

DISPUTES ABOUT MOTOR VEHICLE REPAIRS

You have legal rights when a mechanic or repair shop does work on your car, truck, motorcycle, van, or SUV (vehicle). If you have a dispute with the mechanic or shop, you may file a civil court case when

- you paid for maintenance, repairs, rebuilding, restoring, body work, painting, etc.;
- the work was not done, or was not done correctly;
- the mechanic or shop refuses to fix the problem; and
- you seek compensation.

► **Civil court.** If the amount of money that you seek is \$10,000 or more, you must file your case in district court. You have the right to represent yourself but it is wise to hire a lawyer.

If you seek up to \$5000, in most North Carolina counties you may file a small claim case. In some counties, the small claim limit is \$10,000. You must file a small claim case in the county where the mechanic or shop is located. Ask the Clerk of Court in that county about the small claim limit.

A Guide to Small Claims Court is available for free from the Clerk and is on the internet at <http://www.legalaidnc.org/public/Learn/publications/small-claims/default.aspx>.

► **Parties.** In the civil court case, you are the *plaintiff*. The other party is the *defendant*.

► **Money damages.** The compensation, or *money damages* that you may seek include court costs, legal fees, and the following.

- A *refund* of what you paid if no work was done, or the work was not done correctly;
- *Damages*, if the vehicle was harmed or parts were taken and not replaced;
- *Compensation for loss of use* of your vehicle, if you had no loaner for an *unreasonable* amount of time.
- *Other expenses* that you paid, such as costs for renting a vehicle, bus fare, etc.

If you file a small claim case

The *Guide* has forms and instructions about how to file a small claim action. You may complete and file a *Complaint for Money Owed*. Use black ink and print clearly.

Principal Amount Owed: write the amount of the *money damages*.

Other. In the large space beside the word *Other*, state why the mechanic or shop owes you money. *Example*: Defendant and I agreed that I would pay for repairs. The work was not done correctly or as we agreed. Defendant will not correct the problem or give back my truck.

► **Evidence.** You must give the court proof of several things, including the following.

- Proof of the agreement you had with the mechanic or shop.

Your evidence may be anything written that refers to the agreement, or it may be witness testimony, or your own testimony. A written repair estimate is the best evidence.

- Proof that the work was not done as agreed, or was not done correctly.

A respected mechanic must testify at court about checking the car, and what was wrong.

- Proof of the money damages that you ask for.

The mechanic may also testify about the cost of repairs that should have been done.

If you seek damages for *loss of use*, you should get at least two written statements from rental businesses as proof of the cost to rent a vehicle that is similar to yours.

The North Carolina Vehicle Repair Act

► **Written invoice.** A repair shop or mechanic must give you a written statement of the work that is done, the labor, the parts, and the merchandise that were used, and the costs for each. If any parts that you paid for were used, rebuilt, or reconditioned, the invoice must state that.

Written invoice is not required. When a third party tells the shop or mechanic that you will not be charged because the work is covered by a service contract, a mechanical breakdown contract, or a manufacturer's warranty, a written invoice is not required.

► **Cost for estimates.** You should always get a written estimate for work. A mechanic or shop may charge you for an estimate. If there is a cost for the estimate, the mechanic or shop must

- tell you in advance;
- get your written permission to prepare the estimate; and
- tell you whether the estimated cost is only for diagnostic work

► **Cancelling the work.** You have the right to cancel the work if the cost will be more than what was stated in a written repair estimate. You may give permission for your car to be put back the way it was. If you give permission, the mechanic or shop must do that and can charge you for that. The mechanic or shop may charge you for work that you authorized before you withdrew your permission.

► **Written estimates.** The law requires a mechanic or shop to give you a written estimate for work that costs more than \$350, unless the mechanic or shop does not agree to do the work. The \$350 includes costs for diagnostic work, parts, labor, teardown, supplies, and taxes. You must get the written estimate *before* any work is done.

The written information must state the following:

- whether there is any daily storage cost after work or diagnostics are done;
- your right to keep and inspect parts that are removed from your vehicle;
- that charges will be more than 10% above the estimated cost

When a written estimate is required, the shop or mechanic can charge you the estimated cost as stated here, *plus* 10%. If you pay that, the mechanic or shop cannot refuse to give back your vehicle.

► **Prohibited by law.** The law does not allow mechanics and shops to do the following.

- Charge for repairs that you did not authorize.
- Pretend that repairs have been made to a motor vehicle.
- Pretend that certain parts and repairs are necessary to repair a vehicle.
- Pretend that your vehicle is in a dangerous condition or that your continued use of the vehicle may be harmful or cause great damage to the vehicle.
- Fraudulently change the contract, estimate, invoice, or other document.
- Fraudulently use your credit card.
- Make or authorize any written or oral statement which is untrue, deceptive, or misleading, and which is known, or should be known to be untrue, deceptive, or misleading.
- Make false promises that are likely to persuade you to authorize repairs, service, or maintenance work.
- Use rebuilt, salvaged, used, or straightened parts for new replacement parts without notice, if the cost of repair will be paid due to an insurance policy, and if you have told the mechanic or shop about who insures you.
- Cause or allow you to sign a work order that does not state the work you requested.
- Refuse to give you a copy of any document that requires your signature.
- Fail to tell you that a *rebuilt vehicle* has been restored or rebuilt in a way that does not conform to the original manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.

► **Consumer Protection.** You may report problems and ask for help from the Consumer Protection office in Raleigh. The staff will review your information, and usually they contact the mechanic or shop to see how the problem might be resolved.

Consumer Protection
NC Attorney General
Mail Service Center 9001
Raleigh, NC 27699-9001
877.566.7226
<http://www.ncdoj.gov/Consumer/Automobiles/Auto-Repair.aspx>

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MOTOR VEHICLE REPOSSESSION

When you buy a vehicle and agree to make payments over time, the vehicle is the collateral for the loan. You must sign at least two legal documents. One is a contract for the loan itself. The contract usually requires you to insure the vehicle. The other document is a *security agreement*.

- ☐ **Collateral.** Collateral is something that a borrower pledges as security for a loan. If you do not pay the loan, the lender can take, or *repossess* the collateral.
- ☐ **Security Agreement.** The security agreement states that the lender has the right to repossess the car, truck, van, motorcycle, or SUV (motor vehicle) if you fail to do what is required.
- ☐ **Default.** Default is the failure to pay the loan, have insurance, or meet your other obligations.
- ☐ **Repossession.** If you default on your obligations, the lender can repossess the vehicle. No court action is required. The lender can charge you for the cost to repossess, tow, store, and sell the vehicle.

**The security agreement allows the lender to repossess the vehicle
*without going to court if you are in default.***

- ☐ **Your debt after repossession.** Even if a vehicle is repossessed, or if you return it to the seller, you still owe the lender for the loan and other costs. The lender can sue you for what you owe.
- ☐ **Sale.** The lender can sell, lease, or dispose of a repossessed vehicle. If there is a sale, you are entitled to reasonable advance notice of the time, date and place of the sale. After a sale, the lender must credit the sale money to your loan balance.

Example: You owe \$5,000 for the loan, repossession costs, storage, and sale. Your van was sold for \$4,000. You owe \$1,000. The amount that you owe is called the *deficiency*.

If your vehicle is repossessed

- **Your property in the vehicle.** You are entitled to get your property that was not part of purchase. That includes your tools, clothes, stereo equipment you installed, etc. Contact the lender *immediately after repossession* to get back your property.
- **If you can pay what you owe to date.** You *immediately* should contact the lender and offer to pay what you owe. It is likely that you will have to pay for towing, storage, and repossession costs.
- **If you cannot resolve the default.** It is likely that the vehicle will be sold, disposed of, or leased. Be sure to tell the lender where to send you a notice about a sale.
- **Review your documents.** See whether there is a security agreement and whether you were in default. If there was no security agreement, or if you were not in default, you should get legal help *right away*.

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HOW TO DISPUTE ERRORS ON YOUR CREDIT REPORT

Credit reporting is governed by the Fair Credit Reporting Act (FCRA). Under the FCRA, both the credit reporting company and the account information provider (that is, the person, company, or organization that provides information about you to a credit reporting company) are responsible for correcting incorrect or incomplete information in your credit report.

To take advantage of all your rights under the law, contact the credit reporting company and the account information provider.

STEP ONE. A. You should write to tell the credit reporting company and the account information provider about the information that you think is not accurate.

► Information provider address: If the provider has listed an address on your credit report, send your letter to that address. If no address is listed, contact the provider and ask for the correct address to use for your letter. If the information provider does not give you an address, you can send your letter to any business address for that provider.

► What to mail. A sample dispute letter is at the end of this information. Include copies (**NOT** originals) of documents that support your position. You may enclose a copy of your report with the items in question circled. Send your letters to the information provider and the credit reporting company by certified, return receipt mail so you will have proof that your letters were received. Keep copies of your dispute letter and enclosures.

In addition to providing your complete name and address, your letter should

- include your date of birth and the last 4 digits of your social security number
- clearly identify each item in your report you dispute
- state the facts and explain why you dispute the information, and
- ask that it be removed or corrected.

STEP ONE. B. You may also report a dispute by contacting the credit reporting agencies via the internet. The website and mail addresses are below.

<u>Experian</u>	<u>Equifax</u>	<u>TransUnion</u>
Consumer Disputes	Consumer Disputes	Consumer Disputes
PO Box 4500	PO Box 740256	PO Box 2000
Allen, TX 75013	Atlanta, GA 30374	Chester, PA 10922
www.experian.com	www.equifax.com	www.transunion.com

STEP TWO. The credit reporting companies must investigate the items in question and usually do so within 30 days. Investigation might not happen if they think that your dispute is frivolous.

DEALING WITH DEBT COLLECTORS

☐ **What is a debt collector?** Generally, a debt collector is a business that regularly collects debts for someone else.

☐ **What laws protect consumers?** Both state and federal laws set limits on what debt collectors can do. The main federal law is the Fair Debt Collection Practices Act (FDCPA). The state laws are in Chapter 75 and other chapters of the North Carolina General Statutes.

☐ **Illegal practices.** Some debt collectors use unlawful tactics. For example, it is illegal for a collector to call a large number of times in a day, or threaten to have you arrested for not paying a debt, or give (“publish”) your debt information to your employer or neighbors.

☐ **State laws are important protection.** Lenders may avoid obeying the FDCPA by doing the collections work themselves, without hiring a collection agency. For example, Sears might have its own collection division that handles collection of unpaid debts to Sears. The federal FDCPA protections would not apply.

North Carolina consumer protection laws protect you against anyone who is trying to collect a debt. State law covers in-house debt collectors as well as original creditors and lenders.

North Carolina laws do not allow debt collectors to do the following.

☐ **Harassment**

- threatening violence
- using foul or abusive language
- publishing a list of people who will not pay debts
- calling you at work unless they have no other telephone number for you
- calling too often
- calling too early in the morning or too late at night
- calling “collect”

☐ **Unreasonable publication**. The law limits the ways that a collector can use your debt information. If a collector is trying to find you, the collector can give some information about you but cannot refer to your debt. A debt collector is allowed to communicate with you through the courts.

Unless you give your written permission, a debt collector can communicate only with

- you and your lawyer
- your spouse, or someone who acts as your spouse
- a credit reporting agency
- the collector’s employees, or the lender or creditor’s employees
- someone who makes a legitimate inquiry about you

WHAT IS A JUDGMENT FOR MONEY?

A judgment is a court decision. It is a public record. A judgment is effective for 10 years and can be renewed. A judgment creditor's rights are limited. You will not go to jail because you cannot pay a judgment. Most North Carolina creditors cannot garnish your pay or income. Your pay or income can be taken only for some debts, such as payment of child support or spousal support; benefits fraud; taxes; and payment of some debts to public hospitals.

▶▶ **When a judgment includes an award of money, it has the following effects.**

- A judgment is a **lien** on real estate, including land.
- You owe **interest** on the judgment.
- There is a **court collection** process.
- A judgment affects your **credit**.

▶▶ **A judgment is a lien on land.** If you own any land, or a home and land in North Carolina, a money judgment is lien (claim) on that property. The judgment creditor may be able to force a sale of your property in order to collect payment from you. The judgment must be paid off before you sell the property.

A judgment also limits what you can do with what you own. You cannot transfer, sell, or give away personal property or real estate in order to avoid collection.

▶▶ **You owe interest on a judgment.** A judgment accrues 8% interest per year from the time it is filed with the court.

▶▶ **There is a court collection process.** After a creditor gets a money judgment, the creditor **MUST** use the civil court system to try to collect payment from you. The creditor must have a Sheriff deliver documents to you.

The documents are a *Notice of Right to Have Exemptions Designated* and a *Motion to Claim Exempt Property*. You must complete and file the *Motion* within **20 days** after you get it.

If you do not file the Motion by the deadline, the creditor can have the Sheriff take what you own and sell it to pay the judgment.

**If you receive a Notice of Right to Have Exemptions Designated,
you should get legal help right away.**

▶▶ **A judgment affects your credit.** Lenders, creditors and landlords check the court records. Some lenders and landlords will refuse to do business with you. A judgment shows that you did not meet your financial obligations. As a result, borrowing may be more expensive for you. When you have a judgment or several judgments against you, and you try to get a loan or buy a car, the cost of borrowing may be higher than it would for someone else. (Rev. 10.16.14)

☐ **Deceptive representation.** Debt collectors cannot use a fake name to trick you into talking with them. They must use their own business names, or the name of the creditor or lender for whom they work. They must always state that they are trying to collect a debt. They cannot:

- falsely state or suggest that they are lawyers
- take, or threaten to take your property unless they have the legal right to take it
- mislead you about what their business does
- pretend that they have information for you, or something else valuable for you
- send you documents that look like official court or government documents
- pretend to be connected with a local, state or federal government or agency
- lie about what you owe, or the status of your debt in a legal proceeding
- state that you committed a crime, or that you will be arrested if you do not pay
- state that your pay will be garnished, unless the garnishment is lawful
- mislead you about whether your debt will be increased due to attorney's fees, investigation fees, service fees, or any other fees or charges

☐ **Unconscionable means.** A debt collector cannot use underhanded methods or trickery. Debt collectors are not allowed to:

- communicate with you if they know you are represented by an attorney
- collect their own fees or charges, or interest or other fees related to your debt, unless they are authorized to do that
- sue you in a county other than where you live, or where you got the debt, if doing that would make it very difficult for you to attend court
- get you to sign a statement that you owe a debt, if they know that a court has said you are bankrupt
- get you to sign a statement that you owe a debt, if the debt is barred by the statute of limitations
- persuade you to make a written waiver of your legal rights, unless they tell you that you do not have to sign the waiver and they tell you what the waiver means for you

Practical Tips

☐ **Keep records.** Keep all mail. Keep a record of calls that you get, the time of each call, and the name of the caller. A sample telephone log is included in these materials.

☐ **Plan ahead.** If you get a telephone call from a debt collector, it is a good idea to plan what you are going to say.

☐ **Give the collector a contact telephone number.** If a collector calls you at work, tell the caller not to call you there. Give the caller a different telephone number.

☐ **Write to the collector.** You can stop a debt collector from contacting you. Write a letter to the collector, and tell the collector to stop contacting you. Once your letter is received, the collector is not allowed to contact you again except to tell you about a lawsuit or legal actions.

☑ **Payments and plans.** A debt collector may ask you to send a payment or offer to make a payment agreement. Tell the collector that you need time to think about making any agreement.

Do not sign anything if you think the debt may be barred by the statute of limitations. Do not sign an agreement if you are not certain about the amount that you owe, or if you are not sure that you can pay as agreed.

☑ **Confession of Judgment or Consent Order.** Do not agree or sign a confession of judgment or consent order until you have gotten independent legal advice.

☑ **Negotiation.** You may want to work out a plan to lower your monthly payments.

You should prepare a budget before you try to make a new payment plan. Once you have made a budget, you should know what you can pay. Then you can try to negotiate with the creditor. A sample conversation and a sample confirmation letter are enclosed with these materials.

Do not agree to pay more than what you know you can afford.

If you believe that a debt collector has broken the law, you may contact the NC Attorney

General's Consumer Protection Division at 919.716.6000 or 877.566.7226.

(Rev. 10.15.14)

Sample script to follow when negotiating with a collector or creditor:

"Hello my name is _____. I am not able to make the regular payments on my account. My account number is _____. My payments are _____ months behind **or** I expect that my payments are going to fall behind."

"I would like to bring my account current. Can we arrange a payment plan?"

The collector may offer some suggestions. Do NOT agree to pay any amount that you cannot afford.

"I am working with a financial counselor **or** I have carefully prepared a budget and I can afford to pay _____ (state the amount you can pay, **NOT** the amount that the creditor asks for).

You can also negotiate about what the creditor plans to report to the credit bureaus. Ask about how the repayment will affect your credit report. The creditor should agree that once you have repaid the debt, the creditor will report that and will remove the negative information from your credit report.

Record the information you got. Note the name of the person with whom you talked, the date and time of the conversation, and specific details about the agreement.

If you have made an agreement, repeat it back to the collector. Ask if the collector's understanding of the agreement is the same as yours.

"Thank you, Mr./Ms. _____, for working with me. I understand that I will not be able to receive any additional credit until my situation changes. I will pay _____ (amount of payment) beginning on _____. I will send you a letter confirming the agreement.

Within 5 working days, send the creditor a confirmation letter about your new agreement.

Always keep a copy of correspondence for your records.

(Rev. 10.15.14)

Sample confirmation letter

Your Name
Your Mailing Address
City, State, Zip Code

Date: _____

Re: Account Number _____
Name on account _____

Dear Mr./Ms. _____:

This letter is to confirm the agreement we made on _____. The terms of the agreement are:

The payments I will make on my account will be _____ per month/week

The payments will be made starting on _____ and ending on _____.

If I complete the payments on time through _____, you will remove any negative information about my account that was reported to the credit bureau.

Please contact me immediately if the terms of our agreement are not the same as your recollection of our conversation.

Sincerely,

(Rev. 10.15.14)

Telephone log:

Name of company _____

Telephone number _____

My account is with _____

Account number _____

Name on Account _____

Date _____ Time _____

Person I spoke with _____.

Notes of conversation:

Follow-up:

(Rev. 10.15.14)

Send this by certified / return receipt requested mail to the address provided by the creditor to send your mail – NOT the payment address – and be sure to keep a copy for your own records.

DATE

Collection Agency
Address
City and State, Zip Code

Re: Account No.: _____, in the name of

Dear Collector:

Pursuant to the Fair Debt Collection Practices Act, 15 U.S.C.A. §1692(c) and pursuant to N.C.G.S. §75-51 et sequa, you are hereby notified to cease and desist all communication with me regarding the above-referenced debt. I request that you:

- No longer contact me by mail, electronic mail, telephone, or otherwise;
- Do not contact me at work;
- Do not contact my employer; and
- Do not contact any of my neighbors, friends, family members, or acquaintances.

In accordance with federal law, once you have received my request, you may only contact me to:

- Provide me with proof that I owe the debt that you claim I owe;
- Provide me with a copy of my state and federal rights concerning this debt, including how to dispute your claim;
- Provide me with proof that you are licensed in my state, and show me evidence of your license number;
- Inform me that further collection efforts are being terminated; or
- Notify me that you may or intend to invoke specific remedies.

I keep records of all correspondence about this matter. If you contact me for any reason other than those stated above, you could be in violation of 15 U.S.C.A. §1692 and N.C.G.S. §75-51 et sequa.

Sincerely,

(Rev. 10.15.14)

Consumer / Debt Collectors

The companies also must forward all the relevant data you gave about the dispute to the person or business that gave them your account information. After the information provider receives notice of a dispute from the credit reporting company, it must investigate, review the relevant information, and report the results back to the credit reporting company.

If the information provider finds that the disputed information is inaccurate, it must notify all three nationwide credit reporting companies so they can correct the information in your credit file. If the provider continues to report the item that you disputed to a credit reporting company, it must let the credit reporting company know about your dispute.

And if you are correct — that is, if the information that you dispute is found to be inaccurate or incomplete — the information provider must tell the credit reporting company to update or delete the item.

STEP THREE. When the investigation is complete, the credit reporting company must give you the results in writing and a free copy of your report if the dispute results in a change. The free report does not count as your annual free report. If an item is changed or deleted, the credit reporting company cannot put the disputed information back in your credit file unless the information provider verifies that it is accurate and complete. The credit reporting company also must send you written notice that includes the name, address, and telephone number of the information provider.

If you ask, the credit reporting company must send notices of any corrections to anyone who received your report in the past six months. You can have a corrected copy of your report sent to anyone who received a copy during the past two years for employment purposes.

STEP FOUR. If an investigation does not resolve your dispute with the credit reporting company, you can ask that a statement of the dispute be included in your file and in future reports.

You also can ask the credit reporting company to provide your statement to anyone who received a copy of your report in the recent past. You can expect to pay a fee for this service.

ABOUT YOUR CREDIT FILE. Your credit file may not reflect all your credit accounts. Although most national department store and all-purpose bank credit card accounts will

be included in your file, not all creditors supply information to credit reporting companies: some local retailers, credit unions, travel, entertainment, and gasoline card companies are among the creditors that do not.

► When negative information in your report is accurate, only the passage of time can assure its removal. A credit reporting company can report most accurate negative information for seven years. There is a standard method for calculating the seven-year reporting period. Generally, the period runs from the date that the event took place.

A credit reporting company can report bankruptcy information for 10 years. Information about an unpaid judgment against you can be reported for seven years, or until the statute of limitations runs out, whichever is longer. In North Carolina, a judgment is valid for ten years and can be renewed.

► There is no time limit on reporting the following.

- information about criminal convictions;
- information reported in response to your application for a job that pays more than \$75,000 a year; and
- information that is reported because you have applied for more than \$150,000 worth of credit or life insurance.

SAMPLE LETTER TO CREDIT ACCOUNT INFORMATION PROVIDER

[Your Name]
[Your Address]
[Your City, State, Zip Code]
[Date]

Complaint Department

[Company Name]
[Street Address]
[City, State, Zip Code]

I am writing to dispute the following information that your company provided to **[give the name of the credit reporting company whose report has incorrect information]**. I have circled the items I dispute on the attached copy of the credit report I received.

This item **[identify item(s) disputed by type of item, such as credit account, judgment, etc., and your account number or another method for the information provider to locate your account]** is **[inaccurate or incomplete]** because **[describe what is inaccurate or incomplete and why]**. I am requesting that **[name of company]** have the item(s) removed **[or request another specific change]** to correct the information.

Enclosed are copies of **[use this sentence if applicable and describe any enclosed documents, such as payment records and court documents]** supporting my position. Please reinvestigate this **[these]** matter[s] and contact the national credit reporting companies to which you provided this information to have them **[delete or correct]** the disputed item[s] as soon as possible.

Sincerely,

Your name

Enclosures: **[List what you are enclosing.]**

SAMPLE LETTER TO CREDIT REPORTING AGENCY

[Your Name]

[Your Address]

[Your City, State, Zip Code]

[Date]

Complaint Department

[Company Name]

[Street Address]

[City, State, Zip Code]

Dear Sir or Madam:

I am writing to dispute the following information in my file. I have circled the items I dispute on the attached copy of the report I received.

This item **[identify item(s) disputed by name of source, such as creditors or tax court, and identify type of item, such as credit account, judgment, etc.]** is **[inaccurate or incomplete]** because**[describe what is inaccurate or incomplete and why]**. I am requesting that the item be removed **[or request another specific change]** to correct the information.

Enclosed are copies of **[use this sentence if applicable and describe any enclosed documentation, such as payment records and court documents]** supporting my position. Please reinvestigate this **[these]** matter**[s]** and **[delete or correct]** the disputed item**[s]** as soon as possible.

Sincerely,

Your name

(Rev. 10.07.14)