

Debt Settlement, Debt Consolidation, Debt Negotiation, Credit Repair Services

A NACA member who provides “debt settlement” or “credit repair” legal services shall be required to certify in his/her application and pledge that he/she is familiar with applicable laws governing such work, that he/she complies with all such laws, and that if he/she accepts any referrals from any attorneys that do “debt settlement” or “credit repair” work, he/she has made due inquiry to ensure that they, too, comply with all such laws.

“Credit repair organizations” or “debt settlement companies”, that are not comprised of attorneys actually providing legal services consistent with professional responsibilities and giving full individualized and knowledgeable attention to the consumers, always are considered unacceptable by NACA standards. Any relationship, including accepting referrals, with any debt settlement company or credit repair organization, which company or organization is not comprised of attorneys actually providing legal services consistent with professional responsibilities and giving full individualized and knowledgeable attention to the consumers, absolutely disqualifies a person from NACA Membership.

Compliance with the defined “floor” standards listed below is required. The list of criteria is intended to be illustrative but not exhaustive. It is recognized that some conduct that generally is adverse to the interests of consumer clients yet eludes specific definition often may surface in this area of consumer practice. Therefore, under such circumstances specific practices and behaviors will be evaluated on a case by case basis and attorneys will be barred from membership if any conduct is deemed to be unacceptable/unethical.

I. Disqualifying Conduct - (“Bright Line Tests”) The following are considered adverse to the interests of consumers and violations of the NACA pledge and disqualify an attorney practicing in the areas of debt settlement and debt relief representation from membership in NACA:

A. Services in which a NACA member lawyer or firm fails to provide each of their clients with legal representation consistent with their professional responsibility regarding the client’s individual claims or case through the personal delivery of legal services by the lawyer, appropriately supported by other qualified legal staff under the lawyer’s supervision.

Comment: Court-supervised “Limited Assistance Representation” programs authorize attorneys in certain types of common cases to provide limited, short-term appearances on behalf of consumer clients. NACA strongly supports these programs. Provision of such services is wholly consistent with the mission of NACA, and does not conflict with any NACA membership criteria.

B. Deceptively changing the address on the consumer’s accounts so that the attorney receives the bills and notices, rather than the consumer.

Exception: Correspondence from an attorney to a creditor or debt collector requesting future contact exclusively be made through the attorney.

C. Providing services to consumers which violate federal or state laws, regulations, including, without limitation, CROA, the Telemarketing Sales Rules (including 2010 amendments promulgated by the Federal Trade Commission), or other federal laws and regulations, as well as the regulations in all states in which the attorney practices, advertises, or has a presence, including the professional and ethical rules and guidelines of those states. In signing the NACA Pledge, members who engage in debt defense and debt settlement work certify that they have reviewed and are familiar with the applicable rules and regulations.

Example of violation: Attorney A is licensed in Florida, but provides services to a Wisconsin consumer. A Wisconsin regulation requires registration of the types of services provided to consumers in that state. Attorney A is not registered to perform services to Wisconsin residents. That is a violation warranting disqualification from NACA.

D. Charging up-front fees for services involving debt settlement, debt negotiation, or debt consolidation, in violation of the Telemarketing Sales Rules. Fees for services cannot be charged until these debt relief services are completed. Any exceptions must fully comply with all state and federal laws (including the Telemarketing Sales Rules relating to Debt Relief Services), as well as all ethical rules in the attorney's jurisdiction. Under the new Telemarketing Sales Rules ("TSR"), if you provide debt relief services, you cannot collect any fee from a customer until meeting certain requirements, and cannot "front-load" your fees. For example, if your client has multiple debts and you've settled one of them, you may collect a portion of your full fee, as long as you have completed the required steps in connection with that debt. For more information on complying with TSR, see "Debt Relief Services & the Telemarketing Sales Rule: A Guide For Business", published by the Federal Trade Commission. The TSR should be viewed as a relevant guide, even if the rule may not technically apply to the NACA member engaged in such work (for example, where the attorney or his/her employee has met with the client in person, the TSR does not apply).

Exception: fees relating to bankruptcy filings, as allowed by laws governing federal and/or state bankruptcy/reorganization services

Exception: fees for defending debt buyer lawsuits in litigation.

Example of violation: Requiring consumers to pay a flat fee or combination of an up-front fee and a monthly percentage in exchange for services which offer debt relief.

E. Providing debt settlement services which promise to eliminate or reduce debt or which make representations about the percentage or dollar amount by which debts or interest rates will be reduced.

Example of violation: advising a consumer that their debts will be reduced by 50-70% by retaining services of the attorney.

F. Providing “unbundled legal services” in violation of applicable law or ethics rules, and/or without disclosure of the limits of the representation.

Example of potential problem: The attorney purports or appears to represent the client broadly in connection with debt issues, but does not intend, or is not likely, to represent the consumer in court and/or go to court with the consumer, if the consumer is sued by a creditor.

G. Failing to provide all required disclosures to debt relief clients in compliance with the Telemarketing Sales Rule. The TSR has specific provisions requiring disclosures pertaining to:

1. Cost of services and other important terms, such as refund policies, material restrictions, limitations and exclusions.
2. Good faith estimate of how long it will take to get advertised results, with a reasonable basis for any statements made.
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3. How much money a customer must save before a settlement offer will be made to creditors.
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4. The consequences of the debt relief services and failing to timely pay creditors, including damage to credit report and credit score, risk of lawsuit and continued collections, and risk of accrual of new fees and interest, which will increase amount owed.
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5. Customer’s rights regarding dedicated accounts in compliance with Telemarketing Sales Rule.

II. “Red Flags” – These are warning signs that the attorney may be engaging in or may be about to engage in conduct prohibited by the NACA membership guidelines and/or pledge. They are not automatic disqualifiers, but may warrant review by NACA for membership qualification determinations.

A. With respect to the “bright line” criterion I(A) stated above the following are among the “red flags” that raise concern about the possibility that such individualized attention is not being provided:

attorneys who handle debt settlement matters having an unusually high support-staff-to-attorneys ratio;

attorneys regularly representing consumers in debt settlement matters in which active litigation is not involved.

- B. Instructing or advising consumers to have no further contact with their creditors, without fully advising the clients of potential consequences, e.g., that the creditor may be more likely to file suit.

Exception: The attorney has meaningful involvement with client's matter and is communicating with client.

Exception: The attorney has been retained to defend against suit from creditor, and attorney will directly deal with creditor and/or its counsel.

Exception: The creditor or its debt collector are engaging in debt collection harassment against consumer, and attorney advises consumer relative to debt collection harassment relief. This example contemplates that the attorney has, at a minimum, advised the consumer of potential consequences of failing to communicate with creditors, including potential of litigation.

- C. Instructing or advising consumers to stop making payments on just debts that are owed to creditors, without fully advising consumers of consequences, including increased debt collection attempts, litigation, and adverse credit reporting consequences.
- D. "Ghost-writing" or "host-writing" pleadings or other legal documents to be filed in court for a consumer, without signing the attorney's name or appearing for the consumer.

Exception: Court-supervised "Limited Assistance Representation" programs authorize attorneys in certain types of common cases to provide limited, short-term appearances on behalf of consumer clients, and may permit "ghost writing" or "host writing" in some circumstances. NACA strongly supports these programs. Provision of such services, including such authorized "ghost writing" or "host writing" services is wholly consistent with the mission of NACA, and does not conflict with any NACA membership criteria.

- E. Providing debt relief services which require consumers to make regular or monthly payments directly to the lawyer, rather than to the creditor, prior to the time when a specific settlement is reached between the client and creditor.

Example of potential violation: Advising consumer to stop paying creditor and instead to send money monthly (or to authorize withdrawal of certain amount monthly) to the attorney. All debt relief services must comply with Telemarketing Sales Rules, which address requirements and prohibitions on payments.