

## “Live Loan” Checks in Small Claims Court

Magistrates in some counties are reporting increasing numbers of actions brought by finance companies to collect debts arising from “live loan” checks. Many of us have seen these in our mailbox: documents that look like checks, made out to us personally, accompanied by instructions for quickly and easily converting the document to cash. When the recipient cashes the check, a contract for loan is created. This post will take a brief look at two North Carolina statutes that govern such loans: [GS 75-20](#), which mandates specific disclosures on the check as well as the attached loan agreement, and [GS Ch. 53, Art. 15](#), the Consumer Finance Act (CFA).

### G.S. 75-20: Borrowers Have a Right to Know What They’re Agreeing To

North Carolina, like many states, requires specific information to be disclosed in a specific manner in “live loans”:

1. The face of the check must contain two statements: First, there must be a recital, in at least 10-point boldface type, identifying the document as a loan solicitation and advising the recipient to read the disclosure statement attached to the check. There must be an additional recital, in at least 6-point type, to the effect that endorsing the check constitutes an acceptance of the terms of the loan contract set out in the disclosure statement.
2. The back of the check must indicate that endorsement of the check constitutes an agreement to repay the loan in accord with the terms of the “attached loan agreement.” This statement must be “conspicuously printed in at least 6-point type.”
3. The check must be attached to a disclosure statement, in at least 10-point boldface type, informing the prospective debtor that:
  1. This is a loan solicitation.
  2. If you cash this check, you are agreeing to borrow \$\_\_\_\_ at \_\_\_\_% interest rate for \_\_\_\_ months.
  3. Your monthly payments will be \$\_\_\_\_ for \_\_\_\_ months.
  4. If you are late with a payment, you will be charged the following fees in addition to your monthly payment: (list fees)
  5. All other terms of this loan are clearly identified as loan terms and appear on the back of the check or on this attachment. Read these terms carefully before you cash this check.
  6. You may cancel this loan by returning the amount of the check to the lender within 10 days of the date you cash the check.
  7. You can prepay this loan without penalty.
  8. READ THE AGREEMENT BEFORE SIGNING.

Obviously, these disclosure requirements are intended to communicate to the consumer that the check is not a gift, but rather an offer to make a loan. The act of cashing the check is an acceptance of the offer. The terms of the contract thus created are contained in the written document consisting of the check and the attached paper containing the disclosure statement. The plaintiff in a small claims action seeking money damages for breach of this contract must prove the terms of the contract just as in any other case, by providing the court with a copy of the contract.

### A Few Last Things

- As indicated above, the debtor is entitled to cancel the agreement by refunding the amount of the check to the lender within 10 days of cashing the check.
- The statute contains another section, beyond the scope of this post, pertaining to a situation in which a live-loan check is cashed by someone other than the designated recipient.
- The statute applies only to unsolicited checks, sent by lenders to consumers who do not have an existing account with the lender.
- Violation of these requirements is an unfair trade practice pursuant to GS 75-20(d).

## The Consumer Finance Act

The [North Carolina Consumer Finance Act \(CFA\)](#) regulates loans up to \$15,000 made by finance companies. These companies are required to be licensed by the Commissioner of Banks and to comply with the provisions of the CFA in exchange for the right to charge interest rates higher than is otherwise permitted by [GS Ch. 24](#) (the usury statute). The CFA comprehensively regulates loans falling within its scope, with provisions related to allocation of payments, limitations on late fees, debtors' rights to regular statements, and numerous other aspects. Loans made to lower-ranking military service members are subject to additional restrictions. Of particular significance to the topic of this post are two of the "limitations and prohibitions on practices and agreements" identified in [GS 53-180](#).

First, unfair or deceptive trade practices are specifically prohibited. [GS 53-180\(g\)](#). Second, CFA loans "solicited using a facsimile or negotiable check" are "subject to the provisions of [GS 75-20\(a\)](#)." [GS 53-180\(k\)](#). In other words, finance companies that make live-loans are explicitly required to comply with the disclosure requirements set out in GS 75-20(a). Failure to do so is a violation not only of that statute, but also of the CFA.

## So What?

The significance of the CFA's incorporation by reference of Ch. 75's disclosure and other requirements has to do with the consequences of a violation of those requirements. Remember, a consumer who is injured by an unfair or deceptive practice under GS Ch. 75 has the right to recover treble damages by filing a civil action. As a practical matter, Ch. 75 actions are quite rare in

small claims court, possibly because most pro se litigants are unaware of the availability of this remedy. The CFA's consumer protection remedies go further. A loan made or collected in violation of any provision of that Act "except as a result of accidental or bona fide error of computation" is void: the lender "shall not collect, receive, or retain any principal or charges whatsoever" with respect to the loan. [GS 53-166\(d\)](#). Consequently, a finance company that brings a small claims action on a live-loan which failed to comply with the specific disclosure requirements of GS 75-20 is not entitled to a money judgment in any amount. (Any other violation of the CFA would require the same result.) Furthermore, because the loan contract is void, a defendant who files a timely written counterclaim would be entitled to recover any amount already paid to the lender. Finally, should the defendant counterclaim for an unfair or deceptive practice under GS Ch. 75, the treble damages provision would apply.