stuart Rossman is the project director.

## ENERGY FOUNDATION

- \$100,000 to prepare a transition paper and related advocacy for the new administration's Department of Housing and

Urban Development promoting energy efficiency opportunities in subsidized housing. Charles Harak is the project director.

- \$30,000 for the Appliance Efficiency and Low-Income Energy Project, to promote stronger efficiency standards for residential appliances (including boilers and furnaces) and to advocate for energy policies that help low-income households across the U.S. Charles Harak is the project director.

## HYAMS FOUNDATION

- \$30,000 for the Foreclosure Prevention Project, to advocate for reform of the mortgage market and the state foreclosure process in Massachusetts. Odette Williamson is project director.

## PAUL & PHYLLIS FIREMAN CHARITABLE FOUNDATION

- \$75,000 for Project Stay Connected, which helps low-income families in Massachusetts address utility arrearages and avoid shutoffs. Charles Harak is the project director.

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# MEET OUR Staff



## NCLC WELCOMES NEW STAFF ATTORNEY

NCLC is no stranger to Geoff Walsh. “I’ve relied on NCLC’s expertise and publications for almost every day for the past 25 years,” he reports.

Walsh came to NCLC this fall with over 25 years as a legal services attorney in Vermont and Pennsylvania. Beginning in 1980 as a staff attorney with Community Legal Services in Philadelphia, he then practiced with its housing and consumer units for 11 years. “The consumer and housing attorneys at CLS were a great inspiration for me,” Walsh says. “They set very exceptionally high standards for consumer work, and I’ve always felt fortunate that I had the opportunity to work with them.”

In 1991 Walsh moved his legal services practice on to a strikingly different landscape, small town Springfield, Vermont and Vermont Legal Aid, where he remained for 17 years. Walsh describes

Springfield as typical of many smaller New England cities that were part of a robust small manufacturing region that have now lost jobs with the closing of mills and small factories.

Despite very different urban and rural environments, Walsh notes that there were similarities in the legal practices in the two offices where he worked. “A lot of the abusive practices affecting consumers are very stan-

dardized. Homeowners living five miles down a dirt road sign the same predatory loan documents that a family in a densely packed urban neighborhood signs. Television and the internet bring these products to the target groups, no matter where they live. Consumer remedies work much the same as well,” said Walsh. “It doesn’t matter whether you get to the court building by subway or after driving over mountains and icy roads.”

Geoff has special interests and experience in foreclosure, bankruptcy, and landlord and tenant law. In Vermont he developed a practice that focused on saving homes for clients who acquired homes under the Rural Housing Service (FMHA) home mortgage program. He also worked extensively with mobile home park issues. During his years in Vermont he brought several significant cases that eventually went to the Second Circuit and established rights of residential tenants in bankruptcy. He also pursued statewide class action litigation in a number of areas, including debt collection, eviction proceedings, and government benefits.

Before starting formally with NCLC last fall, Walsh was a contributing author to several NCLC publications, including the *Foreclosures and Student Loans* manuals. He continues to write for these publications, *NCLC Reports*, and manuals on bankruptcy, and credit discrimination. Along with John Rao he produced NCLC’s foreclosure report, “Foreclosing a Dream: State Laws Deprive Homeowners of Basic Protections” released in February 2009 and available at <http://www.NCLC.org>. He’s also been actively involved in NCLC’s project on foreclosure mediation systems. He served as a trainer on bankruptcy for NCLC’s annual Consumer Rights Conference in Portland and he is working with Diane Thompson on NCLC’s three-year project to provide training and consulting for legal services and pro bono programs in Michigan.

“Needless to say, I’m honored to be working with NCLC now, and I look forward every day to the work I’m doing,” said Walsh.

*The consumer and housing attorneys at CLS were a great inspiration for me. They set very exceptionally high standards for consumer work.*

**GEOFF WALSH**

## Recent Cy Pres

Court Awards received since  
January 2008

Robert I. Lax

Kenneth D. Quat

Craig Shapiro and O. Randolph Bragg

Lester A. Perry, Michael D. Kinkley  
and O. Randolph Bragg

Colman Herman

Brian L. Bromberg, Stacy M. Bardo,  
Lance A. Raphael

Kenneth G. Gilman

Donald A. Yarbrough and  
O. Randolph Bragg

Robert W. Murphy

Robert W. Murphy and  
David H. Abrams

Niall P. McCarthy

Adam J. Fishbein

Donald A. Yarbrough

Ralph L. Jacobson and Paul Kranz

Robert S. Green and Kenn Mann

Colman Herman

David J. Philipps and Ronald Sykstus

Colman Herman

Steve D. Larson

Colman Herman

Andrew R. Wolf and Glen H. Chulsky

Robert Bramson, Harry Shulman,  
and Robert Mills

Colman Herman

Kenneth Gilman

Bryan Kemnitzer, Nancy Barron,  
and Alec Trueblood

Daniel S. Blinn and Joanne Faulkner

Bryan Kemnitzer and Nancy Barron

James E. Butler and Joel O. Wooten

Yvonne Rosmarin, Cathleen Combs,  
and Dan Edelman

Joel Feldman

O. Randolph Bragg  
and Edward A. Icove

## \$500K Award Benefits Low-Income Consumers

### Bramson Cy Pres from Fee Harvester Credit Card Settlement



Rob Bramson describes NCLC as the ideal recipient for a \$505,000 cy pres resulting from a \$21 million settlement with Cross Country Bank. "The class make-up of the case was low-income consumers, the very group NCLC serves," explained Bramson, who co-counseled the case with Harry Shulman and Robert Mills of The Mills Law Firm of San Rafael, California. "And the focus of the case was fee harvesting, a practice which a 2007 NCLC report exposed and which detailed several of Cross Country's junk fees and predatory credit practices that target the poor," he added.

Willard P. Ogburn, NCLC executive director, called Bramson "high-principled, persisting in this case for years in a fierce determination to bring justice to as many class members as possible."

"We're most grateful Rob directed this very generous settlement to NCLC," added Ogburn. "Court awards like this help to fund some of our most important advocacy. These are especially difficult times for low-income consumers and we're pleased to be able to put this money to good use on their behalf."

Bramson is well known to NCLC and the larger community of consumer attorneys as an expert in consumer class actions. He is a member of NCLC's leadership Partners Council, a contributing author to the last four editions of our Consumer Class Actions manual, and a frequent participant in our annual conferences and Consumer Class Action Symposiums. Recently he and NCLC successfully co-counseled a case against Blue Hippo, whose pernicious sales and financing schemes have harmed thousands of California consumers.

In addition to NCLC's very generous award, portions of the undistributed settlement went to Public Justice, several California legal services programs, and other deserving non-profits.

Bramson is a partner with Bramson, Plutzik, Mahler & Birkhaeuser, Walnut Creek, California.

For information on directing cy pres to NCLC, contact Willard P. Ogburn or Suzanne Cutler at 617-542-8010.

*Copies of the NCLC report "Fee-Harvesters: Low-Credit, High-Cost Cards Bleed Consumers" are available on the NCLC website, [www.NCLC.org](http://www.NCLC.org).*

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NCLC.org**

# NCLC FINANCES SOLID, DESPITE SHAKY ECONOMY

*Willard P. Ogburn, NCLC executive director, talks with Outlook about the state of NCLC's economy.*

**EDITOR:** These are tough financial times, and many organizations like NCLC have lost money. How is the Center doing?

**OGBURN:** Fortunately, NCLC has held its own. Despite the current financial crisis, we've been able to preserve our assets.

We have several million dollars in reserves, and although much of it is tied up by tax credits, real estate obligations, or otherwise committed, it's good knowing we still have it "in the bank." We have a professional pro bono investment advisor who moved these funds to Treasuries and other low risk holdings in a timely manner to avoid market losses. Donor funds have been prudently managed and our investments are safe.

**EDITOR:** The reserves are doing well, but how about this year's operating budget? Will the fallout from the current economic disaster force NCLC to make any cutbacks in this year's activities?

**OGBURN:** NCLC's expertise in predatory mortgages, bankruptcy, credit, access to utilities and the like is more important than ever. More consumers are suffering in more ways than in decades and it's only going to get worse. We simply can't afford to cut back.

We've budgeted \$7.5 million in programs and activities for 2009. We have a diverse funding base—including generous donations from our friends, publications, litigation, cy pres funds, grants and contracts, expert witness fees, training events, etc., all of which help to underwrite our expenses. We're balancing both the economy and the increased need for advocacy by spending especially carefully



*Will Ogburn, executive director, and Margaret Kohler, director of finance, review NCLC's 2008 financials.*

and putting our efforts to those activities which we think will bring the greatest benefits to low-income consumers and to the community of consumer advocates.

**EDITOR:** Does this mean NCLC won't have to do any fundraising this year?

**OGBURN:** To the contrary, fundraising is more important than ever. Every year we have to raise our entire budget from scratch, but this year could be tough. Foundation giving is down, money is tight, and even the very largest organizations are cutting back. We expect we'll have to work twice as hard to raise the same amount of money we have in past years, and we're prepared to do so. We hope more donors will now see that the work of the National Consumer Law Center is central to the crisis affecting American families and our country. And we hope they'll be more generous than ever before.

**EDITOR:** The building campaign is officially drawing to a close. Do you rate it a success?

**OGBURN:** Absolutely! We're housed in a wonderful new home we love, our

mortgage debt is very manageable, and we are in better control of our expenses than ever before.

We raised more than \$5.5 million, over and above our annual advocacy budgets, for our new headquarters. That's very impressive for a non-profit advocacy organization of our size.

On top of many generous building campaign gifts, we secured very favorable financing for the purchase. We received a pair of historic tax credits with a face value of \$800,000 which are being auctioned off to private investors; a federal new market tax credit which will return more than \$1 million to NCLC over the next eight years; and secured a below market-rate mortgage funded by a tax free bond issued by the Commonwealth of Massachusetts.

The building campaign has greatly strengthened the Center by diversifying our assets and stabilizing our expenses. I can't stress enough the huge thanks we owe to the many friends who know and value our organization, and who supported us with donations of all sizes, pledges, and cy pres awards for the building campaign.

# Brown Earns Top Consumer Award

## **Commitment, determination, integrity, leadership**

Bernard E. Brown was honored with the 2008 Vern Countryman Award on October 26, 2008 during NCLC's annual Consumer Rights Litigation Conference in Portland, Oregon. "Our community of consumer attorneys is all the better for Bernard's commitment, his determination, his integrity, his leadership," said Willard P. Ogburn, NCLC executive director.

"By definition this award honors the accomplishments of an exceptional consumer attorney who, through the practice of consumer law, has contributed significantly to the well being of low-income consumers. Bernard has done this and more," commended Ogburn. "He is a leading voice speaking out for

the rights of low-income consumers, through the cases he litigates, his eloquent advocacy in the press and before Congress, and the mentoring and assistance he gives to other attorneys working on consumer issues."

## **Countryman goes to auto fraud expert**

Two former Countryman winners, Dick Rubin and Joanne Faulkner, describe Brown's focus on the excesses of the used car industry: "Bernard has set the standard...for combating the scourges of odometer fraud and the sale of undisclosed rebuilt wrecks. His string of successful and significant jury verdicts against car dealers is legend. Bernard has litigated cases that have both meted out individual justice and established the precedent on which we all now rely.

"Bernard has had the vision and the energy to expand his efforts beyond the courtroom. He has worked tirelessly over the years with the media to expose auto fraud. He also labored in the halls of Congress and his state legislature to further try to bring basic honesty to the sale of cars.

"He was also one of the founding members of the National Association of Consumer Advocates and volunteered countless hours at NACA's most formative stage as a guiding force and as its initial co-chair...Bernard has given freely as a generous trainer and devoted mentor."

For information on how to nominate a candidate for the 2010 Countryman Award, see below.

## **EACH YEAR THE COUNTRYMAN AWARD HONORS THE VERY BEST IN CONSUMER LAW**

Only a very few are honored with the Vern Countryman Award. Since first presented in 1990 to Henry J. Sommer for his leadership in promoting the field of consumer law, the Countryman Award quickly became the top honor for consumer attorneys.

Recipients include some of the most highly regarded consumer advocates in the country: Bernard E. Brown, Mallam J. Maynard, F. Paul Bland, Gail Hillebrand, Dan Hedges, Joanne Faulkner, Lynn Drysdale, Richard Rubin, Kathleen Keest, Alan Alop, David Ramp, Elizabeth Imholz, Jim Sturdevant, Pat Sturdevant, Mike Ferry, Bill Brennan, Carolyn

Carter, and Margot Saunders. We applaud their efforts on behalf of low-income consumers.

The award presentation is a highlight of the Awards Luncheon each year at NCLC's Consumer Rights Litigation Conference, this year in Philadelphia, October 22-25.

## **Nominate the next Countryman winner**

The Countryman Award honors a legal services or other public interest attorney whose special contributions to the practice of consumer law have strengthened and affirmed the rights of low-income Americans.

If you know of an outstanding attorney who is deserving of this high recognition, please

contact Suzanne Cutler at [scutler@nclc.org](mailto:scutler@nclc.org) for information on the nomination process. Our guidelines are simple: the nominee must have demonstrated excellence in working on low-income consumer issues for at least 10 years; or recently obtained legal relief through judicial, administrative, or legislative action which brought significant benefit to a large number of low-income consumers.

Nominations may be submitted by anyone familiar with the work of the candidate. Nominating materials should include: Candidate's resume; a description of the work which qualifies for the award; and two or more references from those who are familiar with the nominee's work.

We welcome your help in identifying the next deserving recipient!

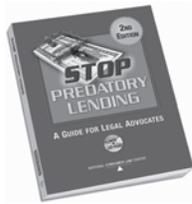


*Bernard has litigated cases that have both meted out individual justice and established the precedent on which we all now rely.*

**JOANNE FAULKNER  
AND DICK RUBIN**

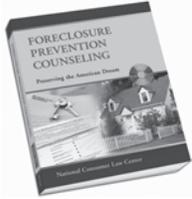
*Are you ready to respond to the Foreclosure Crisis?*

## **SEVEN ESSENTIAL BUILDING BLOCKS**



### ***Stop Predatory Lending***

A roadmap to uncovering and overcoming predatory lending.



### ***Foreclosure Prevention Counseling***

How to obtain a workout agreement for Fannie, Freddie, FHA, VA or RHS mortgages.



### ***Foreclosures***

What you need to know about mortgage servicing abuses, defending a foreclosure action, and steps after foreclosure.



### ***Truth in Lending***

TIL rescission and HOEPA are key remedies to stop a foreclosure.



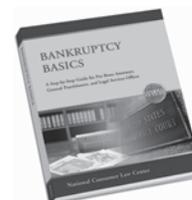
### ***Cost of Credit***

How to raise loan broker or originator abuses against the mortgage holder.



### ***Unfair and Deceptive Acts and Practices***

UDAP statutes usually provide attorney fees, and treble, punitive, or minimum damages for a wide array of deceptive or abusive practices involving predatory lenders, landlord-tenant issues, and foreclosures.



### ***Bankruptcy Basics***

Everything a non-expert needs to know to file a bankruptcy to help save a home.



*For more information or to order these NCLC titles, visit [www.consumerlaw.org](http://www.consumerlaw.org) or call (617) 542-9595*

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# CONSUMER RIGHTS LITIGATION CONFERENCE

Plus  
**Class Action Symposium**  
AND  
**In-Depth Intensives**

If you're interested in predatory loans, credit issues, bankruptcy protections, fair debt, foreclosure abuses, and other oppressive consumer practices, NCLC is the expert—and you won't want to miss this informative NCLC conference.

For more information, go to our website at [www.NCLC.org](http://www.NCLC.org).

Conference brochures and registration forms will be mailed in mid-July and will be available on our website in early July.

Over 800 consumer advocates are expected to attend.

*The one  
consumer law conference  
that has it all!*

Phillies' superfan Mike Donovan of Donovan & Searles, Philadelphia, takes to the podium at Portland's 2008 conference to celebrate his favorite ball team (on its way to winning the World Series) and to invite attendees to join him in Philadelphia for NCLC's annual Consumer Rights Litigation Conference, October 22-25, 2009. Donovan and other prominent Philadelphia-area attorneys have formed a host committee to organize and fundraise for special events during the conference, recruit headline speakers, show-off their city, and provide other invaluable planning and assistance.



NCLC Operations adds new staff: (l-r) **Tamar Malloy**, research assistant, is a 2007 graduate of Smith College who, before joining NCLC, worked as a paralegal at a well-known Boston civil rights firm. **Cassandra Roeder**, publications assistant, is a 2007 graduate of the University of Virginia, where she directed the Adopt-a-Grandparent program and volunteered for the Sexual Assault Resource Agency. Development assistant **Claire Bolton** is a 2008 graduate of Smith College where she worked at Nuestras Raices, a community development organization in Holyoke, Massachusetts. **Olga Shmatkova**, staff accountant, is a former financial assistant at Middlesex Human Service Agency, a non-profit organization focused on shelters for homeless families. Not pictured is **Toni Fisher**, assistant to the director of finance, who has over 16 years experience in the administration of a large Boston-area CPA firm.

# Energy Policy at Center Stage in Washington

## NCLC Seeks Protections for Low-Income, Vulnerable Households

After years of neglect, energy issues are again taking center stage in Washington. From far-reaching climate change legislation to massive investments in energy efficiency programs and home weatherization, the new administration and Congress have ambitious plans to remake the energy sector. Often missing from the public debate, however, is the impact on the poor of creating a “green economy.”

“We applaud efforts to make our energy use more efficient because it’s critical for the long-term health of our economy and the environment,” said John Howat, a senior policy analyst at NCLC. “But we must make sure to consider the likely impact on low-income households, the elderly, people with disabilities and other vulnerable populations. If the price of utility services goes up, it can be dangerous for the health and safety of millions.”

Howat cited federal efforts to encourage, in the name of increased efficiency, the use of so-called “smart meters” and the setting of time-based utility rates. The meters would be capable of two-way communication between the customer and the utility company while recording consumption on an hourly or more frequent basis. While proponents claim these changes would encourage consumers to shift their energy use to off-peak periods, Howat voiced deep skepticism. He fears it would mostly shift a greater burden of electricity costs on to the poor.

“Low-income and low-use electricity consumers (who tend to own few non-essential appliances) just don’t have the flexibility to adjust their energy usage patterns to take advantage of off-peak pricing,” he said. “And there are millions of sick and older consumers who must use essential equipment (like breathing machines) that cannot be turned off

*If a customer can be shut off by the flick of a switch, it will mean a dramatic increase in service disconnections.*

**JOHN HOWAT**

without posing serious risks to their health and safety.”

Another pitfall of smart meters is that they would allow the remote disconnection of service without a visit to the premises. “If a customer can be shut off by the flick of a switch, it will mean a dramatic increase in service disconnections,” said Howat.

After the fall election, NCLC joined a host of other consumer groups in putting forward their concerns in a memo to the Obama transition team and in a letter to Congressional leaders. Among other recommendations, federal policymakers were urged to let state regulatory agencies continue their traditional role in the setting of utility rates and directing utility investments in efficiency programs.

*John Howat*

### **NCLC Wins Key Fight Over Stimulus Language**

Thanks to last minute and effective advocacy by NCLC’s John Howat and Olivia Wein, the final version of the federal stimulus bill enacted in February included much-improved language regarding a controversial concept called utility “decoupling.” Decoupling is essentially an attempt to divorce a utility’s revenues from the amount of energy it sells. NCLC and other consumer groups fear that, without strict caps, decoupling would lead to a spike in utility rates for consumers.

In an early draft of the stimulus proposal, states would have been forced to adopt decoupling, without requiring the utility to demonstrate an increase in energy efficiency investments. After NCLC expressed its serious concerns and rallied other groups against the measure, the mandate to states was eased, and utilities are now required to provide “verifiable and measurable” energy efficiency savings to obtain decoupling.



## A NEW SITE FOR “CAR TALK”

With support from the Annie E. Casey Foundation, NCLC has launched a new e-mail list serve dedicated to issues affecting car finance, sales, and ownership for low-income families. Unlike NCLC’s existing autofraud list serve that discusses litigation issues, the new forum will focus on policy changes needed to bring fairness to car buying and financing, car ownership programs, and alternative financing products for car purchases by low-income families.

“A major goal of the list serve is to improve the efficiency and effectiveness of auto policy advocacy around the country,” said John W. Van Alst, staff attorney and director of NCLC’s auto work. “Until now, individual advocates have been working pretty much in isolation,” he said. “If advocates can quickly share information and strategies with their colleagues from around the country, we stand a much better chance of winning the battle for auto policy reform in state legislatures.”

To join, go to:  
<http://lists.nclc.org/subscribe/>  
and check the Auto Ownership, Finance, and Policy list.

For more information, e-mail:  
John Van Alst at [jvanalst@nclc.org](mailto:jvanalst@nclc.org)



*A major goal of the list serve is to improve the efficiency and effectiveness of auto policy advocacy around the country.*

**JOHN VAN ALST**

### NCLC’S NEW ADDRESS:

National Consumer Law Center

7 Winthrop Square, 4th Floor, Boston, MA 02110-1245

*All other contact information remains as before:*

Phone: 617-542-8010 Fax: 617-542-8028

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## State Foreclosure Laws Need Reform, *continued from Page 1*

a renter,” said Rao. “Too many homes are lost because homeowners are not aware of the process itself or of the various options to avoid a foreclosure. It’s critical that states act now to protect homeowners and restore basic fairness to the foreclosure process,” he said.

Among the report’s key findings:

- In 29 states and the District of Columbia, mortgage holders can bypass the courts and move directly to take away and auction off homes, thereby denying homeowners due process protection comparable to that given many tenants.
- In every state but Connecticut and California, mortgage holders are not required to consider or discuss with homeowners ways to avoid home loss before moving directly to foreclosure.
- In 42 states and DC, mortgage holders are not required to personally serve homeowners with a foreclosure notice before starting a court foreclosure case.

Rao and Walsh propose a host of important and urgent reforms. They include mandatory court supervision over foreclosures of all residential mortgages; requirements that mortgage holders consider loss mitigation, including loan modifications and other workout alternatives; and a guarantee that homeowners are given a chance to catch up on missed payments before foreclosure fees and costs are charged.

“Many state foreclosure statutes were enacted in the 19th and 20th centuries and have gone largely unchanged since then,” said Rao. “By taking a fresh look at their laws, states can reduce the foreclosure rate and bring some stability back to neighborhoods ravaged by this crisis.”

You can download a copy of “Foreclosing a Dream...” at [www.NCLC.org](http://www.NCLC.org).

## California Consumers Win \$8.5 Million Victory in RAL Litigation Settlement Also Requires New Cross Collection Practices

In a victory for consumers of tax refund anticipation loans in California, a settlement has been reached in a class action lawsuit against Santa Barbara Bank & Trust and Jackson Hewitt Tax Service.

The suit, which was filed in a California State Court, challenged SBBT's right to seize (without adequate notice and consent) the customer's tax refund. SBBT then used the refund to pay back any debts allegedly owed, not only to SBBT itself, but also to any lender that had made refund anticipation loans. In the case of class representative Canieva Hood, her refund was seized to pay back an alleged 7-year-old debt to Household Bank.

"This settlement marks a significant victory for low-income consumers who use RALs to scrape by financially," said Charles Delbaum of NCLC, a member of the litigation team representing the class.

According to Delbaum, \$8.5 million will be paid into a settlement fund for distribution to class members and to cover attorneys fees and other expenses. "Class members will get a refund of their \$30 RAL fee plus a percentage of the tax refund that was improperly collected," he said. "Equally important, Jackson Hewitt and SBBT have agreed to stop the practice of cross collection for the calendar year 2009. And in future years, Jackson Hewitt must provide a clear notice to its customers before engaging in cross collection."

A fairness hearing on the settlement is scheduled for April 29th in Santa Barbara. NCLC's Delbaum, Chi Chi Wu, and Stuart Rossman have teamed up on the suit with attorneys James Sturdevant, Monique Oliver, and Whitney Huston of the Sturdevant Law Firm in San Francisco.

*This settlement marks a significant victory for low-income consumers who use RALs to scrape by financially.*

**CHARLES DELBAUM**



## WARNING: KEEP AWAY NCLC Warns About RALs

NCLC and the Consumer Federation of America are once again warning consumers to stay away from expensive RALs (Refund Anticipation Loans). Although RALs may seem like a harmless, easy way to get a tax refund in advance, they come at a steep price.

Fees can be as high as several hundred dollars, and the annual interest rate for a RAL ranges from about 50 percent to an outrageous 500 percent.

NCLC and CFA encourage taxpayers to file electronically and receive their refunds by direct deposit in a bank account within 8 to 15 days. "In tough economic times, quick money may be tempting," says NCLC staff attorney Chi Chi Wu, "but waiting just one more week or two will put more money in taxpayers' pockets."

NCLC and CFA have released a detailed report on the state of the RAL industry in the spring of 2009. Look for it at [www.NCLC.org](http://www.NCLC.org).

## A New Administration, New Challenges, *continued from Page 1*

increase in funding for weatherization and funding to improve the energy efficiency of public housing. NCLC, along with other advocates, was also successful in providing states more discretion to protect low-income consumers when the states implement new natural gas and electricity rate structures promoted under the bill.

President Obama is now turning to the next phase of support for the ailing financial sector and struggling homeowners. He has supported judicial mortgage modifications in bankruptcy, an issue NCLC continues to push. Prospects are looking good for some success, though it may unfortunately be limited to existing mortgages (and not all of those). President Obama's foreclosure prevention program was announced in late February, although key details will not be known until March, after OUTLOOK goes to press. We are promoting more systemic loan modifications, a duty for servicers to offer loan modifications, where possible, prior to any foreclosures, the need for principal reductions, and attention to second liens, among other protections.

President Obama has also taken a vocal stance on addressing the serious challenges posed by climate change. In an early step, President Obama directed DOE to expedite overdue appliance efficiency standards; NCLC briefed his administration on the delay just days before, and his memo cited litigation brought by NCLC and other groups. As the Administration's policy develops, NCLC is fighting to protect low-income access to utility service in the face of increased costs of energy and more frequent utility terminations from climate change and conservation policies and new technology like "real-time pricing" and "smart metering" (which could also lead to prepaid utility services).



*Lauren Saunders, Managing Attorney of NCLC Washington Office*

*It is easy for the focus on preventing collapse of another financial institution, or the very real need to address energy issues, to trump real protection for low-income consumers.*

### **LAUREN SAUNDERS**

One of the biggest tasks ahead will be the review and restructuring of our financial regulatory system. Everyone agrees that the system has failed and needs to be reworked. But there is little agreement on how. The Congressional Oversight Panel created to oversee the financial bailout and headed by Harvard Law Prof. Elizabeth Warren, submitted its recommendations in January. The panel sought input from NCLC and its report agreed with many of our recommendations, calling for repeal of regulations that preempt state consumer protection laws and the creation of a financial products safety commission or another vehicle to protect consumers without the conflicts of interest within the banking agencies. President Obama has yet to weigh in with his views. We are collaborating with a wide coalition of consumer, civil rights, labor, and other groups to ensure that strong consumer protection is an integral part of a revital-

ized regulatory structure. We also are continuing to push substantive protections against abusive mortgage, credit card, student, payday and other lending practices.

The New Year has brought not just a new Administration but also many new faces in Congress. As we work to get to know the new members, it always helps us to know which of you have connections to them.

Even with changes in DC, however, we continue to battle powerful industry lobbies and old attitudes that resist meaningful change. The headlines are screaming with the wreckage that deregulation has brought to American families. Yet it is easy for the focus on preventing collapse of another financial institution, or the very real need to address energy issues, to trump real protection for low-income consumers.

# Enlisting Allies in the Fight for Consumer Justice

## Collaborations Build Strength

The secret to NCLC's advocacy is often found in the strength of our partnerships. Whether in public forums or more often behind the scenes, we join forces with allies of all kinds: from our traditional partners in legal aid to social service agencies and private foundations, government agencies, and consumer, housing, labor, and civil rights organizations, just to name a few.

Here is a sample of some recent collaborative efforts:

- NCLC has signed a contract with the **NATIONAL COUNCIL OF LA RAZA** to conduct five foreclosure prevention trainings for housing counselors who are on the front lines of the foreclosure crisis. The contract is connected to a larger grant that LaRaza received from the U.S. Department of Housing and Urban Development. NCLC will offer its acclaimed trainings, *Preserving the American Dream I and II*, and *Predatory Lending* from April 13-16 in Seattle.

- NCLC has joined forces with **LEGAL SERVICES OF SOUTH CENTRAL MICHIGAN** to combat foreclosure in the Wolverine state. Attorneys from seven Michigan legal services programs are working as a statewide foreclosure prevention unit and providing direct legal representation to homeowners facing foreclosure. NCLC is contributing its expertise through policy support, training, and case consultations on complex legal issues. NCLC's first project training was held February 11-12, 2009 in Lovi, Mich. for over 200 advocates. Funding for the project is provided in part by the Ford Foundation.

- NCLC and the **MISSISSIPPI CENTER FOR JUSTICE** are developing a joint project to stem foreclosures and to curb abusive consumer transactions in Mississippi. The project will combine efforts to increase the number of trained lawyers handling foreclosure cases and to reform state consumer protection laws. Alys Cohen and Margot Saunders of

NCLC led a foreclosure prevention training February 19-20, 2009 in Jackson, Miss. for over 100 advocates.

- NCLC's *Project Stay Connected* is re-granting a portion of its funds to legal aid programs across Massachusetts to help low-income residents maintain their heating and electricity services. The funding will help legal aid lawyers in the state to stop a utility termination, restore lost service, enroll a client on the low-income discount rate (saving \$4,000 to \$1,000 per year), or obtain fuel assistance payments (as much as \$1,300). Funding for this work is provided by the Boston Foundation and the Fireman Charitable Foundation.

- NCLC convened the New England Regional Heating Oil Crisis Response Meeting in Portsmouth, New Hampshire on August 18, 2008. The meeting drew 100 advocates from consumer groups, legal services, housing organizations, federal, state and local governments, and heating oil delivery companies.

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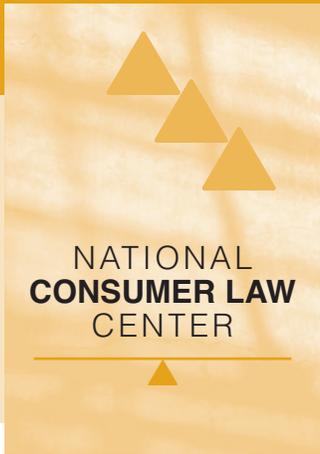
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*The National Consumer Law Center is the nation's consumer law expert, helping consumers, advocates and public policy makers use powerful and complex consumer laws on behalf of vulnerable Americans. In doing so we have built—and are at the center of—a growing community of advocates with a commitment to consumer justice. We protect, promote and interpret the statutes these advocates use in their practices, knowing that as more attorneys understand the complexities of consumer law we increase access to consumer justice and move toward our goal of economic justice for all.*



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## **Weak Consumer Protection Laws Hurt Consumers**

### **NCLC's 50-State Analysis Reveals Huge Gaps in Coverage**

A new report from NCLC reveals serious gaps and weaknesses in the primary consumer protection laws existing in most of the 50 states. Making matters worse are recent court rulings that have opened the door to predators and abuses in billions of daily transactions.

“Consumer Protection in the States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes,” analyzes and summarizes the unfair and deceptive acts and practices (UDAP) laws that protect consumers in each state. Written by Carolyn Carter, deputy director for advocacy at NCLC, the report highlights limitations in the substance and scope of the laws and in their enforcement.

“State unfair and deceptive acts and practices laws provide the main defense against abuses in most consumer transactions,” said Carter. “Yet in some states these laws provide almost no protection to consumers.”

“In Michigan and Rhode Island, court decisions have gutted UDAP laws. Iowa does not even allow consumers who have been cheated to go to court to enforce protections,” said Carter. Louisiana, New Hampshire and Virginia exempt most

lenders and creditors from their UDAP statutes.

Unrestrained by the law, predatory practices took root in the marketplace over the past decade. “Unfair and deceptive acts and practices laws that were too weak failed to rein in abuses by mortgage lenders and brokers and fueled the current nationwide wave of foreclosures,” said Will Ogburn, NCLC’s executive director.

The report identifies five states—Arizona, Delaware, Mississippi, North Dakota and Wyoming—that force consumers to absorb lawsuit costs. Three states—Alaska, Florida and Oregon—sometimes require consumers to pay the legal costs of defendants, even for suits filed in good faith.

There are a number of measures that states can take to strengthen consumer protections, including enacting broader prohibitions on deceptive and unfair acts, filling gaps in the scope of UDAP statutes, and increasing penalties for violations. The report also urges states to eliminate financial barriers and other risks that prevent victims from filing UDAP lawsuits. NCLC’s 50-state analysis can be found at [www.NCLC.org](http://www.NCLC.org).

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