

Debt Relief Services Aren't Just for Kids Anymore

Andrew Pizor, Staff Attorney at the National Consumer Law Center

May 21, 2015



**National Elder Rights Training Project for the National Legal Resource Center.
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Providing Legal Support to the
Aging Advocacy Network

- <http://www.nlrc.aoa.gov/>
- Collaboration developed by the Administration for Community Living/Administration on Aging between the National Consumer Law Center, Justice in Aging, American Bar Association Commission on Law and Aging, Center for Elder Rights Advocacy, and the Center for Social Gerontology
- See upcoming trainings, conferences, and webinars
- Request a training
- Request consulting
- Request technical assistance
- Access articles and resources





Presenter – Andrew Pizor

- Andrew Pizor is a Staff Attorney in the National Consumer Law Center's Washington, DC office where he works on issues related to mortgage financing and defending homeowners from foreclosure.
- He is a contributing author to the Foreclosures, Truth In Lending, and Cost of Credit manuals.
- He was previously a senior staff attorney at the Connecticut Fair Housing Center, an associate at Consumer Law Group, LLC, and was the first staff attorney hired by the Legal Services Corp. of Delaware.
- He is a graduate of Georgetown University and Fordham University School of Law.

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Who Are You?

A quick poll to see who is on the call

- Please pick the one that best describes you:
 - A consumer
 - An attorney for a government agency or non-profit
 - An attorney in private practice
 - A non-attorney with a government agency or non-profit
 - Other



What is a Debt Relief Service?

- Layman's Definition
- Under state law
 - 50 flavors, broad and narrow
- Under federal law
 - Telemarketing Sales Rule (stay tuned)

Bankruptcy – An Aside

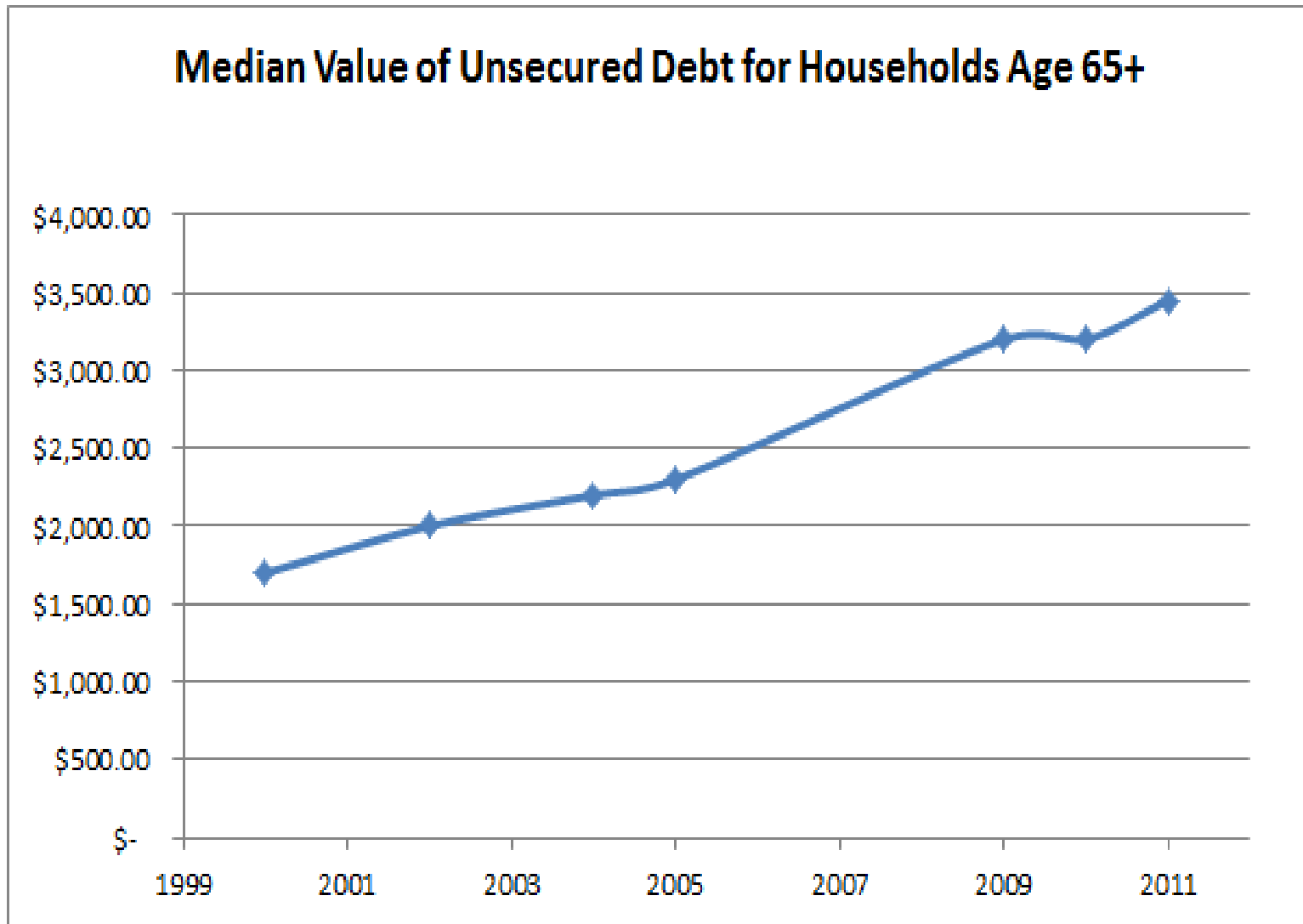
- What is a “Debt Relief Agency”?
- Disclosure required of most bankruptcy attorneys and others providing bankruptcy assistance for a fee. 11 U.S.C. 101(12A).
- Unrelated to “debt relief services” discussed in this presentation

What is a Debt Relief Service?

Layman's Definition & Working Definition for This Presentation

- Any business, including non-profits,
- that offers to help you deal with
- **unsecured** debt
- for a fee (large or small)

What's the Problem



The Christian Science Monitor - CSMonitor.com

Many seniors are buried in debt.

Nearly 4 in 10 seniors carry a mortgage, almost double the rate in the mid-1990s. Security benefits, indebted seniors face a squeeze.

By Bill Hardekopf, Contributor | NOVEMBER 9, 2011

Debt consumes senior citizens in retirement

The New York Times



By - The Wash March 25, 2013

For Older Americans, a Deepening Debt Problem

By CARMEN WONG ULRICH

The Washington Post

Get There

More seniors are carrying student loan debt into retirement

By Jonnelle Marte September 11, 2014



So Who Ya Gonna Call?*



Quality Debt Relief?



\$3 Billion Resolved
We've resolved the most debt
Freedom Debt Relief is #1 in America

Debt Relief That Works



The answer to your debt

- Get a free financial assessment
- Learn about your options

*Source: Ghostbusters (Columbia Pictures 1984) ("Three unemployed parapsychology professors set up shop as a unique ghost removal service.") (<http://www.imdb.com/title/tt0087332/>).



Legitimate or Scam?

The big question--even for savvy consumers

- Business model
 - Non-profit vs. For-profit
- Service offered



Non-profit or For-profit

The Short answer:

- For-profit = assume scam
- Non-profit = investigate further



Non-profit

Non-profit status is not a guarantee

- Some are fronts for for-profits
 - outsourcing
 - statutory exemptions exploited
- Significant funding from creditors
- Over-emphasis on fees or “voluntary” contributions
- Competence?

For-profits

Oh come on!
They can't all be scams!!

Actually . . .

- charging a fee to people who can't pay their bills
- not enough money to be profitable *and* pay consumer's creditors
- (continued)



For-profits

Reasoning (cont).

- Extensive evidence of misrepresentation, false or deceptive advertising (GAO, FTC, state AGs)
- Abysmal track record
- Service offered is frequently illegal or not viable



Services Offered

- Credit counseling/education
- Debt management plan
- Debt settlement
- Debt consolidation
- Debt elimination
- Debt negotiators
- Credit repair
- Student loan assistance
- Bankruptcy

Services Offered

- **Credit counseling/education**
 - Traditional services offered by non-profit credit counseling agencies
 - Is how they qualify for non-profit status
- **Debt management plan**
 - Paying 100% with interest rate and fee concessions
 - Installments to agency, which distributes
 - Agency charges fee
 - Low success rate

Services Offered

- **Debt settlement**
 - Claims to negotiate a reduced payoff of principal due
 - You pay into an escrow account each month until enough saved that they can make an offer to creditors
 - Fee is % of [varies]
 - starting balance
 - ending balance
 - amount saved
 - Often monthly service charges

Services Offered

- **Debt settlement**

- Often takes years to save up enough
- Typically can't afford to save and continue regular payments → *default*
- In meantime, collection efforts continue
- Rampant false advertising
- No guarantee that creditors will cooperate
- Fees reduce savings
- Taxes possible too (discharge of indebtedness)

Services Offered

- **Debt settlement**
 - Most people dropout
 - End up with more debt than when started
 - Sometimes driven into bankruptcy
 - Center for Responsible Lending research
 - success very difficult
 - Concept is legal **but:**
 - for-profit not viable
 - DIY free

Services Offered

- **Debt consolidation**
 - ***One Easy Payment!***
 - May be right in some circumstances
 - Beware of higher interest rates
 - Don't secure unsecured debts
 - Statutes of limitations may've expired
 - Must still be affordable



Services Offered

- Debt elimination



Services Offered

- **Debt elimination**
 - *claim* to make your debts disappear
 - guaranteed to make your wallet smaller
 - universally bogus



Services Offered

- **Debt negotiators, adjustors**
 - various definitions
 - statutory term in some states
 - negotiates some type of concession for you



Services Offered

- **Credit repair**
 - Often advertising hook
 - Dubious
 - Impact of settling a debt on credit report:
 - notation on tradeline that the account was settled for less than the full amount
 - will hurt the consumer's credit score.
 - definitely hurt if was not in default
 - maybe if already in default

Services Offered

- **Student loan assistance**
 - Consolidation and advice—for a fee
 - mis-state government programs as their own
 - charge for things servicer or government do for free
 - extensive misinformation



Services Offered

- **Bankruptcy**

- Used as a marketing foil
- “...bankruptcy alternative”
- “informal chapter 13”
- tactic to evade TSR?
- impact on credit varies, but for some consumers credit score can only go up

For many, bankruptcy is a much better alternative

Services Offered

- Credit counseling/education
- Debt management plan
- Debt settlement
- Debt consolidation
- Debt elimination
- Debt negotiators
- Credit repair
- Bankruptcy

Services Offered

A Poll in 2 parts

What are you seeing problems with?

(you can select more than one)

- Debt management plan
- Debt settlement
- Debt consolidation
- Debt elimination
- Debt negotiators



Services Offered

Part 2 of Poll

What are you seeing problems with?

(you can select more than one)

- Credit counseling/education
- Credit repair
- Student loan assistance
- Bankruptcy



Regulation & Causes of Action



Telemarketing Sales Rule

Applies to **Debt Relief Services**

Definition:

- any program/service
- represented/implied to
- renegotiate, settle, alter terms of an
- unsecured debt

Telemarketing Sales Rule

Rule limited to **Telemarketers**

- Telemarketing: plan/program to induce purchase of goods/services by using interstate telephone call
- Telemarketer: anyone who **makes** or **receives*** calls from consumer related to telemarketing

*the “receives” part doesn’t apply to whole telemarketing rule but does apply to debt relief services



Telemarketing Sales Rule

Exceptions

- Does not apply if sale (or payment authorized) after a face-to-face meeting
- Does not apply to ***bona fide*** non-profits



Telemarketing Sales Rule

An aside: The Attorney Model

- Face-to-face meeting exception and state law exemptions have led to the “Attorney Model”
- Advertising leads consumer to an attorney who closes the deal, sometimes in person
- Attorney does no work
- Abusing law license or acting as front



Telemarketing Sales Rule

- **No payment until results achieved**
- and consumer has made at least 1 pymt per the settlement agreement/plan
- fee must be proportional to total debt enrolled or percentage of amount saved
- (debts calculated at time of signing-up)
- no monthly service charges



Credit Repair Organizations Act

- **No payment until deliver results**
- 3-day cooling off period
- no lying to creditors or advising consumers to lie regarding credit worthiness

State Laws

- Mixed bag
- Most require licensing or registration
- Some allow only non-profits
- Some exempt non-profits, attorneys
- Some limit charges
- Others are wild west



How to Help - Remedies

- Step 1: Stop any EFT from client's accts
- Step 2: Send a letter
 - Cancel contract and any power of attorney (see state law)
 - Ask for full refund
 - Nasty letters from attorneys sometimes work



How to Help - Remedies

More ways to get relief

- Consider contacting state AG
- File a complaint on the CFPB's website
 - <http://www.consumerfinance.gov/complaint/>
 - “Other Financial Service”
- Sue them . . .



How to Help - Remedies

Causes of Action

- TSR:
 - private right of action only if minimum \$50,000 actual damages
 - injunctive relief, attorney fees to prevailing party (but fees to telemarketer are rare)
 - govt. action if pattern or practice
 - injunctive relief, damages, restitution

How to Help - Remedies

Causes of Action

- CROA:
 - non-compliance makes contract void
 - greater of actual damages or amount paid to CRO
 - punitive damages
 - attorney fees
- Check for state analogs

How to Help - Remedies

Causes of Action

- Fair Debt Collection Practices Act?
 - DRS collecting/distributing money to creditors may qualify as a debt collector
 - statutory damages and attorney fees
 - But research before making this claim



How to Help - Remedies

Causes of Action

- State UDAP statutes
 - deception is rampant in DRS industry
 - can be tool to invoke non-compliance with TSR
 - argument is that state law says failure to comply with federal regulations is a UDAP
 - check FTC cases, similar standard for UDAP under FTC Act



How to Help - Remedies

Causes of Action

- Racketeer Influenced & Corrupt Organizations Act claims (and state equiv.)
 - DRS scams often involve mail/wire fraud
 - Network of entities often involved, helps get the principles
 - treble damages and attorney fees
 - complicated claim to establish

How to Help - Remedies

Causes of Action

- Unauthorized practice of law
- Legal malpractice
 - high standard for duty to client
 - malpractice insurance may be available
- Complain to state bar officials
 - some have funds to help clients injured by attorney misconduct

How to Help - Remedies

Causes of Action

- Common law claims:
 - fraud, misrepresentation
 - breach of contract
 - breach of fiduciary duty
 - tortious interference with contract (creditors have used this one, no consumers that I'm aware of)



How to Help - Remedies

Causes of Action

- Bankruptcy & Adversary Proceeding:
 - right to void contracts
 - claw-back money paid
 - possibility of avoiding arbitration clauses
 - get control of debts – the relief client wanted in the first place

Resources

Glossary of Abbreviations

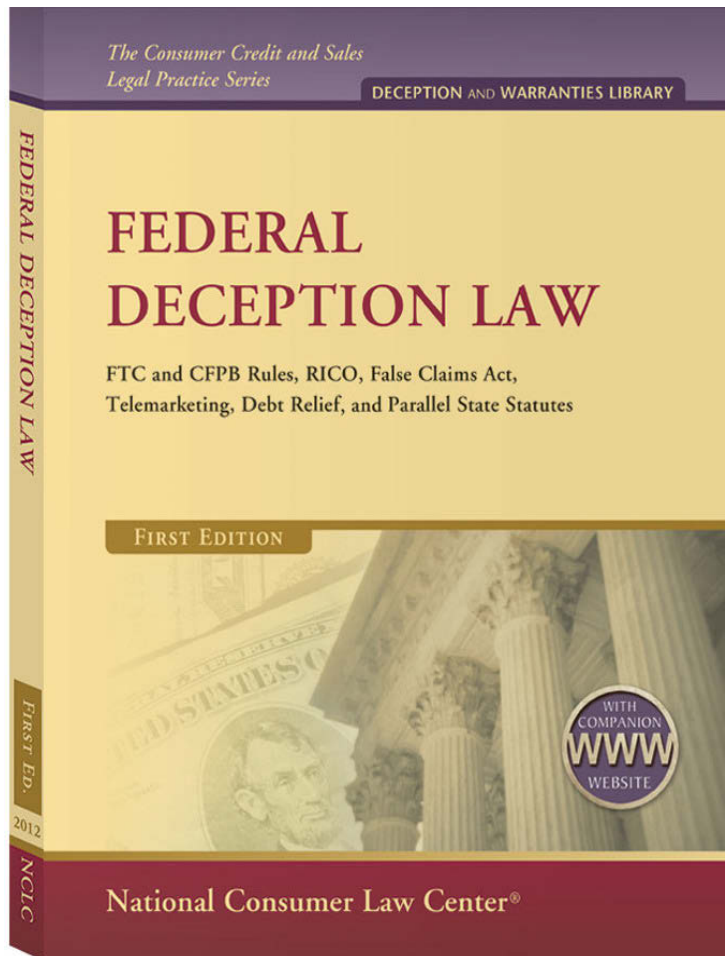
- **AG** – Attorney General
- **CFPB** – Consumer Financial Protection Bureau
- **CROA** – Credit Repair Organizations Act
 - » 15 U.S.C. §§ 1679-1679j
- **DRS** – Debt Relief Service
- **EFT** – Electronic Funds Transfer
- **FTC** – Federal Trade Commission
- **NCLC** – National Consumer Law Center
- **TSR** – Telemarketing Sales Rule
 - » 16 C.F.R. Part 310
- **UDAP** – Unfair or Deceptive Acts or Practices

Resources

- FTC.gov
 - search “debt relief services”
- NCLC manuals:
 - *Federal Deception Law* ch. 10
 - *Fair Debt Collection*
 - *Unfair & Deceptive Acts & Practices*



For More Information on
Debt Relief Service Abuses :
See NCLC's *Federal Deception Law*



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- Registration is open at www.nclc.org
- Email us your ideas for speakers and topics to trainings@nclc.org

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Next Series of Webinars



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- Please fill out the evaluation when you sign-out
- I will email you the PowerPoint and recording in a few days
- Thank you to our speakers!



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