

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR



[Gary Groon](#) is a partner in the firm and member of the firm's creditors' rights section. He is a certified Creditors' Rights Specialist and concentrates his practice in the areas of debt collection and civil litigation. A member of the [Million Dollar Advocates Forum®](#), [The Top Trial Lawyers in America®](#), Gary represents national and local businesses in collection matters throughout North Carolina. Gary speaks several times each year at seminars on collection law and enforcement of judgments. He has been featured as a speaker at educational programs sponsored by Heritage Professional Education, Lorman Education Services, and National Business Institute.

## Creditors Be Aware: Accord and Satisfaction in North Carolina

May 30, 2014 | by

Many creditors have experienced situations where it was nothing short of a battle to get a customer to pay an outstanding invoice. Therefore, it is understandable why creditors race to deposit monies received from past due invoices as quickly as possible.

### What creditors need to know before cashing that check

Prior to depositing these payments, creditors need to ensure there is no restrictive or limiting language on the check or any correspondence accompanying the check. A payment that contains language indicating that the payment is tendered as settlement in full, or some language to that effect, may impact the creditor's ability to pursue any remaining balance—due to a legal concept in North Carolina known as *accord and satisfaction*.

*Accord and satisfaction* is essentially an informal method of dispute resolution affected by use of a negotiable instrument. In order for there to be an *accord and satisfaction* there must first be a bona fide dispute between two parties. When one of those parties subsequently sends the other a check clearly purporting to be in full settlement of the disputed claim, and the other knowingly accepts it, this will amount to an *accord and satisfaction*—a finding that typically precludes further action on the debt.

More specifically, N.C.G.S. ' 25-3-311 states that the cashing of a check is considered satisfaction of a claim if:

1. Check is tendered in good faith
2. Amount submitted is subject to a bona fide dispute
3. Check contains a conspicuous statement that the check is being tendered as full satisfaction of the claim.

However, there are some limitations as to what can constitute an *accord and satisfaction*.

Creditors process a significant number of payments on a daily basis. Personnel

processing those checks may not be aware that the check is being tendered as payment in full and may process the check without the knowledge or consent of the creditor. N.C.G.S. ' 25-3-311(c)(1) is designed to prevent companies from accidentally entering into an *accord and satisfaction*. For example, an *accord and satisfaction* would not result in situations where a customer willfully ignores prior notice from the Creditor about where to submit payments in full, and instead sends their "payment in full" to a non-designated payment processing center where it is subsequently processed.

It's important to note there are no provisions in North Carolina that allow the creditor to circumvent an *accord and satisfaction* by striking through the 'paid in full' language on the check or by a writing on the check that the check is being deposited without prejudice. However, *accord and satisfaction* is an affirmative defense and as a result, failure by the Defendant to raise *accord and satisfaction* as an affirmative defense results in a waiver of that defense.

*If you have questions or concerns about this issue or other legal matters, please contact Smith Debnam attorney Gary Groon at [ggroon@smithdebnamlaw.com](mailto:ggroon@smithdebnamlaw.com).*

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#### CONTACT US

919.250.2000  
[mail@smithdebnamlaw.com](mailto:mail@smithdebnamlaw.com)

#### RALEIGH OFFICE

The Landmark Center  
4601 Six Forks Road, Suite 400  
Raleigh, NC 27609  
  
Phone: 919.250.2000  
Fax: 919.250.2100

#### CHARLESTON OFFICE

171 Church Street  
Suite 120C  
Charleston, SC 29401  
  
Phone: 843.714.2530  
Fax: 843.714.2541