

Alternatives To Bankruptcy: Advising Seniors When Bankruptcy Is Not An Option

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National Elder Rights Training Project for the National Legal Resource Center.
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NLRC

Providing Legal Support to the
Aging Advocacy Network

- <http://www.nlrc.aoa.gov/>
- Collaboration developed by the Administration on Aging between the National Consumer Law Center, National Senior Citizens Law Center, American Bar Association Commission on Law and Aging, Center for Elder Rights Advocacy, and the Center for Social Gerontology
- See upcoming trainings, conferences, and webinars
- Request a training
- Request consulting
- Request technical assistance
- Access articles and resources

Moderator – Jillian McLaughlin

- Research Assistant at the National Consumer Law Center where she studies issues related to consumer finance, energy affordability, and student loan debt.

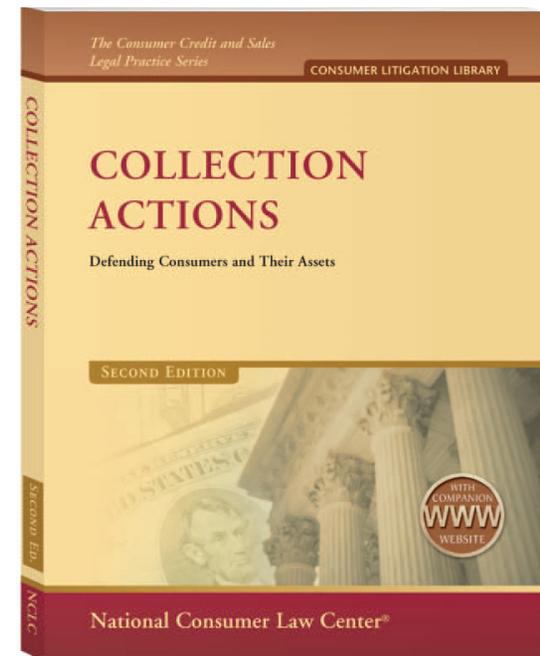
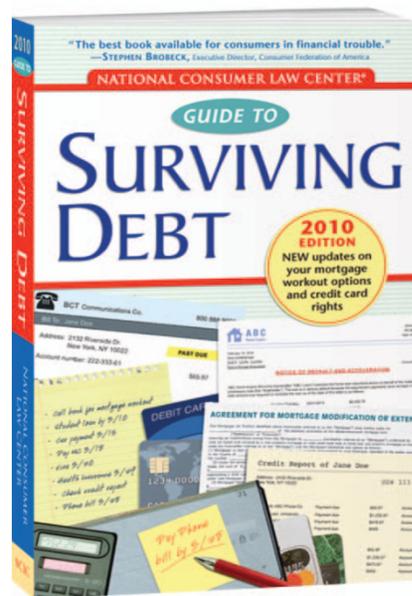
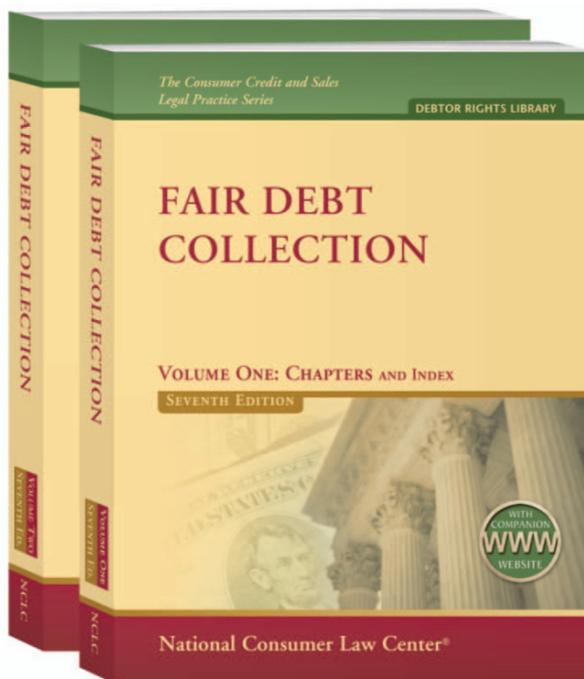
Presenter – Michelle Weinberg

- Join LAF in 2001 and is the Supervisory Attorney at LAF (Legal Assistance Foundation), concentrating in the representation of seniors in consumer protection cases.
- Handled a wide range of consumer cases, including claims under the Truth In Lending Act, the Fair Debt Collection Practices Act, the Illinois Consumer Fraud Act and other consumer protection statutes, including numerous predatory lending, automobile and home improvement fraud cases, and debt collection defense.
- In May, 2005, she received the Excellence in Public Interest Service Award from the United States District Court for the Northern District of Illinois and the Chicago Chapter of the Federal Bar Association.
- In 2011, she received the National Association of Consumer Advocates (“NACA”) Consumer Advocate of the Year for public interest work.
- Ms. Weinberg is frequently called upon to speak at legal conferences and to comment in the news media on emerging consumer issues.



For More Information on Debt Relief Strategies

See *NCLC's Fair Debt Collection, Collection Actions, and More ...*



Definitive Legal Practice Publications
from National Consumer Law Center

For details, visit the NCLC Bookstore at www.nclc.org

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Alternatives to Bankruptcy



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SPECIAL THANKS TO MICHELLE GILBERT

Reasons Why People Want to File Bankruptcy . . .



. . . and what to do
instead

AUDIENCE POLL



HOW MANY OF YOU ARE:

- **LEGAL SERVICES?**
- **PRIVATE PRACTICE?**
- **CURRENTLY ADVISING DEBTORS?**
- **CURRENTLY REPRESENTING DEBTORS?**
- **PRIMARILY BANKRUPTCY?**

Alternatives to Bankruptcy



- Many clients seek bankruptcy at the wrong time – when their economic situation is at the worst and they have no money. Rather than simply rejecting cases as inappropriate or outside priorities, this is a good time to advise clients why bankruptcy is wrong at this time.

Reasons Client Call:



- Dealing with Collection Calls
- Being Sued or Fear of Being Sued
- Facing Utility shut-off
- Losing housing
- Unable to pay student loans
- Social Security Overpayments
- Clearing Credit Report (Applying for Jobs)

Alternatives to Bankruptcy



ADDRESSING CLIENT CONCERNS ABOUT CREDIT REPORTS

Bankruptcy does not “clear” credit report



Impact to FICO® Score

	Consumer A	Consumer B	Consumer C
Starting FICO® Score	~680	~720	~780
FICO® Score after these events:			
30 days late on mortgage	600–620	630–650	670–690
90 days late on mortgage	600–620	610–630	650–670
Short sale / deed-in-lieu / settlement (no deficiency balance)	610–630	605–625	655–675
Short sale (with deficiency balance)	575–595	570–590	620–640
Foreclosure	575–595	570–590	620–640
Bankruptcy	530–550	525–545	540–560

Source: FICO® Banking Analytics Blog. © 2011 Fair Isaac Corporation.

Dealing with credit report issues:



- Get a recent credit report: Annualcreditreport.com
- Challenge old/inaccurate debt
 - Debt can stay on a credit report for 7 years
 - A bankruptcy can stay on a credit report for 10 years
- Include copies of documentation
- Send by certified mail/keep copies
- If credit reporting agencies do not respond, call legal aid

“Clearing Credit Report” for job applications.



The Illinois Employee Credit Privacy Act (820 ILCS 70/1 et seq.) prohibits most employers from basing employment decisions on an applicant's or employee's credit information. Employers cannot refuse to hire or promote a person because of credit history, inquire about credit information, or request a credit report.

It provides exceptions for financial industry employers and management or finance positions in other fields.

Oregon, Washington, and Hawaii have similar laws.



QUESTIONS?

Alternatives to Bankruptcy



**ADDRESSING CLIENT
CONCERNS ABOUT
COLLECTION CALLS,
LAWSUITS AND
THREATS OF LAWSUITS**

Exercise FDCPA Rights



- **Cease communications letters -- consequences**
- **Attorney representation**
- **May occasionally be able to negotiate debt as part of FDCPA claim**



***SEND A
CEASE
CONTACT
LETTER***

However, the creditor may file suit if it can no longer call the debtor to try to obtain payment.

To Whom It May Concern:

This is to inform you that I am unable to pay this debt at this time. *The Social Security Administration has determined that I am disabled and my only source of income is from Social Security, which is exempt from garnishment. I have no garnishable assets.*

Please cease all further communications with me regarding this account pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(c).

Sincerely,

Work Out Payment Plan



- When client has garnishable income, agree to pay amount they could garnish.
- This will save attorney fees & costs; more of the payment will go to the balance.
- This is especially true if client is near age 62 and could get a reverse mortgage, to avoid a judgment lien, or will be going on Social Security soon.
- If debt is result of uninsured auto collision, payments will retain driver's license under state financial responsibility law.

Avoid Debt Consolidation Scams



- Typically charge high fees and do nothing
- Misrepresent that they are attorneys or will represent debtors in court
- Sometimes advise clients to file false disputes
- Divert billing statements so client does not receive notice

Avoid Debt Consolidation Scams



- New FTC Rules -- 16 CFR Part 310 -- Telemarketing Sales Rule.
- No upfront fees until they successfully settle accounts.
- Must keep client funds separate.
- Client can withdraw funds at any time.
- Truthful statements regarding likelihood of success.
- Does not apply to genuine nonprofits.
- No exception for attorneys but only applies to interstate telemarketing.
- Does not apply if face-to-face meeting with client.

Prevent Garnishment of Exempt Funds



New Treasury rules require banks to treat bank accounts that contain money from federal benefits differently. 76 FED. REG. 9939 (FEB. 23, 2011).

Protects two months of exempt federal benefits electronically deposited into bank

Requires banks to look at funds in the account

Still advisable to keep other substantial savings in a separate account.

Advising Clients With Savings



Federal benefits recipients who have more than the wild card amount in the bank in non-SSA funds, should spend the non-SSA money first.

Advising Homeowners



- Need estimate of home equity /knowledge of homestead exemptions.
- Cannot say no garnishable assets if there is equity in the home.
- Possibility of judgment lien – likelihood of levy.
- Client with too much equity for Chapter 7 and not enough income for Chapter 13.

Advising Homeowners, #2



- Reverse Mortgages
- Age 62 with equity in home
- Unsecured credit/debt does not matter
- New minimum income requirements

AUDIENCE POLL



HOW MANY OF YOU HAVE:

- **DEFENDED COLLECTION CASES IN COURT?**
- **REPRESENTED PLAINTIFFS IN FDCPA CASES?**

Defending Lawsuits



- Especially if client has home equity or garnishable income to protect
- “Real” defenses, for example:
 - Fraud, forgery, unauthorized use
 - Discharged in BK or paid off
 - Not the account holder or obligor
- Debt Buyer Defenses
 - Standing
 - Hearsay/Business Records Evidence



QUESTIONS?

Alternatives To Bankruptcy



ADDRESSING CLIENT NEED FOR FINANCIAL ASSISTANCE

Look for Financial Assistance



- Partner with social service agencies to apply for emergency assistance, LIHEAP/energy assistance and homeless prevention funds.
- Private foundations can provide hardship assistance to individuals upon a specific assessment of need. These foundations are encouraged to work with agencies to ensure that funds are distributed equitably.
- <http://foundationcenter.org/findfunders/>

How Does PIPP Work?



- **WHAT CONSUMERS PAY:**

- PIPP households must pay **6% of their monthly income** towards their utility bills. 4% will go to their primary utility (gas) and 2% will go to their secondary utility (electric).
- Households with no income must pay up to \$10 a month.

- **WHAT PIPP PROVIDES:**

- PIPP will provide households **up to \$150 a month** to pay for utilities.

- **ADDITIONAL SUPPORT:**

- Any current arrearages are set aside.
- Each on time payment **reduces that arrearage** every month.

Housing Assistance



- Seek emergency homeless prevention funds where available.
- Public housing tenants should request a grievance hearing about disputed rent. A grievance hearing extends the time during which a tenant may file a bankruptcy if absolutely necessary.

Medical Debt Relief / Charity Care



Hospital not entitled to charitable use exemption from property tax. Provena Covenant Med. Ctr. v. Dep't of Revenue, 236 Ill. 2d 368, 925 N.E.2d 1131 (2010)

Hospitals fight for tax breaks while state wrestles with rules, CHICAGO TRIBUNE, October 16, 2011

<http://www.chicagotribune.com/news/local/ct-met-hospital-taxes-20111015,0,3458601,full.story>

Medical Debt Relief Project



- Legal Assistance Foundation created a project through which trained law students help clients with medical debt gather documents and submit applications for charity care.
- Especially for legal aid programs, this is a good activity for VISTA or Americorps project and a good reason to develop linkages with social work/government programs.

Student Loans



Loans can be discharged for

Closed School

Ability To Benefit

Total And Permanent Disability

Student Loans



If client can't pay, get on a payment plan

- Ibinfo.org – Income based repayment
- Loanconsolidation.ed.gov
- Studentaid.ed.gov
- Finaid.org

There is no statute of limitations for student loans.

Options for SSA Overpayments



- **Request For Reconsideration (Appeal) - 30 Days (Stops Collection) / 60 Days!!**
- **Request For Waiver (Forgiveness) - Can Request Any Time. Should Request In 30 Days To Stop Collection**
- **Negotiate Payment Plan - SSA Can Deduct 10% Of SSI Or Stop SSDI Check Till Paid Back**

So, when should you file bankruptcy?



- **If no other way to restore utility service or prevent service interruption**
- **If no other way to prevent termination of a subsidized tenancy**
 - **To Prevent Wage Garnishment**
 - **To restore a driver's license**
- **When you have positive income flow/medical insurance**
- **When you have parking tickets and can afford a chapter 13**
- **When you have a really bad car loan, but could afford it with a "cramdown"**

Don't think that Chapter 7 is your only tool



- A Chapter 13 bankruptcy requires **regular income**, but not necessarily income from wages.
- The 2005 amendments rejected any requirement that the debtor had to make a “meaningful” payment to unsecured creditors.
- Section 1325(b) provides that a Chapter 13 debtor pay “disposable income” for at least 3 years.
- Disposable income is the difference between “current monthly income” and “necessary living expenses.” Can be as low as \$25 per month.

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Slides originally created by Michelle Gilbert, LAF supervisory attorney