

# What We Know

## NEWS

### ABOUT THE AUTHOR



[Frank Drake](#) has more than 30 years of legal experience, with a concentration in bankruptcy and commercial litigation. Frank represents credit unions, banking and financial institutions, consumer and commercial lenders, and student loan agencies. Frank has taught classes on bankruptcy and commercial law for various Bankers Associations as well as the National Association of State-Chartered Credit Union Supervisors and various states' Credit Union Leagues.

## Frank Drake speaks to Maryland and DC Credit Union Association

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Sarah Snell Cooke, editor-in-chief of [Credit Union Times](#), posted this article covering [Frank Drake's](#) presentation entitled "[Foreclosure Games Debtors Play, Problems With SMCRA](#)" at the [Maryland and DC Credit Union Association's](#) Annual Meeting in Ocean City, MD.

Debtors and their lawyers are exhibiting greater gamesmanship with current regulations affecting collections and foreclosures, Franklin Drake explained during the Maryland & D.C. Credit Union Association's [annual meeting](#) last week.

The first thing a bankruptcy lawyer will request is the note, which credit unions typically don't have a problem with because credit unions typically don't sell their loans. However when it comes to the "qualified written request," it can be a whole other ball of wax, said Drake with the Raleigh, N.C., law firm of Smith Debnam Narron Drake Saintsing and Myers.

With a QWR, a credit union must produce a comprehensive payment history of the account from "day-one, dollar-one." When a credit union takes over another in a merger or assumes a loan, problems can occur in producing a clear and complete payment history because of problems with antiquated operating systems or other reasons.

The fine for an incomplete history is \$1,000 per omission, according to Drake, and debtors are using those fines to make the back payments. That problem can also spread like wildfire on listservs, he warned.

And when redactions are necessary, black it out on "20<sup>th</sup> Century treeware," Drake advised. Some might try to do so electronically but then the boxes are stripped out in PDF'ing a file, he said.

One widespread violation in debt collection occurs under the Service Members' Civil Relief Act. The law requires lenders to affirmatively state a debtor is or is not on active duty in the military. If they do not, they are in violation of SMCRA and, following a 2010 update, consumers can sue for this technical violation.

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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, North Carolina 27609

Phone: 919.250.2000

Fax: 919.250.2100

COLUMBIA OFFICE

1720 Main St.,  
Suite 104  
Columbia, SC 29201

Phone: 864.751.5523

Fax: 888.784.2250