

CREDIT UNION LEGAL NEWSLETTER

November 2009



By

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Credit Union Attorneys

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Freedom of Information Requests Submitted to Credit Unions

By: Charles R. Harroun, Attorney at Law

Legal Issue:

**COURT RULES THE FEDERAL FREEDOM OF INFORMATION ACT (FOIA)
DOES NOT APPLY TO MEMBERS' REQUESTS FOR INFORMATION
SUBMITTED TO STATE OR FEDERAL CHARTERED CREDIT UNIONS.**

Background:

The Freedom of Information Act, 5 U.S.C. § 552 (the FOIA), provides, in part, that information and/or documentation sought by individuals or organizations must be supplied if the FOIA provisions apply to the entity to which the request for information is governed by the Act. If the FOIA provisions apply, then the party to whom the request is submitted must supply the information requested.

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In this case, a credit union member submitted a Freedom of Information request to Neighbors Credit Union. The member requested information and documentation from the credit union concerning a debt the credit union was seeking to collect in a previous action and records concerning the repossession of the member's personal property.

The member/debtor further maintained that the credit union is an *agency* subject to disclosure requirements set forth in the Freedom of Information Act.

Court Ruling:

The Court ruled that the Freedom of Information Act does not apply to credit unions:

“The FOIA only applies to ‘agencies.’ 5 U.S.C. § 552(a). To be an agency, an entity must be an ‘establishment in the executive branch.’”

The Court found that a credit union, whether established under a state or federal charter, is not an agency subject to disclosure requirements of the freedom of information act and the credit union had no obligation to disclose the information requested by the debtor. *Willie Watson v. Neighbors Credit Union*, (U.S. Dist. Court, E.D. Missouri, 2009 WL 161204.

Federal Court Review of State Court Mortgage Foreclosure Dismissed

By: Charles R. Harroun, Attorney at Law

In this case, a Federal Court dismissed debtors' claim for the Federal Court to review a state court foreclosure judgment that had resulted in a foreclosure sale of the debtor's property.

Here, a credit union member's real estate was foreclosed upon in a state court proceeding. Thereafter, the homeowner brought a Federal Court action against the credit union and alleged irregularities and violations of due process in the state court proceedings. Debtor further alleged that the credit union had conspired with others in this state court proceeding to deprive the debtor of his property.

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The Federal Court held that plaintiff's complaint should be dismissed and that the Federal Court does not have jurisdiction to collaterally review the state court judgment.

Consequently, plaintiff's complaint against the credit union in Federal Court was dismissed and the state court judgment of foreclosure stands.

Transfer of Residence to Avoid Creditor Permitted Under Uniform Fraudulent Transfer Act

By: Charles R. Harroun, Attorney at Law

Here, the court permitted debtor's transfer of his place of residence, even though the transfer appeared fraudulent and was an attempt to avoid a creditor from collecting a debt.

In this case, the credit union sued defendant Gribble to collect various debts owing to the credit union on at least four loans in default. The defaulted loans were secured by various large pieces of collateral, including tractors, a combine and a pickup truck; there was no real estate securing these loans.

The credit union filed a complaint against Gribble seeking repayment of the loan. The credit union also sought to foreclose upon the equipment pledged as collateral for the loans.

After the complaint was filed to collect the credit union loan balances, Gribble transferred his primary residence to another party in order to avoid the credit union and collecting its debts.

The credit union sought to set aside the real estate transfer on the grounds that the transfer was fraudulent under the Uniform Fraudulent Transfer Act in the state of Montana.

The Uniform Fraudulent Transfer Act allows the court to set aside fraudulent transfers made by debtors. If a debtor transfers property, whether real property or otherwise, while creditor is seeking to collect a debt, the transfer itself is subject to scrutiny and may be set aside by the court.

In this case, however, the court found that the debtor's transfer of his residence did not qualify as a transfer of an asset under the Uniform Fraudulent Transfer Act.

The court found debtor's place of residence was excluded as an "asset" under the act. The debtor's transfer of his residence, therefore, was held not to be a transfer which could be set aside by the court and the party to whom the transfer was made was permitted to keep the collateral.

The court, however, would have set aside the transfer of *other* property in this case. The transfer of the debtor's residence, however, was deemed not an asset as defined under the act. This otherwise fraudulent transfer was therefore allowed to stand. *Macone County Federal Credit Union v. Tex J. Gribble and Fred Wratishlaw* (Supreme Court of Montana, 2009 MT 290).

Inadequate ATM Fee Disclosures

By: Charles R. Harroun, Attorney at Law

A number of lawsuits across the country are charging financial institutions, including credit unions, with improper ATM fee disclosures on the ATM machines. At least four of those suits were filed against credit unions, claiming there was no fee disclosure on the credit union owned ATMs and, another 10 lawsuits were filed against other financial institutions for the same alleged failure to disclose fees *on the machines*.

Some of the allegations include credit unions operating their own automated teller machines and failing to disclose fees to the consumer for cash withdrawals, balance inquiries and electronic funds transfers. To comply with Regulation E requirements, ATMs located in the credit union lobby must also disclose any fees charged for transactions by the consumer.

Editors Comment: If a consumer complains about fees charged that are not disclosed on the credit union ATM Fee disclosure *located on the machine*, the fee(s) should be reversed or otherwise reimbursed to the member. Credit Unions should also examine their Electronic Fund (EFT) Disclosures for compliance purposes to make sure the following or similar provision is contained in the members' EFT Disclosure:

When you use an ATM not owned by the [credit union], you may be charged fees by the ATM operator, or any network used, in addition to any fee charged by the credit union and you may be charged a fee for a balance inquiry even if you do not complete a separate fund transfer.

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