

**STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION DIVISION**

**2013 ANNUAL REPORT**

**CONSUMER PROTECTION, COMPETITION,  
CHARITIES, AND TOBACCO ENFORCEMENT**



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## Mission Statement

*The Attorney General enforces Idaho's consumer-related laws, including the Consumer Protection, Competition, Telephone Solicitation, Charitable Solicitation, Consumer Foreclosure Protection, and Credit Report Protection Acts. These laws protect consumers, businesses, and the marketplace from unfair or deceptive acts and practices, as well as unreasonable restraints of trade. The Attorney General seeks to fulfill this charge efficiently and economically through education, mediation, and, where appropriate, enforcement actions.*

*In addition to enforcing consumer protection statutes, the Attorney General enforces and defends the State's Master Settlement Agreement with the tobacco industry. The Legislature has also delegated to the Attorney General the duty of enforcing the Tobacco Master Settlement Agreement, Tobacco Master Settlement Agreement Complementary, and Prevention of Minors' Access to Tobacco Acts. The Master Settlement Agreement and these associated statutes help promote the public health and protect the fiscal soundness of the State.*

## INTRODUCTION

Each year Attorney General Lawrence Wasden reports to the public about the activities of his office in the areas of consumer protection, competition, telephone solicitations, charities and charitable solicitations, and tobacco enforcement. This report highlights the enforcement actions that the Attorney General undertook in 2013 and provides updates of the office's significant and ongoing litigation. In addition, the report identifies and discusses the top ten categories of which consumers filed complaints in 2013. The report also summarizes the office's 2013 consumer outreach and education efforts.



Enacted in 1971, the Idaho Consumer Protection Act (ICPA) protects consumers, businesses, and Idaho's marketplace from unfair competition and deceptive practices in trade and commerce. The Idaho Competition Act, enacted in 2000, prohibits unreasonable restraints of trade. Over the years, the Legislature has enacted other consumer laws, such as the Telephone Solicitation and Charitable Solicitation Acts. The Attorney General is committed to preserving the integrity of Idaho's marketplace, and his proactive enforcement and education efforts will ensure the continuing success of the ICPA, the Competition Act and other applicable consumer laws in the coming years.

# ANNUAL ACTIVITIES SUMMARY

## Consumer Complaints & Contacts

- Top Consumer Complaints: motor vehicles and loans and mortgage lenders
- Total Number of Consumer Complaints Filed: 1,024
- Total Number of Other Consumer Contacts Logged 10,107
- Total Amount of Dollar Losses Reported by Consumers: \$2,623,417

## Enforcement Actions

- Investigated and brought suit, alleging that St. Luke's Health System's acquisition of the Saltzer Medical Group violates federal and Idaho law, which prohibits acquisitions that substantially lessen competition
- Implemented \$100 million Idaho mortgage foreclosure settlement and settled with another mortgage servicer
- Litigated and settled final drug manufacturers' average wholesale price cases
- Continued litigation of price-fixing claims, including the filing and partial settlement of a lawsuit alleging price fixing in the electronic books market
- Continued defense of Idaho's tobacco Master Settlement Agreement payments

## Consumer Restitution & Financial Issues

- Recovered \$4,993,571 in consumer restitution. This amount equals \$7.40 for each taxpayer dollar appropriated for consumer operations in FY 2013 (\$674,300)
- Recovered—for the 22<sup>nd</sup> straight year—more money for residents and businesses than the Legislature appropriated from the general fund for consumer protection operations
- Recovered and deposited into the consumer protection account \$2,361,927 in civil penalties, fees, and costs
- Transferred \$6,168,700 in unspent consumer protection account funds to the general fund in FY 2013. Since 2000 the office has transferred \$24,259,600 in consumer funds to the general fund
- Received \$24,896,448 under the tobacco Master Settlement Agreement (MSA), totaling \$354,832,529 received since the MSA was finalized in 1998

# APPLICABLE STATE CONSUMER LAWS

## Consumer Protection

- **Idaho Consumer Protection Act**, Title 48, Chapter 6, Idaho Code
- **Idaho Rules of Consumer Protection**, IDAPA 04.02.0100 et seq.
- **Idaho Lemon Law**, Title 48, Chapter 9, Idaho Code
- **Idaho Motor Vehicle Service Contract Act**, Title 49, Chapter 28, Idaho Code
- **General Contractor Disclosure Law**, Idaho Code § 45-525
- **Consumer Protection Foreclosure Act**, Title 48, Chapter 16, Idaho Code
- **Home Loan Modification Review Notice Law**, Idaho Code § 45-1506C
- **Credit Report Protection Act**, Title 28, Chapter 52, Idaho Code
- **Loan Broker Law**, Title 26, Chapter 25, Idaho Code
- **Pyramid Promotional Schemes**, Idaho Code § 18-3101
- **Security Breaches**, Title 28, Chapter 51, Idaho Code
- **Legal Service Expense Plans Law**, Idaho Code § 41-114B

## Competition

- **Idaho Competition Act**, Title 48, Chapter 1, Idaho Code

## Charitable Solicitations and Charitable Assets

- **Idaho Charitable Solicitation Act**, Title 48, Chapter 12, Idaho Code
- **Charitable Trust Assets**, Idaho Code §§ 67-1401 & 68-1204
- **Uniform Prudent Management of Institutional Funds Act (notice)**, Title 33, Chapter 50, Idaho Code

## Telephone Solicitations

- **Idaho Telephone Solicitations Act**, Title 48, Chapter 10, Idaho Code
- **Idaho Pay-Per-Telephone Call Act**, Title 48, Chapter 11, Idaho Code
- **Idaho Rules of Telephone Solicitation and Pay-Per-Telephone Call Services Rules**, IDAPA 04.02.0200 et seq.

## Tobacco

- **Idaho Tobacco Master Settlement Agreement Act**, Title 39, Chapter 79, Idaho Code
- **Idaho Tobacco Master Settlement Agreement Complementary Act**, Title 39, Chapter 84, Idaho Code
- **Idaho Tobacco Master Settlement Agreement Complementary Act Rule**, IDAPA 04.20.0100
- **Prevention of Minors' Access to Tobacco Act**, Title 39, Chapter 57, Idaho Code
- **Reduced Cigarette Ignition Propensity Act**, Title 39, Chapter 89, Idaho Code

# CONSUMER ENFORCEMENT ACTIVITIES

## ★ CONSUMER PROTECTION ★

Enforcement of Idaho's consumer laws protects a free and competitive marketplace and ensures a level playing field for all businesses. A marketplace unfettered by false, deceptive, and misleading practices and free of unreasonable restraints of trade will yield the best allocation of Idaho's economic resources, the lowest prices, the highest quality, and the greatest innovative and material progress. Pursuant to his authority under the Idaho Consumer Protection Act, the Attorney General undertook a number of matters in 2013 that are noteworthy in scope and impact.

### MORTGAGE FORECLOSURE SETTLEMENTS

In 2012, the Attorney General, along with the Idaho Department of Finance, other states, and federal mortgage regulators, entered into consent judgments with the five largest loan servicers and their affiliates:

- Bank of America Corporation
- Citigroup, Inc.
- J.P. Morgan Chase & Company
- Ally Financial, Inc.
- Wells Fargo & Company

The National Mortgage Settlement (NMS), which became fully effective in October 2012, resolved claims related to the servicers' mortgage origination, servicing, and foreclosure practices. The Attorney General implemented the financial portions of the NMS in 2013.

Under the NMS, 6,564 Idahoans who lost their homes to foreclosure received individual payments, which collectively totaled

\$9,714,720. Idaho homeowners also collectively received \$157 million in direct relief as follows:

- \$14.7 million in first lien principal reduction modifications;
- \$86.8 million in completed short sales and forgiven deficiencies;
- \$18.2 million in completed refinances; and
- \$37.9 million in completed second lien extinguishments.

The State received a payment of \$13 million of which the Idaho Legislature appropriated \$500,000 to the Office of the Attorney General to address housing and foreclosure matters. The Attorney General negotiated service contracts with six HUD-certified housing counseling agencies, the Idaho Law Foundation's Volunteer Lawyer's Program, and Idaho Legal Aid. A supplementary report outlining how each

agency utilized its grant money is attached to this report. The office sent representatives to 29 separate communities to speak about foreclosure and the NMS.

The NMS helped the Attorney General establish a cooperative working relationship with the loan servicers. The Attorney General's part-time housing specialist seeks to facilitate productive communication between homeowners and their loan servicers and to assist homeowners in better understanding their immediate and long-term housing options.

#### **OCWEN FINANCIAL CORPORATION & OCWEN LOAN SERVICING**

In December 2013, the Attorney General announced that he, along with other state attorneys general and the Consumer Financial Protection Bureau, had reached a settlement with Ocwen Financial Corporation and its loan

servicing subsidiary, Ocwen Loan Servicing. Ocwen is the nation's fourth largest mortgage servicer. The settlement addresses allegations that Ocwen engaged in unlawful mortgage loan servicing practices, including robo-signing.

Under the settlement, Ocwen agreed to implement servicing standards similar to those outlined in the NMS. Ocwen also agreed to provide homeowners first-lien principal reductions and to establish a foreclosure fund for borrowers who lost their homes to foreclosure.

In Idaho the settlement will provide troubled Idaho borrowers with an estimated \$3.7 million in first lien principal reductions. Further, over 900 borrowers will be eligible to receive a cash payment, projected to exceed \$1,000 per loan. These payments will be made in 2014.

### **PHARMACEUTICAL MANUFACTURERS ~ AVERAGE WHOLESALE DRUG PRICING**

Idaho Medicaid provides health care services, including prescription drugs, to low-income Idahoans. Since early 2007, the Attorney General has represented the State of Idaho in multiple lawsuits against drug manufacturers based on the companies' alleged false and deceptive average wholesale price reporting practices.

By law, Idaho Medicaid must reimburse pharmacies and hospitals at the "estimated acquisition cost" of the drug. Up until July 2011, Idaho Medicaid primarily used the drug's "average wholesale price," as reported by the drug's manufacturer, as a basis for determining the estimated acquisition cost of a drug. The Attorney General alleged that the defendant

drug manufacturers reported falsely inflated average wholesale prices, which resulted in the State of Idaho paying health care providers millions of dollars more than they should have received.

In 2013, the Attorney General settled with the last two drug manufacturers named in his lawsuits—Abbott Laboratories and Novartis Pharmaceuticals Corp.—recovering more than \$1.75 million collectively from these two companies to reimburse the State and its

taxpayers for their inflated prices. The settlements also reimbursed the Attorney General his fees and costs in pursuing the cases.

The 2013 settlements successfully concluded the Attorney General’s average wholesale pricing litigation. Since 2007, the Attorney General has recovered \$28.3 million from similar settlements with manufacturers.

The chart below summarizes the amount of money each settling defendant manufacturer has paid the State of Idaho since 2005:

<b>DATE</b>	<b>COMPANY</b>	<b>SETTLEMENT</b>
07/12/05	TAP Pharmaceutical Products, Inc. (Lupron drug only)*	\$252,027.44
10/29/06	Dey, Inc. and Dey, L.P.*	\$1,180,600.00
06/25/08	Bristol-Myers Squibb Company and Apothecon, Inc.*	\$1,738,719.00
07/23/09	Ben Venue Laboratories, Inc., Boehringer Ingelheim Pharmaceuticals, Inc., Roxane, Inc.	\$666,000.00
06/10/10	Alpharma USPD Inc. and Purepac Pharmaceutical Co.	\$1,274,623.00
08/23/10	Teva Pharmaceuticals USA, Inc., Ivax Corp., Ivax Pharmaceuticals, Inc., and Barr Laboratories, Inc.	\$1,900,000.00
10/22/10	Sandoz, Inc.	\$1,650,000.00
01/14/11	Warrick Pharmaceuticals Corporation and Schering-Plough Corp.	\$750,000.00
03/31/11	Par Pharmaceuticals Cos., Inc.	\$1,700,000.00
08/10/11	AstraZeneca Pharmaceuticals LP and AstraZeneca LP	\$2,500,000.00
09/28/11	Merck Sharp & Dohme Corp. , f/k/a Merck & Co., Inc.	\$1,600,000.00
12/05/11	Johnson & Johnson, Centocor, Inc., Janssen Pharmaceutical Products, LP, McNeil-PPC, Inc., Ortho Biotech Products, LP, Ortho-McNeil Pharmaceutical, Inc.	\$2,000,000.00
01/27/12	Mylan Inc. and Mylan Pharmaceuticals Inc.	\$625,000.00
04/13/12	SmithKline Beecham Corp., d/b/a GlaxoSmithKline	\$2,600,000.00



06/01/12	Forest Laboratories, Inc.	\$790,000.00
07/12/12	Watson Pharma, Inc. and Watson Pharmaceuticals, Inc.	\$1,700,000.00
07/31/12	Aventis Pharmaceuticals Inc.	\$828,500.00
12/27/12	Pfizer Inc. and Pharmacia Corp.	\$2,900,000.00
02/05/13	Abbott Laboratories	\$1,000,000.00
07/10/13	Novartis Pharmaceuticals Corp.	\$750,000.00

**TOTAL: \$28,399,469.44**

\* Pre-Litigation Settlement

### OTHER CONSUMER PROTECTION CASES

#### **ALLIED COMMERCIAL PARTNERS, LLC**

The Attorney General sued Allied Commercial Partners, LLC, and its manager, Dairld Wurtz, for violations of the Idaho Consumer Protection Act and Idaho’s loan broker law.

Allied Commercial agreed to settle the Attorney General’s lawsuit by entering into a Consent Judgment. The settlement requires the company to comply with Idaho law and to pay \$19,000 in restitution to consumers. The company also paid \$1,500 to reimburse the Attorney General for his litigation expenses

#### **AMERICAN SCHOOL PUBLISHING, LLC**

In 2011 the Attorney General filed a consumer protection lawsuit against American School Publishing, LLC, alleging that hundreds of small business owners in eight states paid

“American School Publishing” for coupon ads that were never published.

The parties reached a settlement in January 2013 wherein the company paid \$9,227 to 40 consumers who filed complaints with the Attorney General. American School Publishing also agreed to pay restitution to other consumers who subsequently contacted the Attorney General. To offset the Attorney General’s litigation costs, he received a payment of \$1,500 from the company.

#### **AUTOS 4 LESS**

The Attorney General settled a matter with Autos 4 Less to resolve allegations concerning the sale of a used motor vehicle that the Attorney General alleged violated the Idaho Rules of Consumer Protection.

In this matter, a consumer traded-in a vehicle and agreed to finance the remainder of



the purchase in a subject-to-financing contract. Autos 4 Less sold the trade-in vehicle and assigned the purchase contract to a third-party financing company. After the financing company declined to finance the purchase, Autos 4 Less seized the delivered vehicle and refused to refund the trade-in allowance to the consumer. Rule 237 of the Rules of Consumer Protection prohibits this type of behavior.

Under terms of the settlement, Autos 4 Less paid the consumer \$2,500 plus interest in restitution and reimbursed the Attorney General \$2,500 for the cost of his investigation.

#### **COINUTS, INC., & KEVIN EVARD MITCHELL**

In April 2013 the Attorney General sued CoiNuts, Inc., and its owner, Kevin Evard Mitchell, in Kootenai County District Court for multiple violations of the Consumer Protection Act. Between 2008 and 2012, consumers paid the defendants hundreds of thousands of dollars for gold and silver that the defendants promised to deliver, but never did. Without returning the consumers' money, Mitchell closed his store, leaving behind dozens of damaged consumers.

The Attorney General obtained a judgment against CoiNuts, Inc., in September 2013 for \$742,826, which includes consumer restitution, civil penalties, and attorney's fees. The Attorney General argued his Motion for Summary Judgment against Mitchell in January

2014. The district court is expected to rule on the motion in the coming weeks. A court trial is scheduled to begin in April 2014.

#### **CORPORATE RECORDS SERVICE**

Corporate Records Service paid the Attorney General a \$15,000 civil penalty to settle allegations that its direct-mail ads to 14,500 Idaho businesses violated the Idaho Consumer Protection Act. For \$125, Corporate Records Service promised to prepare the businesses' corporate minutes. However, those that paid the money received only a blank notebook. Because the ad appeared to originate from the government, a number of businesses believed they were required to respond.

To prevent this confusion in the future, the parties' settlement prohibits Corporate Records Service from using official words and symbols in its ads. The company also reimbursed the Attorney General for the fees and costs incurred during his investigation.

#### **DECEPTIVE DISCOUNT CLUBS**

The Attorney General joined a \$32 million multi-state settlement with Affinion and its subsidiaries, Trilegiant and Webloyalty. The settlement resolves allegations that Affinion used misleading business practices to trick consumers into signing up and paying for discount clubs and memberships.

There are approximately 7,600 “members” of these programs in Idaho and Idahoans will receive approximately \$500,000 in restitution under the settlement when it is finalized in 2014. In addition, Affinion paid \$250,000 to reimburse the Attorney General for his costs related to the investigation.

Affinion and its subsidiaries run multiple “discount clubs” and “membership programs.” These clubs offer services such as credit monitoring, roadside assistance, and discounted travel. Consumers complained that Affinion charged them for these services and memberships without their authorization or knowledge. Some also complained that once they discovered the charges, they had trouble canceling or getting a refund.

The settlement requires Affinion to provide clear and conspicuous information to enrolled consumers regarding their membership, periodic reminders of their enrollment, and make changes to its cancellation practices.

#### **ECOMMERCE SUPPORT, LLC**

The Attorney General closed down a Boise company that sold ecommerce coaching services to thousands of consumers throughout the United States and Canada. As part of a settlement with the Attorney General, eCommerce Support, LLC, agreed to stop

operating in Idaho and paid the office \$90,000 in consumer restitution.

Consumers reported that eCommerce Support misrepresented the written materials and coaching services it sold for thousands of dollars. The company allegedly misrepresented the amount of time consumers would have to dedicate to the program and how much money consumers could earn from the program.

In addition to paying restitution, eCommerce Support paid the Attorney General \$10,000 to reimburse him for his investigative costs. The settlement also holds a \$50,000 civil penalty in abeyance, pending eCommerce Support’s compliance with the settlement

#### **LENDER PROCESSING SERVICES, INC.**

The Attorney General settled with one of the nation’s largest providers of mortgage loan processing services and its subsidiaries in February 2013. The settlement, which resolved allegations that Lender Processing Services, Inc. (LPS), acting on behalf of mortgage servicers, improperly signed and notarized loan default paperwork, required LPS to change its business practices and to pay the State \$890,000.

#### **STANDARD & POOR’S**

The Attorney General sued Standard & Poor’s Financial Services, LLC and its parent company, McGraw-Hill Companies, Inc., for

violations of the Idaho Consumer Protection Act stemming from S&P's public statements regarding its securities rating business.

The Attorney General alleges that S&P made false and misleading statements regarding S&P's independence and objectivity in its role as a credit rating agency for mortgage backed securities. The Attorney General alleges that S&P placed internal goals of market share and generating revenue from ratings fees ahead of S&P public statements of independence and objectivity. Consequently, S&P's false and misleading statements violated the Idaho Consumer Protection Act.

The Attorney General seeks remedies in the form of injunctive relief to prevent this type of behavior in the future, and statutory penalties and disgorgement of fees charged by S&P for securities ratings during the relevant period. The Attorney General is not seeking damages on the behalf of private parties or government entities that may have relied on S&P's allegedly false statements in making investment decisions.

The Attorney General filed the lawsuit in state court in February 2013. However, S&P removed the case to federal court before answering the complaint. A motion to remand

Idaho's lawsuit to state court is currently pending. In the interim, discovery has commenced.

### **WHITE HAT GROUP**

The Attorney General settled a matter with the White Hat Group and its owner, Mark Wicklund, resolving allegations that the company and Wicklund engaged in the unauthorized practice of law. In addition to requiring payment of restitution to former customers, the settlement prohibits White Hat Group and Wicklund from providing legal advice and performing other acts that constitute the practice of law in Idaho.

The Attorney General alleged that Wicklund falsely represented that he was qualified to represent them in legal matters when he was not. It is a violation of the Consumer Protection Act to represent that you have qualifications you do not have. Consumers also complained that the White Hat Group did not perform the services for which consumers had paid. The settlement also requires White Hat Group and Wicklund to reimburse the Attorney General for the costs of the investigation.

## **★ COMPETITION ACT ★**

The purposes of Idaho's Competition Act are to maintain and promote economic competition in Idaho commerce, provide the benefits of that competition to consumers and businesses in the State, and establish efficient and economical procedures to accomplish these purposes and policies. A marketplace free of unreasonable restraints of trade will yield the best allocation of Idaho's economic resources, the lowest prices, the highest quality, and the greatest material and innovative progress. In 2013, the Attorney General exercised his enforcement responsibilities under the Competition Act (and related federal antitrust laws) and continued litigation in several other matters brought under the Competition Act. He also announced a settlement of one such matter.

### **AMERICAN EXPRESS COMPANY, MASTERCARD, & VISA LITIGATION**

Along with the United States Department of Justice and other state attorneys general, the Attorney General filed a civil antitrust lawsuit in the Eastern District of New York against Visa, MasterCard, and American Express. The lawsuit alleges that the companies, which operate the three largest credit card networks in the country, require merchants to restrict the types of discounts provided to credit card customers.

Every time a consumer uses a credit card to buy something from a merchant, that merchant pays a fee that is passed on to consumers through higher prices. In 2009 alone, the three credit card companies and their affiliate banks collected more than \$35 billion in these fees. Visa, MasterCard, and American Express went beyond imposing fees and allegedly prevented merchants from offering

consumers any cost-saving options such as discounts or rewards for using less expensive forms of payment. Restrictive payment rules inhibit price competition among credit card networks. When merchants face increased business costs, consumers pay higher prices.

The attorneys general and USDOJ reached a settlement with Visa and MasterCard in the fall of 2010. The court approved the settlement in 2011. Because of the settlement, companies and retailers may provide their customers with more options and cost saving incentives. Merchants also may inform their customers which cards will lower business costs the most, allowing merchants to pass these savings on to consumers.

Litigation against American Express continues. The Attorney General asserts that American Express maintains the industry's most restrictive merchant rules and has the highest fees of any credit card company. Presently,

American Express's rules prohibit any of the millions of merchants that accept American Express from taking advantage of the discounts and rebates that the Visa and MasterCard settlement would permit. While a precise date is yet to be determined, a trial is expected to take place in late spring or early summer of 2014.

#### **DYNAMIC RANDOM ACCESS MEMORY MANUFACTURER LITIGATION**

Involving one of the largest price-fixing cartels ever discovered, the dynamic random access memory (DRAM) litigation involves 13 manufacturers and represents millions of dollars in damages to purchasers and end user consumers, including businesses, state agencies, and political subdivisions.

Personal computers, servers, workstations, and other products have semiconductors (i.e., memory chips) known as dynamic random access memory (DRAM). DRAM holds temporary instructions and data available for quick access while the device is in use. Electronic products with DRAM are purchased by consumers, businesses, schools and government bodies throughout the world.

The defendant DRAM manufacturers allegedly discussed and coordinated the prices they charged to consumers and to the large computer manufacturers. In June 2002, the United States Department of Justice launched a criminal investigation into the manufacturers.

To recover restitution and damages for Idaho, in 2006 the Attorney General joined a multistate lawsuit against 13 DRAM manufacturers and their subsidiaries, claiming violations of the Competition Act and federal antitrust law. The lawsuit alleges that, as a result of the manufacturers' price fixing, Idaho consumers, businesses, and state and local governmental agencies paid more for their computers, servers, and other electronic devices than they would have paid had there not been any price fixing.

The Attorney General and the defendants have now entered into settlements collectively totaling \$310 million in the participating jurisdictions, including restitution for damaged consumers. The restitution is on behalf of consumers, businesses, the State of Idaho and certain local governmental agencies. A claims process, which is being implemented, will determine the amounts to be distributed to the various harmed parties.

#### **E-BOOKS PRICE FIXING LITIGATION AND SETTLEMENT**

The Attorney General joined with the attorneys general of 49 states in an antitrust lawsuit against Apple, Inc., and five of the largest U.S. book publishers: Hachette Book Group (USA), HarperCollins Publishers LLC., Simon & Schuster Inc., Holtzbrinck Publishers

LLC d/b/a Macmillan, and Penguin Group (U.S.A.), Inc.

The lawsuit alleges that the publishers and Apple conspired to raise the retail price of E-books in two significant ways. First, in order to gain leverage in retail price negotiations with distribution outlets such as Amazon, four of the publishers agreed in late 2009 to delay publication of certain front-list E-books for several months following each book's print release. Second, around January of 2010, Apple began to facilitate an agreement among the publishers to change the E-book distribution system from a Wholesale-Retail Model to an Agency Model. Under the Wholesale-Retail Model, distributors such as Amazon or Barnes & Noble set prices and sold E-books to consumers. The Agency Model allowed the publishers to set E-book prices and sell E-books directly to consumers.

By May 21, 2013, settlements had been reached with all the publishers, leaving Apple as the sole litigating defendant. Together, the publishers agreed to pay more than \$164 million to consumers nationwide. Collectively, Idaho consumers were entitled to receive up to \$832,000 for E-books purchased by Idaho consumers between April 1, 2010 and May 21, 2012 as a result of the publisher settlements.

In July of 2013, following a three week bench trial, a federal court ruled that Apple

violated state and federal antitrust laws in Apple's role in the E-book price fixing scheme. The final judgment imposed limitations on Apple's ability to control its E-book pricing and regulates how Apple can deal with individual publishers for a period of five years. The court also appointed an external monitor to review Apple's antitrust compliance for a period of two years. Apple and some of the settling publishers have appealed the judgment.

The trial did not address the issues of damages or civil penalties. A second trial in May 2014 is scheduled to resolve the issue of damages.

#### **ST. LUKE'S REGIONAL MEDICAL CENTER AND SALTZER MEDICAL GROUP**

St. Luke's Health System, Ltd. (St. Luke's) is a not-for-profit health system that operates six hospitals in Idaho and employs several hundred physicians, including 450 in the Treasure Valley. Saltzer Medical Group (Saltzer) is a for-profit, multispecialty physician group based in Nampa, Idaho, with additional clinics in Boise, Meridian and Caldwell. Saltzer includes 44 physicians, including a large number of primary care physicians (PCPs). In their own words, St. Luke's is the "dominant" health system in the Treasure Valley, and Saltzer is the "dominant" medical group in Nampa.



On December 31, 2012, St. Luke's acquired Saltzer's assets, and Saltzer's physicians entered into a five-year professional services agreement with St. Luke's.

After a rigorous investigation conducted jointly with the Federal Trade Commission (FTC), the Attorney General and the FTC concluded that the acquisition violated federal and state competition laws that prohibit acquisitions that may substantially lessen competition.

After St. Luke's and Saltzer declined the Attorney General's request to postpone closing on the acquisition, he and the FTC filed suit in federal court to unwind the deal.

The primary market the Attorney General and the FTC are concerned about is for adult PCP services in Nampa. By combining the two largest providers of Adult PCP services in Nampa, the Attorney General and the FTC alleged that the acquisition gives the merged St. Luke's/Saltzer a nearly 80 percent share of the primary care physician market. Such a

concentration is more than double the level needed to create a presumption of competitive harm under established antitrust law.

A one month trial was held in federal district court and closing arguments were presented to the Court November 7, 2013. A decision of the Court is pending.

The Attorney General's concerns with the acquisition are that it will enhance St. Luke's market power, allowing it to extract higher reimbursements from health plans at the expense of local employers and healthcare consumers. Indeed evidence was presented at trial showing that the Defendants expect the acquisition to increase their bargaining leverage with health plans and employers, giving St. Luke's the ability to demand higher payments. These health plans and employers agree that the acquisition further strengthens St. Luke's already considerable market power and will likely result in higher healthcare costs for Idaho consumers.

### **★ TELEPHONE SOLICITATIONS AND REGISTRATIONS ★**

Recognizing the special risks and the potential for abuse of telephones for commercial solicitation, the Legislature enacted the Idaho Telephone Solicitations Act (ITSA), title 48, chapter 10, Idaho Code, in 1992. The ITSA safeguards the public against deceit and financial hardship, encourages competition and fair dealings among the telemarketing industry, and prohibits telemarketers from using representations that have the tendency or capacity to mislead purchasers.



Telephone solicitors must register with the Attorney General’s Consumer Protection Division before soliciting in Idaho, and the telemarketer’s failure to register renders any sales contract entered into during the unlawful telephone solicitation unenforceable by the telemarketer. In 2013 the Division registered 15 telemarketers, a decrease from 2012.

Idaho’s Do Not Call law, which established the state’s “no telephone solicitation contact list,” predates the National Do Not Call Registry and subjects violators to civil penalties of up to \$5,000 per violation. When the National Registry was created in 2004 all Idaho numbers registered on the Idaho-only list were transferred to the Registry. Presently, the Registry contains 1,119,074 Idaho telephone numbers.

### **★ CHARITABLE SOLICITATIONS AND TRUST ASSETS ★**

Idaho law assigns to the Attorney General the duty of enforcing the Idaho Charitable Solicitations Act (ICSA). The ICSA prohibits false, deceptive, and misleading charitable solicitations. This year, the Attorney General did not undertake any actions to enforce the ICSA.

In addition to overseeing charitable solicitations, the Attorney General has a statutory duty to ensure that charitable or public trust assets are utilized according to the charitable purpose of the organization, or, if applicable, according to the donor’s specified instructions. The Attorney General’s responsibility often includes reviewing requests to modify the terms of a charitable trust or to dissolve a trust that has become imprudent or impracticable. When necessary, the Attorney General intervenes in actions to prevent private parties from unlawfully dissipating charitable trust assets.

#### **ESTATE OF DIANA K. TIBBETS**

Early in 2012, the Attorney General intervened in a Washington County case involving the estate of Diana K. Tibbets. Ms. Tibbets executed a holographic will shortly before her death in July 2011, and devised 51% of the residue of her estate to a charitable trust to benefit Idaho’s animals. Ms. Tibbets’ brother objected to the validity of the charitable trust and filed an objection with the court.

The Washington County Magistrate Court ruled against the brother and found that Ms. Tibbets—through her holographic will—established a valid charitable trust. The brother appealed the magistrate’s decision to the Washington County District Court, but the court affirmed the magistrate’s ruling.

The personal representative of Ms. Tibbets’ estate and the Attorney General agreed to donate the charitable trust assets to the Idaho Humane Society’s (IHS) Designed to Be Kind

Campaign. On December 18, 2013, the Attorney General delivered a check in the amount of

\$254,514.82 to the IHS.

## TOBACCO

The Attorney General enforces Idaho's Tobacco Master Settlement Agreement (MSA Act), Tobacco Master Settlement Agreement Complementary (Complementary Act), Prevention of Minors' Access to Tobacco Act, and Reduced Cigarette Ignition Propensity Acts. Enforcement of these laws includes prosecuting violators and defending the laws against constitutional challenges in state and federal court actions. In addition to his responsibilities under these state statutes, the Attorney General enforces and defends the State's Master Settlement Agreement (MSA) with various tobacco companies.

The MSA has had a substantial impact on cigarette consumption in the United States. Since the MSA was signed in 1998, cigarette consumption has dropped nationally more than 48%. Youth smoking rates also have declined nationally according to a study sponsored by the National Institute on Drug Abuse. In Idaho the smoking rate has decreased among adults from 20.3% in 1998 to 16.4% in 2012. In 1993 the youth smoking rate in Idaho was 27.3%. By 2011 that rate had decreased to 14.3%.

Attorney General Wasden serves as Chair of the American Legacy Foundation, which was created pursuant to the MSA to reduce youth tobacco smoking and to prevent smoking-related disease in the United States. The American Legacy Foundation developed, and continues to manage, the largest youth smoking prevention campaign in the country—truth<sup>®</sup>—with results that have proven successful.



### MASTER SETTLEMENT AGREEMENT AND IDAHO TOBACCO LAWS

#### MASTER SETTLEMENT AGREEMENT

The 1998 MSA, the largest civil litigation settlement in U.S. history, resolved

litigation brought by 46 states, including Idaho, in the mid-1990s against the largest U.S. cigarette manufacturers (Philip Morris, R.J.

Reynolds, and Lorillard), along with the industry's trade associations and PR firms. The primary purposes of the MSA are to stop the tobacco industry's targeting of children and denials of the addictiveness of nicotine and the negative health consequences of smoking, while also reimbursing the States for money spent on treating individuals with tobacco-related illnesses. Since the MSA was finalized in 1998, some 40 additional tobacco companies have joined the MSA and are bound by its terms.

As required by the MSA, each year the tobacco industry pays Idaho a sum of money, which is deposited into the Idaho Millennium Fund. During 2013, the tobacco industry paid \$24,896,448 to Idaho, bringing Idaho's total payments since entry of the MSA to \$354,832,529. Additional information about the MSA, the specific advertising restrictions that the MSA places on the tobacco industry, and details about how Idaho's tobacco payments are allocated is available on the Attorney General's tobacco webpage at

[www.ag.idaho.gov/tobacco/tobaccoIndex.html](http://www.ag.idaho.gov/tobacco/tobaccoIndex.html).

The Attorney General defends the MSA and Idaho's tobacco laws in state and federal lawsuits brought by tobacco manufacturers and distributors. The lawsuits assert that the MSA, as well as Idaho's related tobacco laws, violate constitutional provisions or are preempted by federal law. To date, the Attorney General has

defeated challenges to these Idaho laws in actions arising in Idaho, California, Washington, D.C., Oregon, Kentucky, and New York.

Under Idaho's Complementary Act, the Attorney General maintains and administers a directory of tobacco manufacturers and brands that are in compliance with Idaho's MSA and Complementary Acts. At present, the Attorney General has certified 33 tobacco manufacturers and 149 tobacco brands. The directory is available on the tobacco webpage of the Attorney General's website.

The Attorney General has been successfully litigating with the tobacco industry over the State's enforcement of Idaho's MSA Act. The industry had disputed the effectiveness of the State's efforts and sought to eliminate potentially tens of millions of dollars of Idaho's tobacco MSA payment. After several years of litigation, the tobacco companies dropped their challenge to Idaho's payment for one year. This litigation required the Attorney General's commitment of thousands of hours of staff time and tens of thousands of dollars of litigation expenses. Ultimately, Idaho demonstrated its assiduous enforcement efforts by producing thousands of documents and by filing multiple pleadings with the arbitration panel, all of which evidenced and thoroughly explained the State's diligent enforcement activities. Because of the Attorney General's commitment to enforcing

the MSA Act, Idaho's MSA payments at issue are being protected and will not be reduced.

### **PREVENTION OF MINORS' ACCESS TO TOBACCO**

The Attorney General is part of an ongoing multistate enforcement effort related to the retail sale of cigarettes and tobacco products to minors. Settlements with retail and convenience stores help accomplish this goal. The Attorney General has entered into such agreements with Kroger, Wal-Mart, Walgreens, and RiteAid stores and with gas station and convenience store chains operating under the Chevron, ConocoPhillips, ExxonMobil, and BP

brand names. Preliminary research indicates that youths' access to cigarettes and use of tobacco products has decreased because of the retail store settlements, as well as the Attorney General's ongoing monitoring of the stores' compliance and the Attorney General's continued enforcement of Idaho's tobacco sales laws. As additional data about youth smoking becomes available, the Attorney General will evaluate and focus the office's enforcement and education efforts.

## **TOBACCO ENFORCEMENT**

### **NATIVE WHOLESALE SUPPLY COMPANY**

The Attorney General and the Idaho State Tax Commission filed a lawsuit against Native Wholesale Supply Company, an unlicensed cigarette wholesaler in Perrysburg, New York, alleging the company illegally sold Seneca and Opal brand cigarettes in Idaho, which had not been approved for sale on the Idaho Directory of Compliant Tobacco Product Manufacturers and Brand Families (Idaho Directory), and sold such cigarettes at wholesale without the required Idaho cigarette tax permit. The Attorney General alleged that Native Wholesale Supply had sold more than 100

million cigarettes in Idaho not approved for sale in the State.

The Attorney General and the Idaho State Tax Commission prevailed in their lawsuit before the District Court and obtained a permanent injunction against the company, prohibiting it from selling cigarettes in Idaho that are not listed on the Idaho Directory.

Native Wholesale Supply appealed the case to the Idaho Supreme Court. On October 15, 2013, the Idaho Supreme Court upheld the district court's order prohibiting Native Wholesale from selling cigarettes not on the Idaho Directory.

# MEDIATION AND CONSUMER CONTACTS

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The Attorney General's Consumer Protection Division accepts written complaints from consumers who wish to report an alleged violation of a consumer-related law the Attorney General enforces. The Division has three consumer specialists and a housing specialist who process incoming complaints for the Division's informal dispute resolution program.

If appropriate, the complaint is sent to the identified business with a request for a written response. A member of the Division's legal staff reviews the response and decides whether to close the complaint as "resolved" or to refer the matter to the Division's enforcement team for further consideration. While the Attorney General does not force a business to participate in the dispute resolution process, most businesses, understanding the benefits of addressing their customers' concerns, voluntarily respond to complaints.

Before 2009, the Division considered all complaints for the office's informal dispute resolution program. Increasingly limited resources required the Division to revise its policies and procedures for its complaint intake, review, and mediation process in late 2009. The Division now provides its mediation services

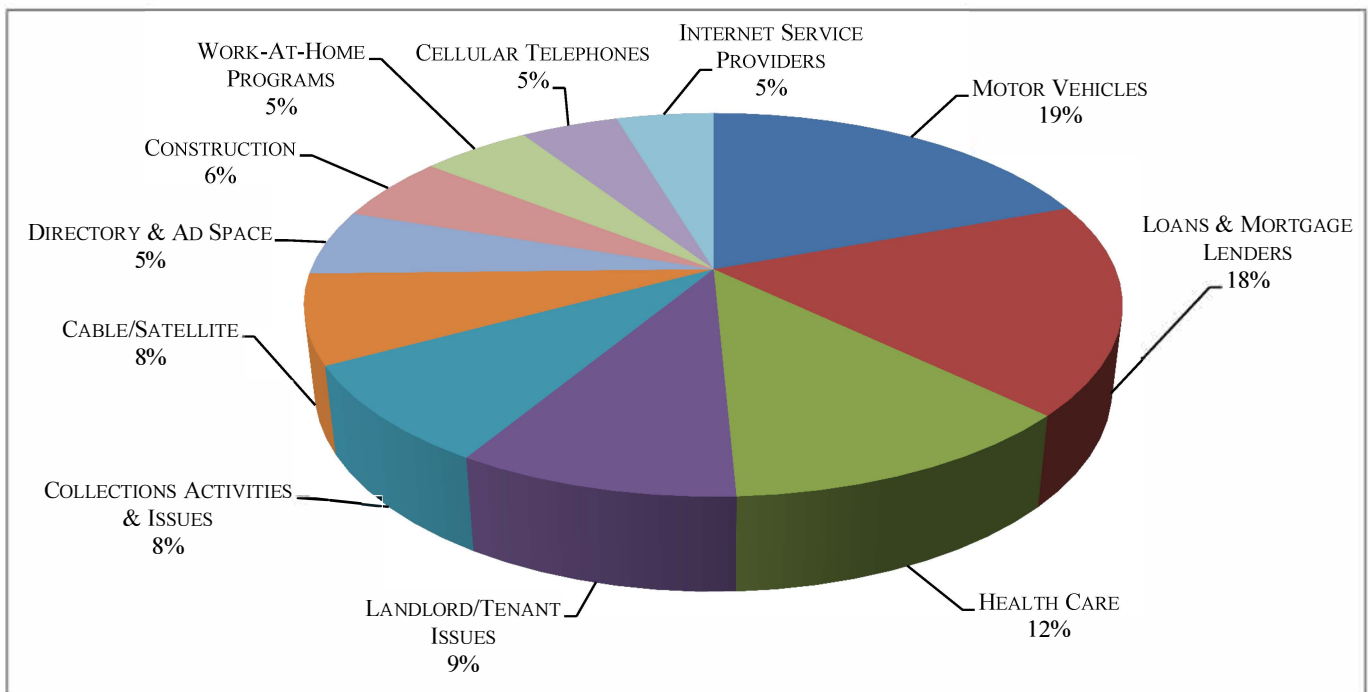
primarily to complaints from Idaho consumers. However, the Division may mediate out of state complaints if (a) the transaction occurred during the consumer's visit to Idaho; (b) the transaction involves a well-established Idaho company; or (c) the Attorney General already has an enforcement action pending against the business.

In 2013, the Division mediated 1,024 complaints, resulting in a recovery of \$150,750 for consumers. In addition, the Division processed 10,107 other consumer contacts, including more than 7,640 telephone calls and 1,159 emails. The Division also had hundreds of in-person visits from consumers and processed dozens of written requests for information.

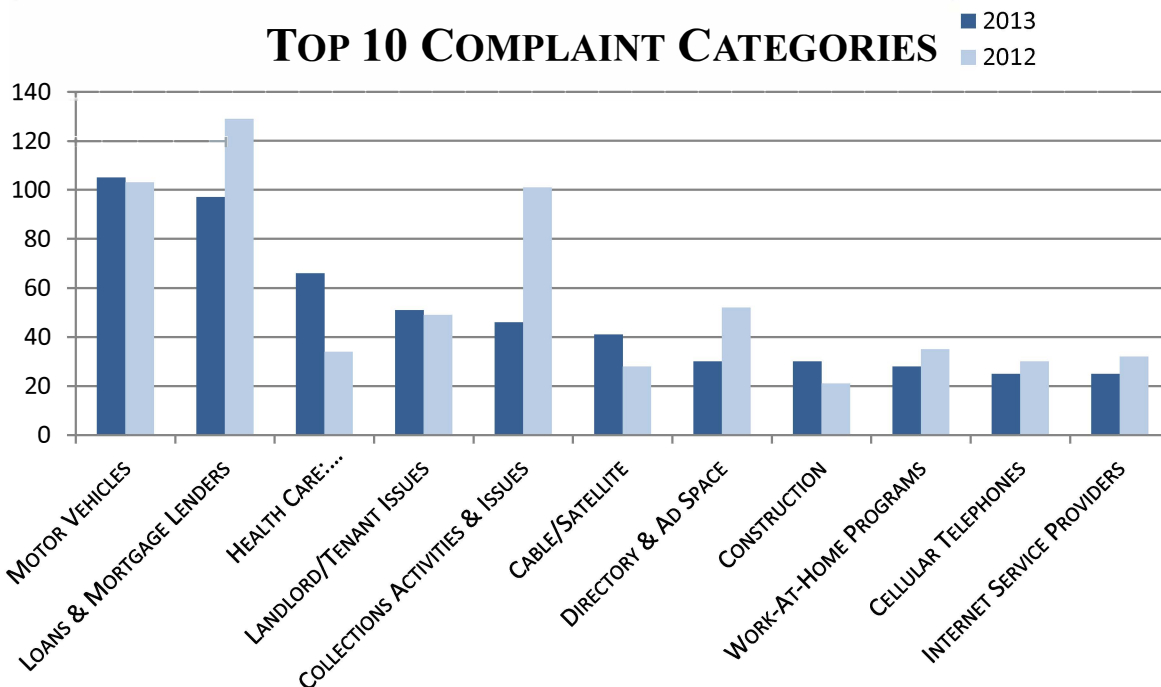
# CONSUMER PROTECTION BY THE NUMBERS

The office categorizes each complaint by the primary “good” or “service” complained about. The top 10 goods or services that consumers filed complaints about in 2013 are listed below:

<b>TOP 10 COMPLAINT CATEGORIES</b>			
	<b>CATEGORY</b>	<b>2013</b>	<b>2012</b>
1	MOTOR VEHICLES	105	103
2	LOANS & MORTGAGE LENDERS	97	129
3	HEALTH CARE: DENTAL/OPTICAL/MEDICAL	66	34
4	LANDLORD/TENANT ISSUES	51	49
5	COLLECTION ACTIVITIES & ISSUES	46	101
6	CABLE/SATELLITE	41	28
7	DIRECTORY & AD SPACE	31	52
8	CONSTRUCTION	30	21
9	WORK-AT-HOME PROGRAMS	28	35
10	CELLULAR TELEPHONES	25	30
10	INTERNET SERVICE PROVIDERS	25	32
	ALL OTHER COMPLAINTS	479	537
	<b>TOTAL COMPLAINTS RECEIVED</b>	<b>1024</b>	<b>1131</b>



## TOP 10 COMPLAINT CATEGORIES



Consumer complaints decreased about nine percent from 2012. Complaints about loans and mortgage lenders slipped from the number one category for the first time since 2009.

Motor vehicle complaints are now the number one category of complaints, although that is more a function of a drop in mortgage and lending complaints than a material increase in motor vehicle complaints. The motor vehicle complaints in 2013 raised a variety of issues, including vehicle advertising and sales, but were not concentrated in one area.

The largest jump in complaints relates to health care. In 2013, the Attorney General received 66 complaints, almost twice the number of health care complaints that he received in 2012. The most common health care complaints involve \_\_\_\_\_.

The other complaint category that experienced growth in 2013 relates to cable and satellite television issues and matters surrounding how these services were marketed to consumers.



# EDUCATION AND OUTREACH

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Public awareness and education remain the best defenses against consumer fraud. Providing Idaho's consumers with timely, accurate information about their rights under Idaho's consumer laws and warning consumers about pervasive scams encourages Idahoans to maintain their personal and financial vigilance. Educated consumers are better equipped to monitor and judge a business's practices, thereby promoting a more compliant and competitive marketplace.

The Attorney General provides consumer information through his website, public service announcements, pamphlets and

consumer tip sheets, consumer alerts, and public speaking engagements. Information and guidelines are available to companies operating in Idaho, and the Attorney General strives to continue his cooperative working relationship with Idaho's business community.

The Attorney General's educational and outreach efforts do not use tax dollars. Money from civil penalties, fees, and reimbursed costs is deposited into the consumer protection account. Funds from this account, pursuant to legislative appropriation, pay for the Attorney General's educational activities.

## ATTORNEY GENERAL'S WEBSITE

The Attorney General's website at [www.ag.idaho.gov](http://www.ag.idaho.gov) provides information for Idaho businesses and consumers. The site has pages dedicated to:

### **Consumer Protection**

The page includes links to information about filing a consumer complaint, dealing with credit card debt, buying a new or used car, controlling junk mail and unsolicited telephone calls, and contacting a consumer specialist.

### **Telephone Solicitation Registration and Renewal**

Visitors will find information about Idaho's telemarketing registration process, including an application.

### **Mortgage Servicing, Housing and Foreclosure**

This page includes information about Idaho's housing-related laws, including the Idaho Deed of Trust Act. Mortgage servicers have access to form templates to ensure they comply with mortgage notice requirements and answers to frequently asked questions about the

forms and the laws' new requirements. Links to information about avoiding foreclosure and mortgage modification scams are listed on this page.

### **Tobacco**

Visitors to this page will find a copy of Idaho's Master Settlement Agreement, links to Idaho's tobacco laws, forms for tobacco product manufacturers and distributors, and a database of tobacco manufacturers and their brands that have been approved for sale in Idaho.

### **PROTECTEENS**

Developed by Attorney General Wasden and Secretary of State Ben Ysursa, *ProtectTeens* is a video presentation and a resource kit for educating parents and teens about using the Internet wisely and safely. Parental supervision and vigilance are the keys to protecting children from Internet predators, but adults often are unaware of the dangers or lack the knowledge or skills to utilize the technology available to them. *ProtectTeens* helps bridge the awareness, knowledge, and skills gap between parents and their children, while reminding teens of the potential risks associated with linking themselves to the rest of the world.

*ProtectTeens* is available for viewing on the Attorney General's website at [www.ag.idaho.gov](http://www.ag.idaho.gov). Idahoans may use the

website contact form to request a mailed copy of the *ProtectTeens* DVD or to request a *ProtectTeens* presentation to a group or organization. The *ProtectTeens* program is the result of a partnership with Governor C.L. "Butch" Otter, First Lady Lori Otter, Superintendent of Public Instruction Tom Luna, and the following organizations: The State of Idaho Internet Crimes Against Children Task Force; the Idaho Association of School Administrators, the Idaho Parent Teachers Association, the Idaho Prosecuting Attorneys Association, the Idaho Medical Association, the Idaho Sheriffs Association, the Idaho School Boards Association, and the Idaho Chiefs of Police Association.

### **CONSUMER EDUCATION PUBLICATIONS**

Eighteen consumer manuals are available to download from the Attorney General's website or by requesting copies from the Consumer Protection Division. The manuals are free and produced

without cost to Idaho’s taxpayers. Funds obtained as the result of enforcement actions, with legislative approval, pay for the manuals.

<b>TOPIC</b>	<b>PUBLICATION TITLE</b>
<b>Automobiles</b>	Guidelines for Motor Vehicle Advertising in Idaho Idaho Lemon Law
<b>Charities &amp; Non-Profits</b>	Charitable Giving Service on an Idaho Non-Profit Board of Directors
<b>Credit &amp; Debt</b>	Credit and Debt
<b>General Consumer Issues</b>	Consumer Protection Manual Senior Citizens Manual Young Adult Handbook
<b>Housing &amp; Home Improvement</b>	Buying a Home Foreclosure Prevention: A Workbook Landlord Tenant Guidelines Residential Construction
<b>Identity Theft &amp; Privacy</b>	Identity Theft Manual
<b>Internet Safety</b>	Internet Safety Manual
<b>Telephone &amp; Mail Schemes</b>	Telephone Solicitation Manual Pyramids, Gift Schemes & Network Marketing

The Attorney General also provides tip sheets about preventing unwanted telephone solicitations, finding a credit or debt counselor, avoiding mail fraud, and other topics.

**CONSUMER AND MORTGAGE FORECLOSURE OUTREACH PRESENTATIONS**

Consumer Protection Division personnel spoke throughout Idaho about identity theft, health care fraud, Internet safety, foreclosure prevention, and current scams. The three consumer and one housing specialists visited fairs, senior centers, universities, and high schools in all parts of Idaho and participated in other education events with other consumer organizations. At each event, the specialists answered questions from audiences and distributed consumer education manuals. The map on the next page shows the Idaho towns and events where consumer staff members visited in 2013.

## Locations visited by Consumer and Housing Specialists in 2013



- North and Central Idaho***
- Consumer Literacy:  
Bonner County  
Coeur d'Alene  
Post Falls  
Sandpoint  
Spirit Lake
  - Senior Centers:  
Coeur d'Alene  
Hayden  
Sandpoint  
Spirit Lake

- Southwest Idaho***
- Senior Centers:  
Boise  
Emmett
  - Foreclosure Presentations:  
Boise  
Caldwell  
McCall  
Meridian  
Mountain Home  
Nampa  
Payette
  - Financial Literacy:  
Boise  
Eagle  
Meridian
  - Consumer Fairs:  
Caldwell  
Nampa

- Southeast Idaho***
- Foreclosure Presentations:  
Blackfoot  
Fort Hall  
Idaho Falls  
Pocatello  
Rexburg

- South Central Idaho***
- High Schools:  
Twin Falls
  - Foreclosure Presentations:  
Burley  
Gooding  
Jerome  
Rupert  
Twin Falls
  - Senior Centers:  
Gooding  
Jerome  
Twin Falls

# LEGISLATIVE INITIATIVES

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The Attorney General did not propose any legislation in 2013 regarding consumer protection matters.

# TEN YEAR CONSUMER PROTECTION SUMMARY

ACTIVITY	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
Complaints Received	1,024	1,131	1,028	1,312	1,896	1,676	1,614	2,051	1,875	4,079
Other Consumer Contacts	10,107	10,562	10,756	12,422	14,255	4,997	3,384	3,226	5,236	2,762
Dollars Claimed Lost	\$2,623,417	\$2,271,658	\$2,074,981	\$2,715,622	\$2,227,203	\$9,800,077	\$3,641,859	\$2,622,263	\$1,380,717	N/A
Restitution Recovered	\$4,993,571	\$8,497,948	\$8,151,956	\$5,920,578	\$7,431,388	\$932,134	\$662,253	\$1,692,089	\$603,089	\$5,777,643
Penalties & Costs Recovered	\$2,361,927	\$16,468,334	\$2,530,829	\$536,237	\$5,944,188	\$2,988,047	\$1,772,175	\$281,678	\$252,777	\$528,138
Enforcement Actions Completed	16	29	18	22	18	39	19	12	22	15
Registered Telemarketers	15	76	80	75	62	53	71	66	52	76
Numbers on DNC Registry	1,119,074	1,088,730	1,048,897	1,019,030	939,958	855,696	702,513	624,222	434,382	362,061

For more information about this report or to file a consumer complaint:

**Office of Attorney General  
Consumer Protection Division  
954 W. Jefferson St., 2<sup>nd</sup> Floor  
P.O. Box 83720  
Boise, ID 83720-0010**

**(208) 334-2424 (or) (800) 432-3545 (toll free)**  
**[www.ag.idaho.gov](http://www.ag.idaho.gov)**

**LAWRENCE WASDEN**  
— IDAHO ATTORNEY GENERAL —