

Community Legal Services, Inc.  
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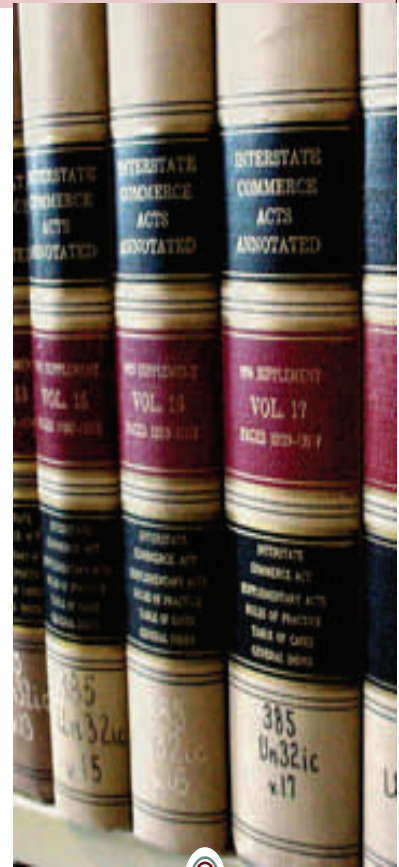
# Arizona Statewide Consumer Law Project

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Advocating Justice  
for the Consumer

## **INTRODUCTION TO THE STATEWIDE CONSUMER LAW PROJECT**

This issue of the Statewide Consumer Law Project (“SCLP”) Newsletter updates matters discussed in the April 2010 issue as well as spotlighting new issues and activities.

Comments and suggestions are appreciated and may be directed to Brad Gelder, Attorney, SCLP, at [bgelder@clsaz.org](mailto:bgelder@clsaz.org)



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## **Protecting Tenants at Foreclosure Act**

On May 20, 2009 President Obama signed The Helping Families Save Their Homes Act of 2009 into law. This act includes The Protecting Tenants at Foreclosure Act (PTFA) which provides new protections for tenants of foreclosed home owners.

More information regarding this law may be obtained from Brad Gelder.



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***“Injustice anywhere is a threat to justice everywhere.”***  
***Martin Luther King, Jr.***

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### **Debtor’s Examination Notices**

Consumers can NOT be jailed for failing to pay creditors.

However, a civil arrest warrant can be issued under state law if a debtor ignores judicial process after a judgment is entered.

Most frequently, this arises when a judgment creditor notifies a debtor of a debtor’s examination and the person fails to go.

We urge any consumer debtor receiving such a notice to contact an attorney for advice.

### **Social Security Exempt from Private Creditors**

Most of us are aware that Social Security is generally exempt from private creditors if properly managed, meaning it can not be taken for unsecured consumer debt even after a court judgment. (Federal agencies may garnish social security to a limited extent without going to court).

A useful letter that the Volunteer Lawyers Program (VLP) often sends applicants whose income is limited to social security, but who will not benefit from counsel and do not require a bankruptcy, advises such clients (1) to keep social security deposits separate from all other deposit types and (2) to not deposit social security into an institution where a debt is owed by the recipient. More information regarding social security issues can be obtained by contacting Brad Gelder at [bgelder@clsaz.org](mailto:bgelder@clsaz.org) or the Volunteer Lawyers Program (VLP) at 602.258.3434.

## Consumer Information Websites

As we all know, there is an overwhelming amount of information available on the Internet, some useful and accurate and much that is not. Below is a list of some of the more useful websites which the Volunteer Lawyers Program (VLP) has compiled.

### Websites of Interest for Client Interviews

**Arizona Department of Economic Security— [www.azdes.gov](http://www.azdes.gov)**  
*Client referral for social services (i.e. AHCCCS)*

**Arizona Department of Financial Institutions— [www.azdfi.gov/lists/lists.htm](http://www.azdfi.gov/lists/lists.htm)**  
*Check to see if collection agencies are licensed*

**Bankruptcy Court Self Help— [www.azb.uscourts.gov](http://www.azb.uscourts.gov)**  
*Click “Debtor Help”, click “Before You File”, click link to Digicounsel.net*

**Center for Responsible Lending—[www.responsiblelending.org](http://www.responsiblelending.org)**  
*What affects lenders*

**County Recorder—[www.recorder.maricopa.gov/recdocdata/](http://www.recorder.maricopa.gov/recdocdata/)**  
*Check for judgments*

**Income Based Repayment—[www.ibrinfo.org](http://www.ibrinfo.org)**  
*Income based repayment of federal student loans (calculator)*

**Justice Court—[www.superiorcourt.maricopa.gov/docket/JusticeCourtCases/Index.asp](http://www.superiorcourt.maricopa.gov/docket/JusticeCourtCases/Index.asp)**  
*Check the docket, see case status*

**Justice Court Precinct Map—<http://www.a2zcomputerworks.com/maps/jcmar.html>**  
*Check if Justice Court venue is proper*

**National Consumer Law Center—[www.consumerlaw.org](http://www.consumerlaw.org)**  
*What affects consumers*

**Social Security Administration—[www.ssa.gov](http://www.ssa.gov)**

**Superior Court—[www.superiorcourt.maricopa.gov/docket/CivilCourtCases/caseSearch.asp](http://www.superiorcourt.maricopa.gov/docket/CivilCourtCases/caseSearch.asp)**  
*Check the docket, see case status*

**U.S. Dept. of Housing and Urban Development—[www.hud.gov](http://www.hud.gov)**  
*Approved housing counseling agencies*

## Debt Modification/ Repair and Foreclosure Prevention Organiza- tions.

We have become particularly wary of companies promoting so-called debt modification and credit repair as well as foreclosure prevention services. Many of these companies request an up front or continuing administrative fee, are almost universally of no value, and merely add to the consumer’s pain.

In particular, many of these companies have no understanding and/or fail to advise the consumer that their services are of no utility and that other alternatives exist which are more cost effective and may not cost the consumer anything.

A June 18<sup>th</sup> article in The New York Times by Peter S. Goodman entitled “Peddling Relief, Firms Put Debtors in Deeper Hole,” reported on this growing industry.



## LITIGATION MATTERS

### WHOSE TAX CREDIT IS IT?

Client purchased a home from a private developer which provided financing. At the time, the federally sponsored first time home buyer's tax rebate was in effect.

Inserted in the seller's Note was the requirement that the buyer, upon receipt of the credit, pay 1/2 of it toward the note obligation.

Furthermore, at closing, buyer was charged for a "credit repair" service in the amount of nearly \$400. We are partnering with private counsel, Choi and Fabian, on this case and preparing suit.

We intend to allege violations of the Truth in Lending Act, as well as the Credit Repair Organization Act.



### QUIT CLAIM FOR NOTHING

This quiet title action concerns an Hispanic woman who, believing she was receiving approximately 10 acres of land from a 40 acre tract, paid in excess of \$30,000 for a quit claim deed from a grantor with no legal interest in the property.

Our client was originally the defendant in a quiet title action brought by someone unaffiliated with the perpetrator. Further complicating matters was the fact that the tract is encumbered by a deed of trust (mortgage).

When original plaintiffs allowed their action to terminate, the SCLP initiated its own quiet title action on behalf of its client.

With the assistance of private counsel Dan Holwerda from Fennimore Craig, we are presently negotiating a resolution with the former plaintiffs and the mortgage holder.

### LANDLORD TENANT CASE—UPDATE

In the April 2010 issue, we highlighted the *qui tam* False Claims Act (FCA) action brought against a Section 8 landlord in which we co-counseled with Rose Winkeler, Attorney in the Housing Unit of Community Legal Services. Because it was brought under the FCA, and therefore on behalf of the federal government, settlement was controlled by the United States Department of Justice. As a result, we did not believe our client's claims were adequately compensated. Accordingly, Attorneys Winkeler and Gelder brought a State court action in which we are litigating the client's state law claims against the property manager and its predecessor in interest. (The landlords have filed for bankruptcy). Depositions are scheduled for early July.

### CHECK FORGERY RECOVERY

Client's check book was taken from his desk drawer during a 2009 Christmas party at his home. Despite advising the bank of the theft the next business day, the bank permitted obviously forged checks to clear against his account over the next few weeks. We were able to have the funds - exceeding \$1800 - returned to client upon presentation to bank of a complaint we had drafted for filing with Superior Court.



## **NON-LITIGATION MATTERS**

### **WEBINAR: ARIZONA FOUNDATION FOR LEGAL SERVICES AND EDUCATION (AZFLSE)**

On May 20, 2010 SCLP presented a consumer CLE webinar at the AZFLSE in conjunction with the Foundation and the State Bar of Arizona . This Webinar can be viewed at no cost by legal services advocates and Volunteer Lawyers Program volunteer attorneys statewide.

For more information, contact Leslie Ross, AZFLSE Public Legal Information Manager at [Leslie.Ross@azflse.org](mailto:Leslie.Ross@azflse.org)

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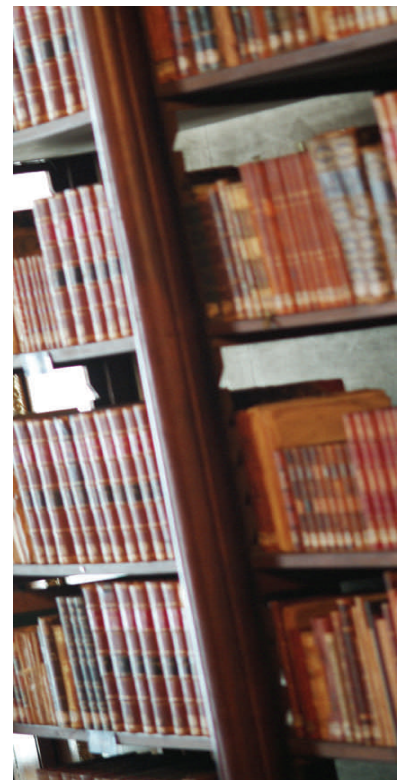
*“The first duty of society is justice” - Alexander Hamilton*

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### **SANDRA DAY O’CONNOR COLLEGE OF LAW AT ASU AND THE CONSUMER ADVOCACY PROTECTION PROJECT (CAPP)**

On April 7<sup>th</sup>, SCLP presented a consumer outreach program for the Consumer Advocacy Project Program (CAPP), a newly formed law student group focused on consumer issues and outreach. SCLP’s work with CAPP is ongoing and will include an outreach visit of the Justice Bus its second visit to Prescott Valley, in October 2010.

SCLP’s collaborations with CAPP are an important tool furthering our interests in working with law students and volunteer attorneys to arrange consumer law group presentations on a statewide basis.





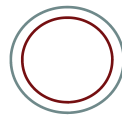
## **VOLUNTEER LAWYER PROGRAM (VLP) CLE TRAINING**

On July 13<sup>th</sup> at 5:30 p.m., SCLP participated with Tom Moring, a frequent VLP volunteer and a founding member of Pak & Moring PLC in providing a CLE training program for VLP attorney volunteers. The training focused on debt counseling, debt collection defense and bankruptcy issues. Approximately fifteen current and prospective volunteers attended.

## **PROPOSED GARNISHMENT RULE COMMENT**

Several federal agencies have solicited comments on a proposed rule which will provide much needed additional protections against creditor garnishments for recipients of federal benefits, including social security benefits.

SCLP drafted comments regarding the rule which Lillian O. Johnson, CLS Executive Director, approved and submitted to the agencies on June 10th of this year.



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