Debt Relief Services Aren't Just for Kids Anymore

Andrew Pizor, Staff Attorney at the National Consumer Law Center

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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

Median Value of Unsecured Debt for Households Age 65+
Many seniors are buried in debt.

Nearly 4 in 10 seniors carry a mortgage, almost double the rate in the mid-1 Security benefits, indebted seniors face a squeeze.

Debt consumes senior citizens in retirement

For Older Americans, a Deepening Debt Problem

Get There

More seniors are carrying student loan debt into retirement
So Who Ya Gonna Call?

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
  – “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
• **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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- Upcoming elder rights webinars on May 27th and 28th
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Next Series of Webinars

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Just a Reminder

• 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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