

## Debt Adjusting

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Whether economic times are good or bad, there is never any shortage of people ready to pick your pocket. When times are tough, hucksters target people who are already hurting. Many of these “kick ‘em while they’re down” schemes are familiar: promises to make a fortune by working at home a few hours a day, promises to remove derogatory but accurate information from a credit report, promises to find you a loan in exchange for an up-front fee, and of course, the sale of products with that “easy monthly payment” stretching from now to eternity. Be wary as well of debt adjusting, a practice so closely associated with deception and fraud that – except in very narrow circumstances – it has been illegal in North Carolina since 1963 [NC Gen Stat 14-423].

**What is debt adjusting?** Debt adjusting occurs whenever a consumer hires someone to negotiate with their creditors to settle, reduce, or otherwise alter the terms of the payment of the debt. The use of a so called debt adjustment business to gouge consumers is such a problem that North Carolina and seventeen other states have gone so far as to make the practice illegal. Of course, you won’t see any storefront signs or advertisements for “debt adjusters;” instead, the business will call itself “credit counseling” or “debt management” or “debt solutions” or some such benign sounding name. However, if they take a fee for negotiating with your creditors, they are engaging in debt adjustment and in fact committing a crime in this state- unless they fall within an exception.

**What Problems are Associated with Debt Adjusting?** Other than the fact that the practice is illegal, there are many other problems associated with debt adjustment. First, the debt adjuster may use the bait and switch, advertising a very low interest consolidation loan and then telling any who inquire that they don’t qualify, funneling them instead to debt adjustment services.

The debt adjuster may tell you to ignore your creditors, which is likely to result in penalties and interest, liability for opposing party attorney fees, and even property repossession and adverse court judgements. Further, the debt adjuster’s sales pitch may include promises that are impossible to keep, such as reducing your debt with creditors that have a policy of refusing to settle for less than the full amount of the debt. The debt adjuster may promise to reduce your debt by some large percent, which rarely if ever comes true. The debt adjuster may falsely claim to be a non-profit agency, may extract fees without telling the consumer, or may mislead the consumer to believe that the fees are going to pay down creditors and not to the debt adjuster’s pockets.

Nor does the debt adjuster perform this service for free. The debt adjuster is likely to extract a large fee. Further, a reduction in debt is considered income on which tax must be paid. Thus, the fees, adverse judgements, increased costs, and taxes may significantly reduce or even entirely wipe out the benefit of any debt reduction achieved.

**Legal Action Against Debt Adjusters.** The North Carolina Attorney General has successfully taken enforcement actions against debt adjusters, as has the Consumer Finance Protection Bureau (CFPB). For example, on July 9, 2019, the CFPB settled a claim against Freedom Debt Relief, in which the defendant agreed to pay \$20 million restitution and a \$5 million penalty. The Bureau alleged that Freedom Debt Relief charged consumers without settling debts as promised, charged consumers who settled their own debts with creditors, misled consumers about its fees, and misled consumers about its ability to reduce debts through negotiation.

**Exceptions Authorizing Debt Adjustment in NC.** The North Carolina exceptions in which debt adjustment is authorized are listed below, and most are common sense. A regular, full time employee of the debtor can adjust his employer's debts; a court can authorize debt adjustment; creditors can settle their own debts; at no cost to the debtor, creditors can hire agents to settle their debts; lenders can provide a loan to the debtor and at the debtor's request and, without compensation, distribute loan proceeds to the debtor's creditors; a person not regularly engaged in the business of debt adjustment may, for a fee, occasionally adjust debts; and attorneys licensed to practice in North Carolina may engage in debt adjustment in this state.

**Exploitation of Exceptions.** Some of these exceptions have been exploited by debt adjusters in an attempt to evade NC law. For example, you may see an advertisement posted by an attorney advising that he can assist with your debt issues. However, when the consumer inquires, they never speak to the attorney and instead are funneled to an independent debt adjustment firm. The consumer thinks he is getting legal services from an attorney and instead gets debt adjustment services from a non-attorney. Attorneys engaging in such deception may be disciplined by the North Carolina State Bar.

**Lawful Credit Counselling.** Credit counseling agencies may lawfully engage in debt adjustment, but only if they do not charge more than forty dollars, they do not require the purchase of any additional products, and they are accredited by an organization authorized by the North Carolina Commissioner of Banks. In addition, prior to the initiation of any payment plan (which must be in writing) the agency must conduct a free, individualized financial assessment and prepare a suitable plan for the payment of outstanding debts.

**Assistance Available.** According to the Attorney General, consumers who wish to locate a reputable, authorized credit counseling agency should contact the National Foundation for Credit Counseling at 1-800-388-2227 (on line at [www.nfcc.org](http://www.nfcc.org) ). Military members and their dependents should also consider the free resources provided by the Navy and Marine Corps Relief Society, and the MCCS Financial Counselors. Military legal assistance attorneys can help victims of fraud.

**Complain!** Consumers or others who believe they may have discovered an unlawful debt adjustment business are encourage to notify their chain of command, the installation Inspector, a legal assistance attorney. Victims are particularly encouraged to make an on line complaint to the North Carolina Attorney General and to the CFPB.

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