



# SHARK TALK

THE LAW FIRM OF  
**SHAW & CROWSON, PA**  
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## ISSUE THREE

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A Businessman, a Banker, and a Lawyer were stranded in a small boat out in the ocean. But nearby they could see an island. The sharks began to circle.

The Businessman said, “We have to get to that island, but how can we get through these sharks?”

The Banker said, “I’m not going to risk swimming through these sharks.”

The Lawyer said, “Just follow me.”

The Lawyer jumped into the water. And the sharks all formed a respectful line to let him swim through.

The Businessman and the Banker called out, amazed, “How did you do that?”

“No problem,” the Lawyer answered. “Professional courtesy.”

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*Are you swimming with  
sharks?*

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*If you have to swim with sharks, you need a good  
lawyer.*



Who protects you?

# SHARKS AND TAXES

HOW SOLVING ONE  
PROBLEM  
CAN CAUSE A BIGGER  
ONE



IRS reporting requirements for Forms 1099A and 1099C can cause homeowners and consumers to trade debt problems for IRS problems.

Under most circumstances, a mortgage lender is required to file a Form 1099A with the IRS when the home or other property securing the mortgage is foreclosed upon. You can lose your property through foreclosure, then be left with a large income tax liability.

In this real estate market, many owners are trying to sell their homes or other real property at a “short sale”. The property is sold for today’s fair market value. The mortgage lender accepts the net proceeds of the sale and agrees not to charge the balance to the property owner. But, under most circumstances, the lender is then required to file with the IRS a Form 1099C. This tells the IRS that debt has been forgiven, or “cancelled.” Again, there could be a large tax liability.

There has been an exemption for homeowners. But this is due to expire at the end of 2012.

Form 1099C is also filed when other debt is cancelled. For instance, if a consumer settles a credit card debt for less than the full balance owed, the creditor must file a Form 1099C with the IRS. The IRS then assumes that the consumer must pay income taxes on the amount of debt not paid. If you settle large amounts of debt by negotiated payments, you could replace credit card debt with IRS debt.

But, if at the time the debt is “cancelled” you are insolvent, then the resulting income taxes may not be owed. When dealing with the IRS, it is up to the taxpayer to prove insolvency. Generally, you are insolvent if you do not have enough assets to pay all of your liabilities. But it is also important to know that the IRS has an exception to tenants-by-the-entireties protection provided by state law. Most debt discharged in Bankruptcy is not subject to 1099A or 1099C reporting.

If you have questions about Form 1099A or 1099C, you need to seek professional advice.



*Is peace of mind worth the price  
of professional advice?*

## SECOND HAND SHARKS

### New Maryland District Court Rules

When credit card debt or other consumer debt that you owe is “charged off”, that does not mean you are no longer legally responsible for paying it. The term “charged off” simply indicates that no payment has been made for more than 180 days. Most often, once the debt is “charged off”, the original credit card company sells the debt, often for just pennies on the dollar, to second-hand debt collectors.

These second-hand debt collectors will then write you, call you, and maybe threaten to sue you to collect the money owed. Since the debt was bought for less than the amount owed, the second-hand debt collectors will usually offer to settle for two-thirds or even half the amount owed. If there is no payment or settlement, often the debt will be resold to yet another debt collector.

Before January 1, 2012, it was common for these second-hand debt collectors to easily obtain judgments against Maryland debtors in District Court. Many judgments were entered on “affidavits” which simply recited that the money sued for was the true amount owed. But January 1, 2012, the rules changed.

“Affidavit” judgments still exist. And if you are sued for a debt and do nothing, it is still almost certain that an affidavit judgment will be entered against you. But now, Maryland defendants have the right to require more proof.

If the Plaintiff is a second-hand or third-hand creditor, the Plaintiff must prove that it is legally entitled to collect the debt. And there must be better proof than just an allegation that the debt is owed and that the amount of the debt claimed is the true amount.

If the dollar amount in question is \$5,000.00 or more, the “hearsay rule” applies. That means the witness testifying as to the amount of the debt and your obligation to pay it must have personal knowledge. The witness cannot merely testify that somebody else said you owed this debt.

The debt collectors have attorneys working for them. Unless you want a judgment against you that might have been avoided, you need an attorney, too.

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**OUT OF STATE  
“DEBT  
CONSOLIDATION”  
COMPANIES**

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*Do not know  
MARYLAND LAW  
And cannot  
REPRESENT YOU IN  
MARYLAND COURTS*

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**PROTECT YOUR RIGHTS -  
PROTECT YOUR PROPERTY**



## ALMOST A BILLION DOLLARS

The STATE ATTORNEYS GENERAL MORTGAGE SERVICING SETTLEMENT could result in nearly One Billion Dollars in foreclosure relief, mortgage mitigation, or monetary awards for Maryland homeowners. This settlement, which involves both state and federal agencies involves the five largest mortgage servicers. These include Ally/GMAC, Bank of America (and Countrywide), Citi, JP Morgan Chase (and WaMu) and Wells Fargo (and Wachovia). The settlement does not include FANNIE MAE or FREDDIE MAC loans. One resource for online information about this settlement is [www.nationalmortgagesettlement.com](http://www.nationalmortgagesettlement.com).

The intent of the settlement is to provide immediate mortgage modification relief for homeowners. This relief may include reduced



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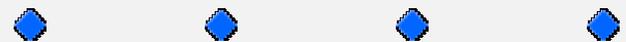
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interest rates or extended amortization. But it may also include principal reductions for homeowners who are current in their mortgage payments, but whose homes have dramatically fallen in value.

The settlement also addresses both negligent loan servicing and improper foreclosure procedures. Mortgage servicing reforms are implemented under the settlement. Key among these is the requirement that lenders must adopt procedures to ensure the accuracy of loan accounts. Borrowers will have better ability to dispute the amounts claimed as owed. The homeowner must be told exactly what entity “owns” their home loan and has the legal right to foreclose. And, very importantly, the banks must thoroughly evaluate all loss mitigation applications before moving forward with foreclosure.

Homeowners seeking to “short sale” their homes (sell the home for less than the amount owed on their mortgage) may also benefit. These servicers will be required to expedite short sale requests. Homeowners who were foreclosed upon while seeking loan modifications, or foreclosed upon through faulty procedures may be entitled to money awards.

Under the settlement agreement, the banks involved will be responsible for notifying homeowners of their rights and remedies.



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