

Consumer Impact



NCLC Continues to Fight for Student Loan Justice

Attorneys with NCLC's Student Loan Borrower Assistance Project are tackling student loan reform on multiple fronts. This past April, NCLC co-sponsored *A Research Symposium on Student Loans* with Suffolk University Law School in Boston. The two-day event included 84 participants from several federal agencies, state attorney general offices, consumer and student groups, industry, the Federal Reserve, policy staff, academics, and students. Keynote speakers included Senator Elizabeth Warren and Consumer Financial Protection Bureau Student Loan Ombudsman Rohit Chopra. Topics ranged from the role of the secondary market in financing high-cost student loans and the impact of student loans on small business

Sen. Elizabeth Warren speaks at the Education Symposium, with co-organizers Suffolk University Law Professor Kathleen Engel (far left) and NCLC attorney Deanne Loonin.

formation to robo-signing by servicers and the personal experiences of student loan borrowers. "Deanne [Loonin] was the driving force behind the symposium," notes co-organizer Kathleen Engel, professor of law at Suffolk University Law School. "The collaboration between Suffolk and NCLC led to stimulating and critical conversations that are bound to lead to new policy initiatives and greater protections for student borrowers." Some

papers presented at the symposium will be featured in an upcoming issue of *Suffolk Law Review*.

Lawsuit Filed: Private Debt Collectors

Also this past spring, NCLC sued the U.S. Department of Education seeking materials related to the financial incentives and oversight that the Department provides to private companies collecting from borrowers on federal student loans. "Collection agencies routinely violate consumer protection laws and prioritize profits over borrower rights," says NCLC attorney Persis Yu. "Taxpayers and student loan borrowers

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Impact Update

State Reform on Tax Lien Foreclosures

Your Support Made a Difference!

NCLC's 2012 report *The Other Foreclosure Crisis* by attorney John Rao generated a groundswell of outrage over a predatory practice that made billions for companies while leaving elders swindled out of their homes for as little as \$400 in back property taxes. It also got the attention of *Washington Post* reporters who produced an award-winning series in fall 2013 about this national problem with a focus on Washington, D.C., – one of the worst municipalities in the

country at protecting vulnerable homeowners on this issue.

Until recently, that is. A coalition of D.C.-based advocates, led by Legal Counsel for the Elderly (LCE) Supervising Attorney Amy Mix (an Equal Justice Law Fellow at NCLC from 2001-2003), LCE Senior Attorney Joanne Savage, and Crowell & Moring law firm, pushed for change. The result? In July 2014, tax lien reform was passed by the City Council. "This ordinance provides effective solutions to many common problems with tax lien sales and is a great starting point for states considering reform of their property tax laws," says Rao.

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Consumer Impact

is a biannual publication of the National Consumer Law Center to inform our supporters about NCLC's advocacy. To receive *Consumer Impact* via e-mail, contact lmahoney@nclc.org.



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A Note From the Executive Director

Dear friends,

First, let me thank you for the work you do for consumer protection and economic justice, as well as your support of NCLC. As you read this newsletter, please congratulate yourself for our collaborative work. For example, our front page Impact Update celebrates local advocates who persuaded the City Council in Washington, D.C. to pass a law reforming tax lien sales, which were resulting in foreclosures. A 2012 report by NCLC's John Rao brought national attention to this scheme and he urges other cities and states to consider similar changes to protect vulnerable citizens.

Also in this issue, we "shine the spotlight" on Countryman Award-winner and long-time NCLC attorney Margot Saunders' work as an expert witness. Margot has teamed with some of you on cases, including on important payday lending lawsuits in Georgia and West Virginia (see page 7).

There is so much more for you to read in this newsletter and much more work which we are able to pursue with your help and support. Together, we can make sure that *all* families share in the economic opportunity in our country.

I look forward to seeing many of you at the Consumer Rights Litigation Conference in November. I leave you with a photo from last year's conference as we honored Bob Hobbs for his more than four decades of service to consumer justice. Although Bob is retiring from his role as deputy director of NCLC, I am pleased that he plans to remain involved with our community.

Sincerely,

Willard P. Ogburn, Executive Director



KOCHFOTO



23rd Consumer Rights Litigation Conference & Consumer Class Action Symposium

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VISIT TAMPA BAY

A Tribute to Mike Caines

This past Spring, we lost our dear friend Mike Caines. Mike, a supporter of NCLC, was the CEO of First Class, Inc., in Chicago, Illinois. Over the years, he worked with many members of our consumer law community to provide help and guidance in the often daunting and highly competitive world of class-action settlement administration. Mike was truly devoted to his clients and always went the extra mile to make them feel special. “Friendly.” “Helpful.” “Reliable.” “Responsive.” “Knowledgeable.” Time and time again, those were the words used to describe Mike. And, to his credit, First Class was always recommended by lawyers on both sides of a case. Mike’s humble approach, big laugh, and gentle smile will be sorely missed by his many friends and family.



Education Symposium Update...

continued from page 1

have a right to information about the impact of the Education Department’s policy of paying outside debt collectors on the rights of borrowers, and the Department should not insulate itself from public scrutiny.” At press time, NCLC had received some of the requested documents and will use the information to advance our advocacy work, including to help inform NCLC’s recent report on the Department’s disturbing use of private debt collectors. *Read the report:* tinyurl.com/ngdabp8

New Report on For-Profit Schools

NCLC also released *Ensuring Educational Integrity: Ten Steps to Improve State Oversight of For-Profit Schools* on June 18, the day before news leaked that for-profit chain Corinthian Colleges would close. Robyn Smith, NCLC attorney and author of the report, held a state advocacy briefing, and advocates in Maryland and California indicated interest in reforming their state laws. The report was also highlighted in a *New York Times* story by Pulitzer-Prize winning author Gretchen Morgenson. *Read the report:* tinyurl.com/muslfjb

Keep up with NCLC’s student loan work at:
studentloanborrowerassistance.org

Cy Pres Propels NCLC Work Forward

While assuring great outcomes for consumers, attorneys also ensure NCLC can continue our work to support consumer lawyers and their clients. Please consider NCLC for unclaimed funds from settlements.

Gross v. Symantec

Jay Edelson, Rafey Balabanian, Ben Richman, and Chandler Givens of Edelson PC directed a *cy pres* award as part of this class-action suit. The settlement resolved claims against the software developer and its subsidiaries regarding deceptive marketing and sale of certain consumer software products. The court agreed that NCLC was an appropriate recipient of the *cy pres* because it would further the goals of “increasing awareness and protections for Internet users and consumers.”

Cy Pres Donors March – July 2014

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.

Seth J. Andrews	Jason M. Leviton
David M. Arbogast	Michael Litrownik
Rafey S. Balabanian	Niall P. McCarthy
Jeffrey Berns	Alice McInerney
Timothy G. Blood	Jonathan R. Miller
O. Randolph Bragg (2)	Mark J. Moore
Brian Bromberg	Andrew Neuhauser
James Butler, Jr.	Cullin A. O’Brien
Pamela A. Car (2)	Thomas J. O’Reardon, II
Mark J. Dearman	Samuel Oates
Michael D. Donovan	William L. Reinbrecht (2)
Jay Edelson	Benjamin H. Richman
Joanne S. Faulkner (2)	Christopher A. Seeger
Francis & Mailman, PC	Gerson Smoger
Chandler R. Givens	Marc R. Stanley
Kenneth Hiller	Stephen Taylor
Leslie E. Hurst	Andrew T. Thomasson
Roger W. Kirby	Tom Urmy
Sergei Lemberg	Joel O. Wooten

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

Master Case No. C11-1985 MJP – Starbucks Consumer Litigation

Tom Urmy (Shapiro Haber & Urmy, LLP) and Jason Leviton (Block & Leviton, LLP), sued Starbucks for not disclosing that the per pound price it charged for half and quarter pound bags of “scooped” coffee beans was higher than the posted price for full pound bags of the same coffee. Starbucks stopped the practice and paid into a settlement fund the amount it had received from the improper conduct.



Jeremiah Johnson v. General Mills

Timothy G. Blood (pictured) and Thomas O’Reardon of Blood Hurst & O’Reardon, LLP settled a case against General Mills for allegedly falsely advertising “probiotic” yogurt products. Cullin A. O’Brien (Robbins Geller Rudman & Dowd LLP) was co-counsel.



Easterling v. Collecto, Inc.

Brian Bromberg (pictured), Michael Litrownik, and Jonathan R. Miller (Bromberg Law Office, P.C.) and Kenneth Hiller and Seth Andrews (Law Office of Kenneth Hiller, PLLC) represented Berlincia Easterling. The Second Circuit found that telling Easterling that her student loan debt was “ineligible for bankruptcy discharge” – because she had declared bankruptcy eight years earlier without obtaining a discharge – was false and misleading, and the letter’s capacity to discourage debtors from fully availing themselves of their legal rights rendered its misrepresentation exactly the kind of abuse that the FDCPA was designed to target. The case settled on behalf of Easterling and 181 other New Yorkers.

Northcoast Financial Services v. Hopson in Toledo (Ohio) Municipal Court

Andrew Neuhauser of Advocates for Basic Legal Equality (ABLE), along with co-counsel Jeanne Johns, Stanley Hirtle, and Priya Travassos represented plaintiffs who bought cars at a used car dealership in Fort Myers, Florida, which sold the loans to Northcoast Financial Services. Northcoast filed lawsuits against more than 200 borrowers in Toledo, Ohio, and received default judgments against many of the individuals and then began the garnishment process.

All judgments were vacated, all cases were dismissed with prejudice, all debts were considered satisfied, credit reporting agencies were notified that the debts were fully satisfied, and all plaintiffs received either half or all of the garnished money.

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In Memoriam: Mike Kinkley

Our community has lost a tremendous advocate with the recent passing of Michael Kinkley. “Mike was a passionate and committed advocate for consumer rights,” says NCLC Executive Director Will Ogburn. “We are grateful for his contributions to our community of consumer advocates and to NCLC over many, many years. He will be deeply missed.”

Mike was a trial and appellate lawyer in Spokane, Washington for more than 31 years. A graduate of Ohio State University and the Gonzaga Law School, he was admitted to practice in Washington, Idaho, and various federal courts. He successfully represented consumers in more than 30 consumer class-action lawsuits (including several million- or multimillion-dollar resolutions), in federal courts and several states, as well as numerous successful appeals.



Cy Pres...

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Henggeler v. Brumbaugh & Quandahl and *Birge v. Brumbaugh & Quandahl*

Pamela A. Car and William L. Reinbrecht (Car & Reinbrecht P.C.) and O. Randolph Bragg (Horwitz Horwitz & Associates) directed two *cy pres* awards to NCLC. These settlements arose from class-action lawsuits filed in the District of Nebraska for violations of the FDCPA and the Nebraska Consumer Protection Act by a debt collection law firm.



Jones v. Midland Funding, L.L.C., and *Jones v. Midland Funding, L.L.C.*

Joanne Faulkner (pictured) of Law Offices of Joanne S. Faulkner challenged the fair debt activities of a bank in Connecticut. The two cases held that Midland violated the FDCPA by not disclosing that the amount of the debt was accruing interest or disclosing the applicable interest rate. The court also rejected Midland's offer to consider the testimony of a lawyer as an expert witness.

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

⇒ Impact Update

Improving State Laws on Prepaid, Payroll Cards

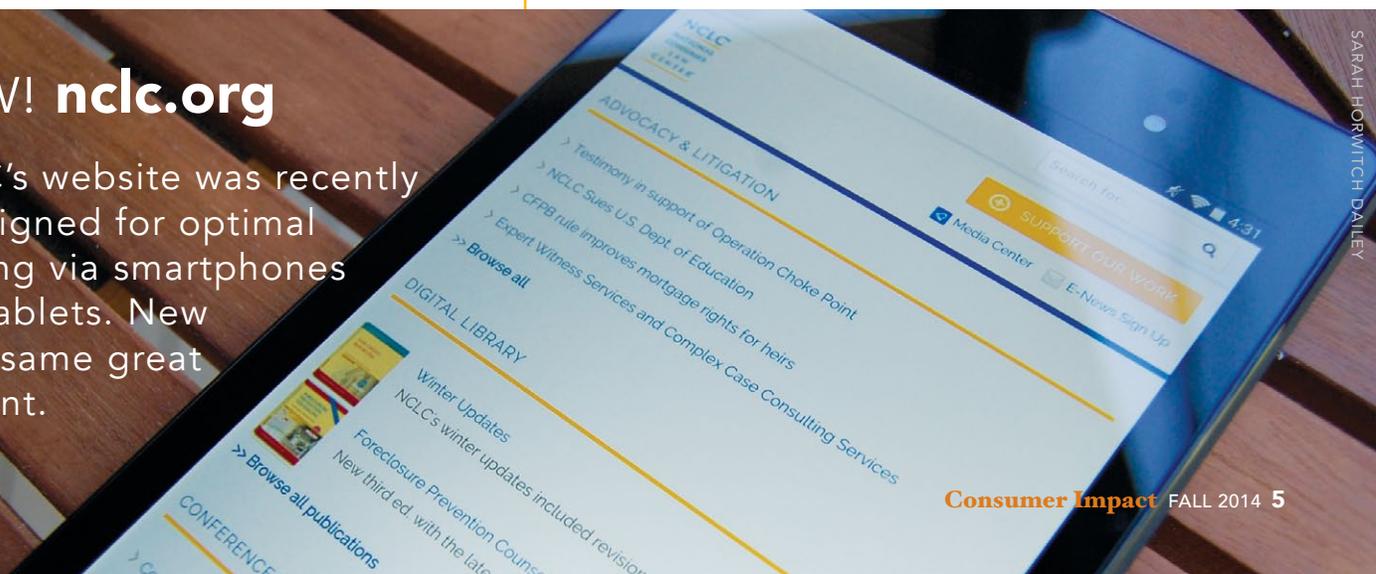
NCLC worked with local advocates for passage of two state laws that offer cutting-edge consumer protections on new banking products.

California Governor Jerry Brown signed into law (effective January 1, 2015) a bill that protects child support deposited to prepaid cards. The law applies federal law provisions to the cards, protecting recipient parents from unauthorized charges and prohibiting overdraft fees. NCLC was a sponsor of AB 2252 and worked closely with the Western Center on Law & Poverty for successful passage.

Illinois Attorney General Lisa Madigan supported a bill that has resulted in the strongest law in the nation to advance protections for workers receiving wages via payroll cards. NCLC's Lauren Saunders' expertise in payroll cards and knowledge of the industry helped local allies to improve an already strong bill. The law makes payroll cards voluntary and allows employees to access their wages without fees, including banning fees for declined transactions and overdrafts.

NEW! nclc.org

NCLC's website was recently redesigned for optimal viewing via smartphones and tablets. New look; same great content.



Notable Mentions

APPOINTED to NCLC's Board of Directors: **Latryna Carlton** and **David Vladeck** (pictured). Carlton is a board member at Florida Rural Legal Services, founding member and board member of the Florida Equal Justice Center, president and founder of the community-based Committed Citizens of Waverly (Florida), and an Internal Revenue Service VITA Site Coordinator. Vladeck is a professor of law at Georgetown University Law Center and former director of the Bureau of Consumer Protection at the Federal Trade Commission.



BEVERLIE SOPIEP

AWARDED to NCLC attorney **Olivia Wein**: The Sister Pat Kelley Award, which is the National Energy and Utility Affordability Conference's highest honor given to an individual for commitment to low-income households.

LEFT NCLC to become managing attorney in the Office of Regulations at the Consumer Financial Protection Bureau specializing in mortgage issues: **Diane Thompson**.

HIRED to advance NCLC's advocacy:



Chantal Hernandez will join NCLC as a full-time staff attorney, effective January 2015. Currently she is a staff attorney with the Foreclosure Prevention Project of MFY Legal Services, Inc. in New York. During law school, she was an intern for the Federal

Trade Commission and U.S. Department of Justice and also represented low-income clients at the Janet R. Spragens Federal Tax Clinic in Washington, D.C.



April Kuehnoff is a full-time staff attorney who most recently represented consumers for Shapiro Haber & Urmy, LLP in Boston on ERISA, consumers, and securities class-action cases. Her background also includes working as a Skirnick Public

Interest Fellow for Cambridge & Somerville (Massachusetts) Legal Services and as a law clerk for the Honorable Justice Gary Katzmann of the Massachusetts Appeals Court.

David Seligman is a full-time staff attorney. Previously, he worked at NCLC as an Irving Kaufman Fellow and served as a law clerk for Judges Robert D. Sack and Susan L. Carney of the U.S. Court of Appeals for the Second Circuit and Judge Patti B. Saris of the U.S. District Court for the District of Massachusetts.



BEVERLIE SOPIEP

Sarah Bolling Mancini has joined NCLC as of counsel. She works half-time for NCLC focusing on foreclosures and mortgage lending, and half-time as an attorney in the Home Defense Program of Atlanta Legal Aid. She represents homeowners in bankruptcy cases and has litigation experience in state, federal district, and bankruptcy courts. She also clerked for the Honorable Amy Totenberg, U.S. District Court for the Northern District of Georgia.

Elizabeth Renuart returns to NCLC in an of counsel role. Her work at NCLC focuses on our legal treatises and on expert witness and consulting projects. Previously, she was an associate professor of law at Albany Law School, staff attorney at NCLC from 1996-2009, and a member of the Consumer Advisor Council to the Federal Reserve. She also practiced law as a legal-services attorney in Georgia and Maryland for nearly two decades.

Robyn Smith is half-time of counsel to NCLC, concentrating on student loan and for-profit school issues. She also works half-time on these issues as a staff attorney at the Legal Aid Foundation of Los Angeles. Previously, she was a supervising deputy attorney general in the Consumer Law Section of the California Attorney General's office, the directing attorney of the Consumer Law Project at Public Counsel in Los Angeles and was a managing attorney for the Legal Aid Society of Hawaii.

LEARNING & ASSISTING NCLC's consumer law and advocacy: Thank you to the following students and recent graduates for their help over this past year. **Matthew Brooks** (Boston College Law School) from January-April 2014, **Miche Jean** (Suffolk University Law Intern) from January-April 2014, **Martin Menezes** (Georgetown University Law Center Entry into Practice Fellow) from June-August 2014, and **Annie Chan** (Emory University Law Fellow) November 2013-October 2014, and to NCLC's summer legal interns (pictured, l to r): **Nigel Mustapha** (Columbia Law School), **Jasmine Gomez** (Boston University School of Law), **Rebecca Chang** (Harvard Law School), **Francesca Procaccini** (Harvard Law School), and **Tiffany Johnson** (Suffolk University Law School).



BEVERLIE SOPIEP

ADVOCATE SPOTLIGHT **Margot Saunders**

Saunders initiated NCLC's expert witness program in 2005 after serving as the managing attorney in our Washington, D.C. office for 14 years. She also does consulting on complex legal cases as part of her advocacy work at NCLC.

Q: Why was NCLC's expert witness and consulting program launched?

A: There is a real need for expert witnesses to assist attorneys representing consumers in consumer finance litigation, as a myriad of federal and state laws and regulations, as well as industry standards are generally implicated. Evaluating which are applicable is often complicated. NCLC attorneys have a thorough understanding of these complexities, as well as the expertise to build spreadsheets and to provide credit math analyses.

Q: How has NCLC's expert witness program changed over the years?

A: In 2005, I was the only attorney at NCLC doing expert witness work. Now, several other NCLC attorneys also participate. Initially, almost all our cases were mortgage origination claims; then, for several years, I was doing

almost all small loan, payday loan, and auto finance cases. Now there's a mix.

Q: What do you consider before taking a case?

A: NCLC turns down ten cases for every one that we accept. When evaluating a case, we try to ensure that the claims can be substantiated with the facts, that the consumer has been actually harmed, and that we can provide an opinion that will be supportive and truthful. We also do not take cases in which the consumer is paying the fees. We need to see counsel invested in the case and knowledgeable about how to use experts effectively.

Q: Any particular cases that you'd like to mention?

A: I've been fortunate to have been involved in several cases which

"After nine years of litigation (and nine separate appeals) Margot's skill, background, intellect, and ability to do consumer math (and effectively explain what it means) served as the "missing link" we needed to prove our case [Greene v. Cash America]. Margot's work was an integral part of the payday lender's agreement to refund up to \$36 million to Georgia consumers."

—Attorney John Bevis
Barnes Law Group, Marietta, GA



advanced the law for consumers. In West Virginia, the Attorney General's (AG) office litigated a case against CashCall, a California lender. The AG maintained that CashCall's high rate loans violated the state's usury cap. It was a David versus Goliath situation; CashCall had considerable resources. My job was to interpret the contract between CashCall and the bank that was ostensibly the lender (framed in this way to avoid state usury limits). The AG's office won a terrific victory for consumers, recently affirmed by the West Virginia Supreme Court. In another recent class-action case in Georgia against a payday lender – *Greene v. Cash America* – I did the same kind of analysis, but added a spreadsheet showing the flow of money between the bank and Cash America.

For more information about NCLC's expert witness and consulting services, visit: tinyurl.com/n5tzbfd

Behind the Scenes: Debt Collection Reform *Advocacy Campaign Moves Forward with Your Support*

Anticipation is building! The Consumer Financial Protection Bureau (CFPB) is expected to release proposed rules for overseeing debt collection by late 2014. The CFPB requested input earlier this year and Margot Saunders spearheaded NCLC's extensive comments (nearly 200 pages long!). Saunders led meetings between advocates and the CFPB staff numerous times to discuss NCLC's suggested recommendations for reform. She also met with

representatives of large debt collectors to discuss potential areas of agreement. NCLC's recommendations include several innovative points that, if adopted, would provide considerably more protections for consumers in collections' situations. "This advocacy depends heavily on my close work with other NCLC attorneys as well as the expert consumer attorneys in the field," she says. Read NCLC's comments to the CFPB: tinyurl.com/mskc2xu

Maine Adopts Law to Help Low-Income Utility Customers

Kudos to the Pine Tree State for requiring utility companies to adopt arrearage management programs (AMPs), which are incentive programs that provide relief for low-income utility customers with significantly overdue utility bills.

On May 28, 2014, the Maine Utilities Commission published a “Notice of Inquiry” seeking comments on the rules it needs to adopt to implement AMPs. The notice suggests that commenters review the AMP programs in Massachusetts (in which NCLC

attorney Charlie Harak and Senior Energy Analyst John Howat have been deeply involved) and included a link for utilities to review NCLC’s September 2013 report written by Harak. *Read the report:* nclc.org/amp-report

Washington, D.C. Tax Lien Overhaul

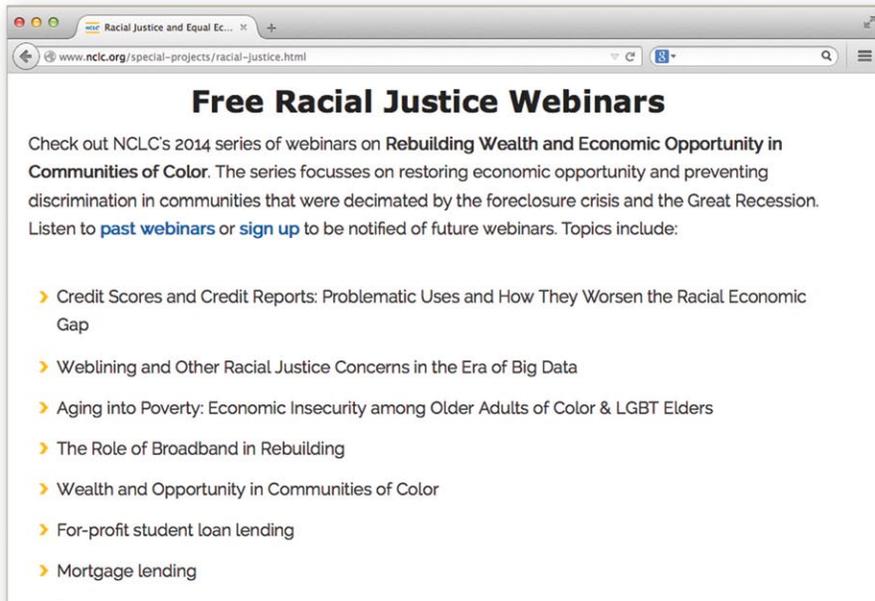
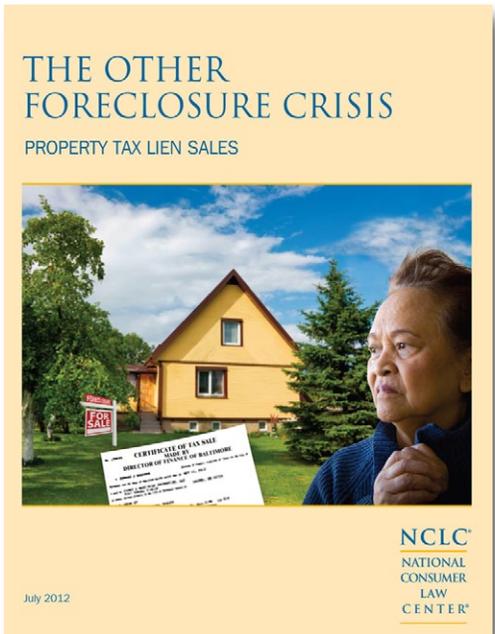
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Some of the key reforms:

- improves pre-and post-tax sale notices to affected property owners;
- creates an ombudsman office to assist owner-occupants to help avoid the tax sale and foreclosure;
- ensures that tax liability must exceed \$2,500 before a home can be sold;
- helps property owners avoid the sale by allowing a potential one year forbearance and allowing elders to defer past year’s taxes into a tax deferral program; and
- creates a cap on purchaser attorneys’ fees and elimination of an equity windfall to purchasers so homeowners may retain some accumulated equity.

Rao worked with the *Washington Post* reporters as well as with a journalist who wrote an article in the *Texas Observer* about tax lien problems in that state, published this past July. *Read the report:* tinyurl.com/mcbzrzu

Your support allows NCLC to work on important policy issues in states and cities around the nation. *Thank you!*



NCLC’s 2014 Racial Justice Webinar Series

Listen as experts discuss hot consumer topics through a racial justice lens.

Don’t Miss Out! Sign up to learn about upcoming **free** webinars: tinyurl.com/lvp8puu

Planned Giving: Your Legacy and NCLC

Put your passion into future action! NCLC has launched a Planned Giving program that enables friends and supporters to consider NCLC when developing their estate plans.

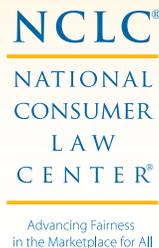
Some colleagues in legal services and private practice have let us know that their estate plans include one or more gifts to advance our work in the future but have wanted to keep their plans private. We recently heard from our good friend Mike Greenfield, who is the George Alexander Madill Professor of Contracts and Commercial Law at Washington University in St. Louis, about his intention to make NCLC a beneficiary of his estate to fund summer internships at NCLC. He kindly allowed us to share this information so others might join him in making an estate gift.

You have worked and we have worked together on such an important mission. Do you know you can continue to ensure that the mission continues in perpetuity? If it is appropriate to include NCLC in your estate plans, we can help you determine ways to comfortably direct a portion of it to sustain NCLC's essential work. Your gift can provide general support or be targeted to a specific aspect of our work that you care about. Please contact Jerry Tuckman with questions at (617) 542-8010 or gtuckman@nclc.org.

"Please join me in leaving a legacy for consumer justice."



—Mike Greenfield, George Alexander Madill Professor of Contracts and Commercial Law at Washington University, St. Louis, Missouri



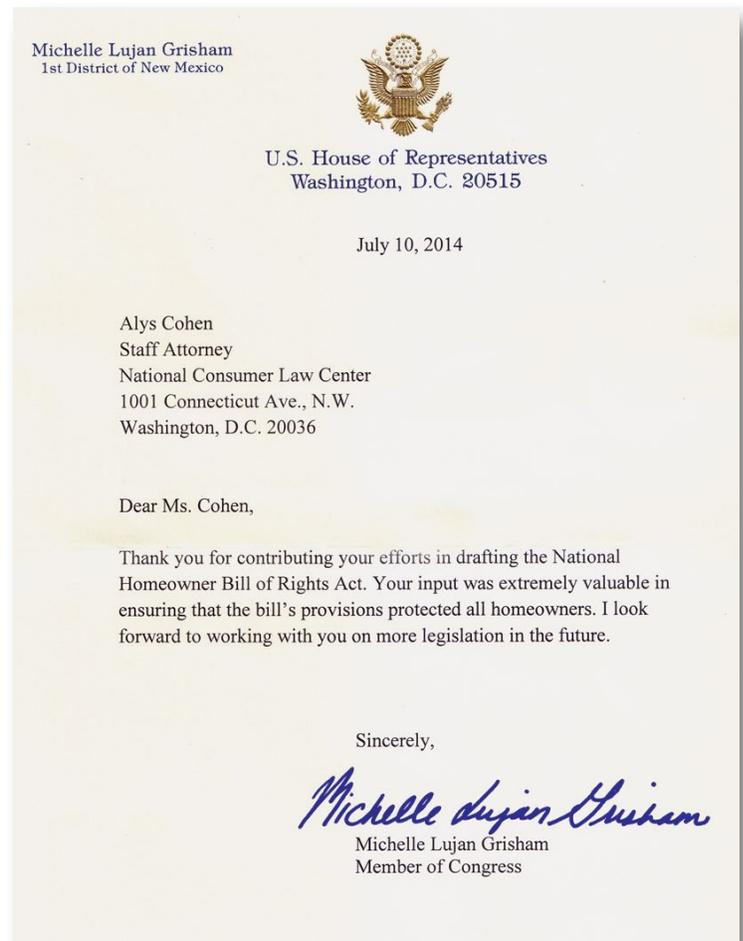
With a bequest or similar charitable planning arrangement, many of which feature tax and financial benefits, you can give back by supporting the National Consumer Law Center.

➡ Impact Update

Reining in Pension Advance Scams

In July 2014, the U.S. Govt. Accountability Office (GAO) report *Pension Advance Transactions: Questionable Business Practices Questioned* was publicly released with references to NCLC's 2003 report *In Harm's Way at Home* and 2012 comments to the CFPB regarding pension advances. Last year, the GAO contacted NCLC Director of Litigation Stuart Rossman after he was quoted in a story that ran in a publication for active and retired federal workers warning them of the scams. The GAO made several recommendations to the CFPB and Federal Trade Commission (FTC) on how they could better protect consumers through improved oversight and enforcement. Both agencies agreed with most of the GAO recommendations and the CFPB noted that currently it is "examining potentially improper practices in this area." The director of the FTC's Bureau of Consumer Protection noted that she also shared GAO's concerns and "has directed staff to review the industry and its practices, and, if warranted, to take appropriate law-enforcement action." *Learn more online:* *In Harm's Way at Home:* tinyurl.com/6m9r92f; Comments to the CFPB: tinyurl.com/lfwrbma; GAO report: gao.gov/products/GAO-14-420

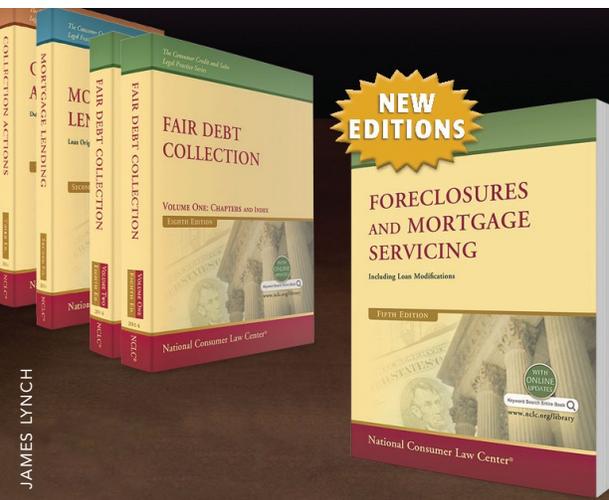
Letter of Appreciation



Hot Off the Press

NCLC is pleased to present four new revised editions: *Mortgage Lending, Collection Actions, Fair Debt Collection and Foreclosures and Mortgage Servicing*. Whether a new lawyer or seasoned veteran, NCLC treatises will help keep you on top of the latest developments with expert analysis and an extensive study of state and federal statutes. Our treatises come with unique online material: hard-to-find agency letters, sample complaints, discovery requests, trial documents, and more.

Visit nclc.org/shop for more information and to order your copies today!



“National Consumer Law Center materials are among the most popular sources in our Collection. Whether they represent sellers and lenders or buyers and borrowers, our attorney members keep consulting them because they know they will find answers to their questions in these thoroughly researched and clearly written manuals.”

—Brian Harkins, Supervisor of Reference Services, Social Law Library

Thank You!

We appreciate the contributions made between August 1, 2013 and July 31, 2014 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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