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### Topics for Discussion

1. Improving Your Business Profit with Credit Applications and Other Contract Documents
2. Getting Paid Faster and Keeping Your Customers
3. Electronic Communications with Your Customer and Vendor; What Have I Agreed To?
4. How Do Red Flags Policies Impact Us?

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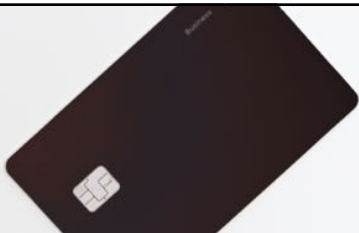
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What Is Your Credit Policy?

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What Is Your Credit Policy?

- A Credit Policy must be clearly established.
- What are the terms that will be offered to the customers of the company?
- What level of receivables can the company afford to carry?
- What are the parameters to be used for extending credit?

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One Type of Credit Policy

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### What is your Credit Policy?

- The dollar amount of credit to be extended will vary based upon:
  - Marketing conditions
  - Financial strength of potential customer
  - Perceived character, ability and capacity of management
  - Experience and longevity in business

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### What is your Credit Policy?

- How will decisions be made regarding the manner in which credit will be granted?
- Who makes the decision?
- Will there be a limitation on authority?
- Should a prompt pay discount be offered?
- Are industry terms necessary or expected by our customers?
- The policy should be written and periodically reviewed.

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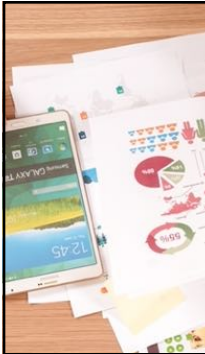
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### What is your Credit Policy?

- Credit worthiness review
  - Credit reports
  - Other vendors
  - History
- How do you plan on asking for guarantees?
- Do you ask for security?
- Handling collection efforts.

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### Provisions to Include

- Attorney Fee Provision:
  - Reference "Reasonable Attorneys Fees"
- Finance Charges:
  - Contract Rate of 1.5% (18% APR) or
  - Legal Rate of 8% per year
  - Reference NCGS § 24-5

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### Provisions to Include

- Finance Charges:
  - Reference NCGS § 24-5
- NCGS § 24-5. Interest on judgments. (Modified)
  - (a) Actions on Contracts. – In an action for breach of contract the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after judgment, then interest on an award in a contract action shall be at the contract rate after judgment; otherwise it shall be at the legal rate. On awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, however, interest shall be at the lower of the legal rate or the contract rate. For purposes of this section, "after judgment" means after the date of entry of judgment under G.S. 1A-1, Rule 58.

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### Other Provisions Which are Helpful

- Arbitration? Pros and Cons
- Ability to Unilaterally Modify Credit Limit With No Notice to Credit
- Jurisdiction and Venue? (where the lawsuit may be filed)
- Buyer agrees that any line of credit desired or approved is not a limitation of liability. Buyer agrees to make all payments even if in excess of credit limits.

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### Other Provisions Which are Helpful

- Buyer hereby authorizes the Seller to utilize oral or written consumer **credit reports** on Buyer from time to time in connection with the extension or continuation of the business credit represented by this credit application. Buyer authorizes the Trade References listed herein to release to seller any information concerning the credit or financial status of buyer.

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### Other Provisions Which are Helpful

- Buyer agrees that all information supplied by Buyer herein is correct to the best of Buyer's knowledge, and Buyer understands that all goods or services purchased from Seller are subject to all terms and conditions contained in this credit application and agreement and all other terms and conditions contained on any of the Seller's invoices, delivery tickets and/or statements.

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### Other Provisions Which are Helpful

- In the event of any conflict between the provisions of this Agreement and the terms of any other agreement, sales order, purchase order, oral statement or otherwise, the terms and conditions of this Agreement shall control.
- (Battle of the Forms) What do you do?

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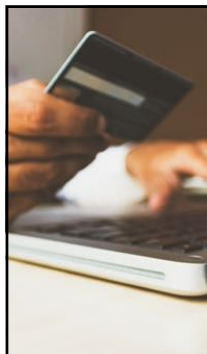
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### Other Provisions Which are Helpful

- Creditor shall have the sole discretion and complete right to apply any payment received from Customer in any manner which Creditor deems proper unless otherwise specified in the remittance by Customer.

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### Other Provisions Which are Helpful

- Seller shall not be liable for any damages or other losses resulting from any delay in delivery or performance where such failure is the result of a cause beyond the Seller's reasonable control, including but not limited to, an act of God, any government law, regulations, or order, shortage of material, or any other cause beyond the Seller's reasonable control.

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### Other Provisions Which are Helpful

- Seller's liability hereunder shall be limited to the purchase price paid by the Buyer for any goods. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, CLAIMS FOR LABOR, OR ANY CONSEQUENTIAL DAMAGES OF ANY OTHER TYPE.
- Other limitations of liability?
- Limitations of Warranties?

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### Getting Paid Faster/Keeping Your Customer

- Sound credit decisions
- Persistent contact
- Timely follow up
- Contact as soon as possible
- Calling on large invoices before invoice is due to insure all documents are in order

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They Owe Us How Much?

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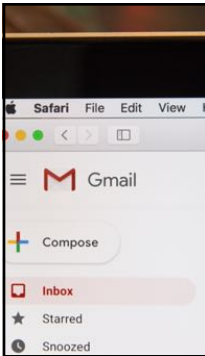
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### Getting Paid/Keeping Your Customer

- Email contact with your customer
- Email of invoices and statements
- Having and using a strong procedure and timeline on follow up and collections
- Placing orders on hold
- Discounts?

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### Getting Paid/Keeping Your Customer

- Setup payments by wire with customers (avoid delay with checks in the mail)
- Personal calls to follow up on emails
- Contact customer within 5 days of invoice due date
- Using sales staff to help in the relationship

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Sometimes, a different voice matters...

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### Getting Paid Faster/Keeping Your Customer

- Visit with the customer to learn more about their business
- Empathize with customer when talking with them about their challenges in business

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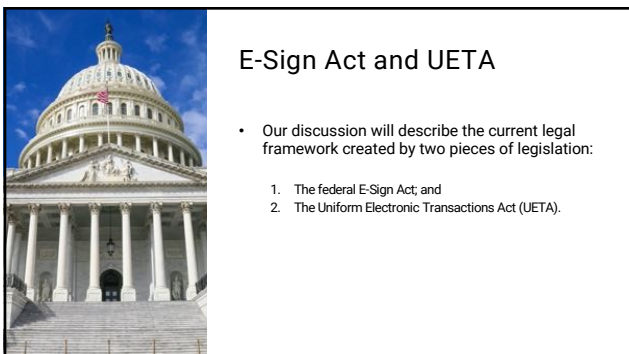
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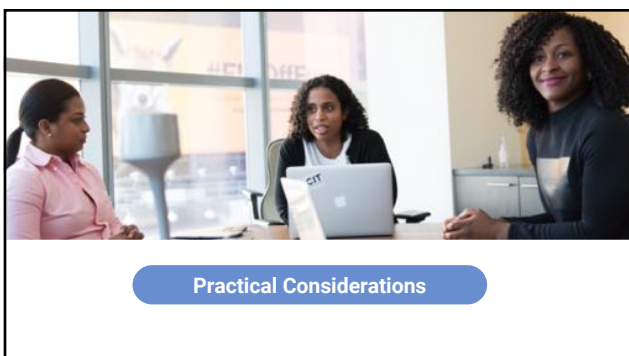
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### Practical Considerations

- Remember:
  - Whether in an electronic or paper form, keep in mind that signatures and contracts are now undoubtedly enforceable even if they are in electronic form.

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### Practical Considerations

- Existing Contracts:
  - Can existing contracts be changed by electronic means?

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### Practical Considerations

- Existing Contracts:
  - Parties to existing contracts should be wary of the fact that their electronic actions can have the same significance under the contract as general written actions.

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### Practical Considerations

- Existing Contracts:
  - Likewise, new contracts can be formed through electronic means, even if past interactions between parties have been limited to paper contracts.

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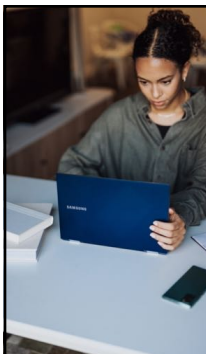
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### Practical Considerations

- Orders:
  - Please read the electronic messages very closely.
  - **Question:** Are there additional terms "attached" or on the reverse of the electronic message?

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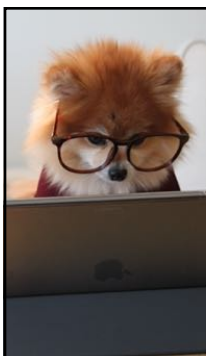
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### Practical Considerations

- Purchase Orders/Applications:
  - PDFs can be changed
  - Use caution when approving applications and/or purchase orders in PDF format

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North Carolina Identity Theft & Federal Red Flags

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### What Will We Cover?

- A few Definitions
- North Carolina Requirements vs. Federal Requirements (FTC)
- Treble Damage Potential
- What Does the Law Require Me To Do?
- Destruction of Records

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### Redaction of Identification Numbers

- *As defined by the statute, "redaction" means rendering data so it is unreadable or is truncated so that no more than the last four digits of an identification number are accessible as part of the data.*

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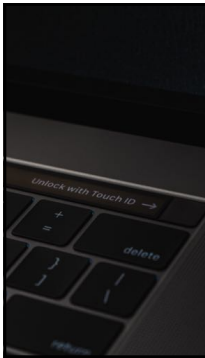
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### Identification Numbers

- Please note that "identification number" is not limited to social security numbers.
- It also applies to employer tax identification numbers, driver's licenses, bank account numbers, passport numbers, electronic identification numbers, email names or addresses, internet account numbers, internet identification names, digital signatures, fingerprints, parents legal surname prior to marriage, and any other personal information that could be used as part of an identity theft scheme.

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What is the Liability if We Violate the Act?

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How GREAT is the Risk?

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What is the Liability?

- Violations of the Act will automatically qualify as Unfair or Deceptive Acts or Practices under Chapter 75 which could result in treble damages.

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What is the Liability?

- There are now provisions which will be violations of the Unfair or Deceptive Act, but which will only subject the guilty party to treble damages if the business was negligent in training its staff, developing its policies and procedures, or willfully allowed information to escape control.

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Thou Shall Not...

- The crux of the Act is that a business shall not intentionally communicate or otherwise make available to the general public an individual's social security number or other identification number.

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### Thou Shall Not...

- A review of the concerns leads us to believe that few businesses will have to alter practices to comply with this portion of the Act.
- The "thou shall not" portions of N.C.G.S. §75-62 include:
  - (1) not using a social security number as the number on a credit card, access card, or as a password;
  - (2) require an individual to use the social security number to access a Web site, unless a separate PIN or password are also required;

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### Thou Shall Not...

- The "thou shall not" portions of N.C.G.S. §75-62 include:
  - (3) require an individual to transmit their social security number via the Internet unless the connection is secure or the social security number is encrypted;
  - (4) print a social security number on mailed material where the number might in anyway be visible to the public;

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### Thou Shall Not...

- The "thou shall not" portions of N.C.G.S. §75-62 include:
  - or (5) sell, lease, loan or otherwise intentionally disclose a social security number to a third party without the written consent of the individual.

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What is the password again?

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### Federal Law Red Flags

- The new law requires each creditor to develop and implement an Identity Theft Prevention Program.

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### Federal Law Red Flags

- The ID Theft Program must include:
  - Reasonable policies and procedures for
    - Detecting
    - Preventing
    - Mitigating ID theft
  - And Enable a Creditor to:
    - Identify relevant patterns and practices (red flags)
    - Detect red flags
    - Respond appropriately
    - Ensure updating of the Program

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### Federal Law Red Flags

- What Constitutes Red Flags?
  - The regulations define Red Flag as a pattern, practice, or specific activity that indicates the possible risk of identity theft.

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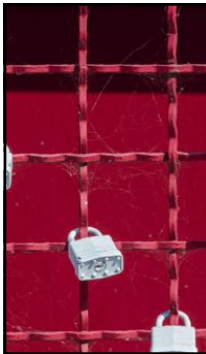
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### Federal Law Red Flags

- The Red Flags Rule requires creditors that offer or maintain accounts to adopt a written identify theft prevention program to:
  - DETECT warning signs of identify theft;
  - PREVENT identify theft within reason with steps impacting day to day operations; and
  - MITIGATE any damage caused.

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### Federal Law Red Flags

- Creditors are likely to detect Red Flags during the process of:
  - Opening New Accounts
  - Billing for equipment, services, etc.
  - Reviewing records of the customer
  - Customer Service
  - Collecting Past Due Accounts

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Federal Law Red Flags

- Creditors Need to Take Five Steps:
  1. Identify the Red Flags for your business;
  2. Set up procedures to detect Red Flags;
  3. Respond to Red Flags to prevent theft or mitigate damages
  4. Update your Identify Theft Detection and Prevention Program as needed to keep current; and
  5. Educate your employees

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Federal Law Red Flags

- Identifying Red Flags
  - Suspicious documents
  - Suspicious personal identifying information
  - Suspicious account activity
  - Notice from other industry sources

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Federal Law Red Flags

- Identifying Red Flags
  - Suspicious documents
  - Photograph not matching
  - Appearance of forgery or altered documents
  - Information does not match

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### Federal Law Red Flags

- Identifying Red Flags
  - Suspicious personal identifying information
  - Address is fictitious
  - Phone number invalid
  - Social security number not matching
  - Information is inconsistent with other information on file

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### Federal Law Red Flags

- Identifying Red Flags
  - Suspicious account activity
  - Mail returned repeatedly as undeliverable with account activity continuing
  - Inconsistent and unusual account activity

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### Federal Law Red Flags

- Identifying Red Flags
  - Notice from other industry sources
  - Notice from the customer, law enforcement, etc of possible identity theft
  - Complaints from the customer
  - Sharing of information in industry group meetings

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### Prevent and Mitigate

- Notify the correct person within your company when you encounter:
  - Suspicious documents
  - Suspicious personal identifying information;
  - Suspicious account activity; or
  - Information from other sources

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### Summary

- The truth is that this is an area in which a business could unintentionally cause harsh financial consequences if the business is not fully aware of the law and its requirements. Policies need to be drafted and procedures established.

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### Summary

- The law clearly recognizes the business need and purpose in acquiring sensitive identity information. The requirement is that those acquiring such information be careful guardians of the information.

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### Summary

- Plan of Action:
  - Make the company aware of the new law;
  - Review the company's current policy;
  - Make adjustments or define new policies to follow the new law;
  - Properly train and educate each employee;
  - Periodically audit your company to make sure your company is following the policy.

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### Questions?

If you have any questions or comments, please let us know.

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