

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[Caren Enloe](#) leads Smith Debnam's consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

North Carolina Provides Some Clarification and Relief on Debt Collection

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In a move that provides clarification and more consistency with the FDCPA but widens the gap as to the treatment of collection agencies and non-collection agency debt collectors, North Carolina has modified its Debt Collection Act (the "NCDCA") to conform more closely to the FDCPA regarding third party communications.

North Carolina has a bifurcated statutory scheme regarding its collection statutes. Chapter 58 of the North Carolina General Statutes regulates the collection efforts of collection agencies and debt buyers. Chapter 75 of the General Statutes regulates all others engaged in debt collection, including original creditors. The modifications to the statute, which were enacted on August 5, 2015, and took effect immediately, apply to Chapter 75 only and serve to clarify what is appropriate regarding contact with third parties.

As things stand now, third party communication rules in North Carolina are as follows:

FOR COLLECTION AGENCIES/DEBT BUYERS:

The third party contact rules are codified in the North Carolina Collection Agency Act (the "NCCAA") at N.C.G.S. §58-70-105 and prohibit communication with any person other than the debtor or his attorney except:

- With the permission of the debtor or his attorney;
- To persons employed by the collection agency, to a credit reporting agency, to a person or business employed to collect the debt on behalf of the creditor, or to a person who makes a legitimate request for the information;
- To the spouse (or one who stands in place of the spouse) of the debtor, or to the parent or guardian of the debtor if the debtor is a minor;
- For the sole purpose of locating the debtor, if no indication of indebtedness is made; and
- Through legal process.

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

Collection agencies and debt buyers operating in North Carolina should be aware that the NCCAA applies not only to the collection of consumer debt but also to the collection of commercial debt.

FOR OTHERS INCLUDING ORIGINAL CREDITORS:

Unlike the NCCAA, the NCDCA only applies to consumer debt defined as being any debt incurred for personal, family, household, or agricultural purposes. The third party contact rules are codified at N.C.G.S. §75-53. As amended, debt collectors (which include original creditors) are prohibited from communicating with any person other than the debtor or his attorney except:

- To designated third parties with written permission of the debtor or his attorney;
- To persons employed by the debt collector, to a credit reporting agency, to a third party employed to collect the debt on behalf of the creditor or a person who makes a legitimate request for the information;
- To the spouse (or one who stands in place of the spouse), or to the parent or guardian of the debtor if the debtor is a minor and lives in the same household with the parent;
- For the purposes of location information about the debt as long as no indication of the indebtedness is made.

There are three key amendments to the statute specific to third party communications:

- Contact to third parties is permissible where the debtor or his attorney provides written permission. *Written permission can now be provided prior to default.*
- *A bona fide error defense is now available with respect to communications to parents, guardians and spouses.* As amended, the statute provides that if the debt collector has a good faith belief that the communication to the spouse, parent or guardian is within the exception set forth above, the communication shall not be in violation of the exception. Creditors should be aware, however, that if the debtor is no longer a minor, the good faith exception as to parental contact is not likely to apply.
- *The amendment also sets forth the acceptable scope and frequency of location information communications.* The amendments:
 - Prohibit disclosure of the debt;
 - Require the debt collection to “identify himself or herself, state that he or she is attempting to confirm or correct location information about the debtor, and, only if expressly requested to do so, identify his or her employer;
 - Prohibit stating that the debtor owes a debt;
 - Prohibit communication with any particular person more than once a week or a total of three times during any 30 day period unless requested to do so by the person.

The statute additionally provides clarification that under the NCCAA, creditors and other

non-collection agency/debt buyer debt collectors are allowed to collect their filing fees and other court costs.

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