

FREE LEGAL SEMINAR

ON

**A Guide to Debt Collection
Law for the Consumer**

October 2010

A Washoe County Law Library Community Service Program

Speaker: Geoffrey Giles, Esq.

Date: Thursday, Oct. 21, 2010

**Location: Washoe County Law Library
75 Court St.- Old Courthouse**

Time: 5:00 – 7:00 PM

*Due to limited space please sign up ahead of time by
contacting the Washoe County Law Library at*

328-3250

Debt Collection Outline

- 1) **Collection Activity by Creditors Directly**, phone calls, letters, suits.
 - a) They can call you directly. If you can pay, work it out before it goes to collection!!
 - i) Don't give them power over you.
 - ii) Make a \$5/month deal and stick to it.
 - iii) Try to convince them you are "judgment proof".
 - b) Tell them not to call.
 - i) Felony to Record Call without Permission; You Do Not Consent.
 - ii) Tell them not to call you at work; at home only, at certain times.
 - iii) Tell them you can't pay it. [special rules for medical creditors]
 - iv) Do Not Tell them you are in Bankruptcy when its not true. You can say that you've hired a lawyer.
 - v) TAXES and STUDENT LOAN are in different category.
- 2) **Collection Activity By Third Party Debt Collectors**; letters, calls, robo-calls.
 - a) Federal Fair Debt Collection Practice Act, [FDCPA]
 - i) No misleading or deceptive practices.
 - ii) Demand VALIDATION of debt.
 - iii) If you have a lawyer, they can't call any more.
 - iv) Statutory damages \$1000 and attorney fees for violations.
 - v) Tie in with Fair Credit Reporting, [no comparable state law]
 - vi) Crime to lie to BANKS, but not Collection Agencies.
 - b) State law on being licensed; NRS 649.171.
 - i) Applies to consumer and business debts [FDCPA only consumer]
 - ii) No private right of action, but it is a UDAP [NRS 598.0923]
 - iii) Complaint procedure with Nevada Dept. of Business & Industry.
- 3) **Statute of Limitations**; once expired they can't sue, but they can harrass!
 - a) The general rule is six (6) years from last payment or last charge on a credit card.
 - b) Different rule for installment payments [15 year HELOC can be as much as 21 years]
 - c) 2 year statute of limitations on cell phone bills, from last call or last payment.
 - d) "Zombie Debt" that just won't go away.
 - e) Debt-Buyers and other bottom feeders

- 4) **Real Estate Collections- Foreclosure Process- Acceleration, NOT, Sale.**
[mediation- Issues AB149- if there is time]
- a) Deed of Trust issues; [anti-deficiency as of 10/1/09- not refinanced loans]
 - i) First deed- 6 month statute of limitations on deficiencies.
 - ii) Second deed- 6 year statute of limitations on Sold Out Juniors.
 - iii) Defenses- PMSI- versus- refinance
 - 1) 598(d)
 - 2) Truth in Lending - Rescission/Recoupment (3 years)
 - 3) Fair Credit Reporting violations
 - b) Second Mortgages;
 - i) Right to Foreclose - waiver when there is no Equity
 - ii) Lawsuits are often filed- before and after foreclosure by first.
 - iii) They make deals at 20%- before they go to debt buyers.
 - c) Credit Scoring/Reporting Issues
 - i) Dispute accuracy
 - ii) Reinvestigate
 - iii) about half of the time they will go away- Don't Pay for This to any Service Provider.
 - iv) RESPA QWR, TILA- Who owns the Note. 16 USC 1641(f)(2).
 - d) **Real Estate Loan Modification-** all players need license.- FTC Proposed New Rule- interest rate reduction, principal reduction, ARM to fixed, recapitalization of arrears. Most beyond scope of this seminar.

BANKRUPTCY- THE 800 Pound Gorilla- last resort any more, not first.

BE YOUR OWN LAWYER- Don't get defaulted, seek help when you need it.

DEAL OUT COMPANIES now regulated; 16 CFR 310.