

# Now or Never: Check Your Wallet for RadioShack Gift Cards!

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Last week, RadioShack announced in court papers that it had settled a dispute over gift cards to its stores that remain unredeemed during its bankruptcy case. Pursuant to the proposed settlement, which is subject to bankruptcy court approval, gift card holders will be required to file a simple proof of claim, available online or by mail. Those holding unredeemed balances on certain purchased gift cards – that is, those which were actually purchased for cash from RadioShack, RadioShack.com or other merchants – will have gift card balances treated as priority claims and will be paid 100% of the value of the cards. Those holding merchandise return credit, promotional or giveaway gift cards or other cards that were not actually purchased for cash, will have general unsecured claims in the case.

The RadioShack settlement represents a compromise between the Attorney Generals of several states, arguing on behalf of consumer gift card holders, and the Debtors. At this point, it is unclear whether a group of gift card holders themselves, who have also filed a class action seeking priority treatment, will support the settlement. It is also unclear just how much of the estimated \$46 million balance in unredeemed gift cards are covered under the “priority” portion of the settlement, and how many will be considered unsecured.

Under the RadioShack settlement, a website and toll-free number will be established to provide the gift card holders access to the claim form. Still to be negotiated, however, is the procedure for notifying the gift card holders of the claims process and existence of the website. The parties are likely considering this process carefully for a reason: gift card holders are generally not “known” creditors, in that the company maintains or ever receives any information on the ultimate holders, and for this reason the notice portion of the process has been a hang up in other retail bankruptcy cases.

When Borders filed for bankruptcy back in 2011, it sought and obtained approval of a general bar date for pre-petition claims, notice of which was sent to known creditors and published in the New York Times. There was no mention of gift card claims in the notice, and no gift card holders filed claims by the general bar date. Although Borders stores did honor gift cards until the doors closed, gift cards were deemed valueless after the store closing sales ended in September 2011, pursuant to the Borders liquidating plan. Thereafter, a class of Borders gift card holders filed papers seeking authority to file late claims on the basis that they did not receive adequate notice of the claims bar date, and priority status for such claims. The Bankruptcy Court, District Court for the Southern District of New York and, most recently, the Second Circuit Court of Appeals, have denied the class’ claims, deeming them equitably moot. Although these courts have agreed that the single advertisement that Borders took out

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in the New York Times was enough to put holders of approximately \$210 million in unredeemed gift cards on notice of the need to file a claim, the card holders have asked the United States Supreme Court to weigh in next term.

Contrast the Borders case with Sharper Image, another recent retail bankruptcy. In that case, Sharper Image's motion to establish a general claims bar date (which expressly covered gift card holder claims) was withdrawn when it drew criticism for proposing to simply publish notice in the New York Times and Wall Street Journal, rather than attempting to reach known gift card holders. Eventually, Sharper Image gained approval to establish specific gift card claim procedures, which included publication of notices on various websites, including Facebook, and advertising in People and Sports Illustrated magazines. Gift card holders who could provide a copy of their gift card received 100% recovery on their unredeemed balances.

For now, the ultimate lesson for gift card holders may be to pay attention. If you are holding on to a gift card for a company that is faltering – for example, American Apparel, a company with publicized financial woes – you are well advised to use that gift card before a bankruptcy is even filed. Those who wait may be left holding the card.