

Disability Rights Legal Center

CLRC

Cancer Legal Resource Center

The CLRC is a joint program of the Disability Rights Legal Center & Loyola Law School Los Angeles

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National Consumer Rights

Introduction

While dealing with cancer, many people accumulate financial debt. They may not have health insurance to cover the costs of necessary medications, treatments, or procedures or their health insurance may not cover all of the medical expenses. They may not be able to continue working, or have lost their job. There are many ways to accumulate financial debt and there are many ways to deal with financial debt. It is important to understand your financial situation and your options in order to make the best decisions.

Dealing With Creditors

Creditors are the direct person or business to whom you actually owe money. It is important to contact your creditors immediately if you are having trouble paying off your debt. You may be able to work out a payment plan that reduces your payments to a more manageable level and protect your credit rating.

Prioritize Your Debt

It is important to prioritize your debt. Medical debt is unsecured debt and usually should not be paid before secured debt or living expenses such as food, housing (e.g. rent or mortgage), utilities or car payments. You should also be very careful about converting medical debt into secured debt, for example, by taking out a second mortgage to pay for medical bills, especially after your medical bills have been sent to a debt collector. This is important because once your medical bills have been sent to collections your credit has already been impaired so it is generally discouraged to convert medical debt.

Credit Reports

The status of your charge accounts, loans, and payments to creditors are contained in a file known as a credit report, which can affect your ability to get loans, buy a car or house, etc. Your credit report often includes a numerical rating of your credit, known as a credit score. If you fall behind with your financial obligations your creditors may turn over the debt to a debt collector or a collection agency. Debt collection agencies are permitted to take reasonable steps to enforce and collect payment of your debts. Creditors may also report past-due debt to credit reporting agencies, which can affect your credit score and show up on your credit report and effect your ability to obtain credit in the future.

You are entitled to fair and accurate reporting of your credit information under the Fair Credit Reporting Act. However, there are no laws that protect your credit score or credit report from being negatively impacted during a period of disability. So, even if the only reason your credit score has gone down is because of high medical debt, or because you were unable to work and pay your bills during an illness or other disability, there is no legal right to repair your score by showing you have a disability.

Laws That Prohibit Harassing Debt Collection Practices

State and federal laws were enacted to ensure that debt collectors treat you fairly and do not harass you. The Federal Fair Debt Collection Practices Act (FDCPA, 15 U.S.C. §§1692-1692p) protects consumers from harassing and illegal collection practices by collection agencies.

Creditor vs. Debt Collector: A creditor is different from a debt collector. A creditor is someone who extends credit to you and you owe money. A creditor may contract with a debt collector, usually a collection agency, to collect your debt if you do not make payments on time. The FDCPA pertains only to “debt collectors.” Creditors are not included in the definition of “debt collector” under federal law, so creditors do not have to follow the requirements of the FDCPA.

Procedures for Debt Collection: A debt collector must initially send you a notice describing the amount of debt owed and the name of the creditor to whom it is owed. You have 30 days to dispute (disagree) that the debt is valid or to pay it. Once you have done this, the debt collector cannot contact you again until you are sent proof that the debt is valid.

If they contact a third party to try to locate you, debt collectors can only ask the third party for your contact information (address, place of employment, and phone number). They are not allowed to tell them that you owe money or contact them more than once, unless there is reasonable belief that the third party has been untruthful or to correct incomplete information previously obtained.

Harassment: Debt collectors are not allowed to harass you, make false statements or engage in unfair practices. This means you should not be contacted at inconvenient times or places, they cannot tell you that you will be put in jail for not paying your bills, threaten to publish your name in a list of “deadbeat” consumers, threaten to sue you when they have no such intention, use obscene language and/or threats of violence, or engage in deception to make you accept collect phone calls or to attempt to collect any debt. If you have an attorney, the debt collector must contact the attorney instead of you. You cannot be contacted at work if you inform the collector that your employer disapproves of such contact. You can also request that the debt collector stop contacting you by writing them a cease and desist letter, at which point the debt collector can only contact you to inform you that there will be no further contact or that they are taking specific legal action against you. (See example on next page.)

Unfair Debt Collection: If you believe a debt collector has engaged in unfair debt collection, you can report the collector to the Federal Trade Commission. A debt collector engaging in prohibited debt collection practices can be sued in state or federal court. You can also call the State Attorney General’s Public Inquiry Unit to report harassing debt collectors.

The Fair Debt Collection Practices Act (FDCPA, 15 U.S.C. §§1692-1692p): The FDCPA is a set of laws that promote honest, fair and responsible debt collection by giving consumers specific rights. The purpose of the FDCPA is to eliminate abusive practices in the collection of consumer debts, to promote fair debt collection, and to provide consumers with a method for disputing and confirming debt information, in order to ensure the information's accuracy.

The federal statute applies to debt collectors, and generally excludes original creditors. A debt collector is defined as a person who either uses any instrumentality of interstate commerce (eg. telephone, Internet, roads) or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect debts owed or due or asserted to be owed or due another. The federal statute covers debts arising from transactions and only if the money, property, insurance, or services are primarily for personal, family or household purposes.

Note: A collector may contact you in person, by mail, telephone, telegram, or fax. However, a debt collector may not contact you at inconvenient times or places, such as before 8 a.m. or after 9 p.m., unless you agree.

A debt collector must:

- Identify their self in every communication.
- Give you the opportunity to dispute the debt by providing you with a 30 day notice of the alleged debt.
- Provide the name and address of the original creditor, if they are not the original creditor, if you make a written request within 30 days of receipt of the original debt notice.
- Provide verification of the debt if you send a written dispute or request for verification within 30 days of receiving the validation notice.
- Report any disputes you claim against the debt collector to any credit bureau.

A debt collector may not:

- Contact you at inconvenient times or places, such as before 8am or after 9pm, unless you agree.
- Contact you at your place of employment if the collector knows that your employer disapproves of such contacts.
- Harass, oppress, or abuse you or any third parties they contact.
- Use any false or misleading statements when collecting a debt.
- Engage in unfair practices when they try to collect a debt.
- Give false credit information about you to anyone, including a credit bureau; send you any falsified "official" documents or use a false name.
- State that you will be arrested if you do not pay your debt.
- State that they will seize, garnish, attach, or sell your property or wages, unless the collection agency or creditor intends to do so through legal means, such as a lawsuit.

Note: This is not a comprehensive list.

Please visit www.ftc.gov/bcp/edu/pubs/consumer/credit/cre27.pdf for a complete copy of The Fair Debt Collection Practices Act.

Notice to Cease and Desist Communication Letter

You can stop a debt collector from contacting you by writing a letter to the collector telling them to stop. Once the collector receives your letter, they may not contact you again except to say there will be no further contact or to notify you that the debt collector or the creditor intends to take some specific action. Although the letter will stop any communication regarding the debt, it will NOT cancel the debt. You could still be sued by the debt collector or your original creditor for the total amount of the debt.

<p>Date <u>(Debt Collector Name)</u> <u>(Debt Collector Address)</u></p> <p>RE: Creditor: (Name of Company you owe money) Acct No.:</p> <p style="text-align: center;">NOTICE TO CEASE AND DESIST COMMUNICATION</p> <p>To Whom It May Concern:</p> <p>This is formal notice to cease and desist any further written or oral communication with me regarding the above-referenced account. I am unable to pay the amount demanded on the account.</p> <p>I receive limited income for my basic necessities and I do not own real property. My financial situation is not likely to improve. This information is provided solely to enable you to properly assess my situation.</p> <p>Be advised that under both state and federal fair debt collection laws, if a consumer notifies a debt collector in writing that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector SHALL NOT communicate further with the consumer with respect to such debt.</p> <p>Thank you in advance for your cooperation in this matter.</p> <p>Sincerely, DEBTOR (Your Name)</p>

Consumer Resources:

Federal Trade Commission, *Consumer Protections - Credit and Loans – In Debt?*, available at www.ftc.gov/bcp/menus/consumer/credit/debt.shtm

Consumer Federation of America and Fair Isaac Corporation, *Your Credit Scores*, available at www.pueblo.gsa.gov/cic_text/money/creditscores/your.htm

Federal Trade Commission, *Fair Credit Reporting*, available at www.pueblo.gsa.gov/cic_text/money/fair-credit/fair-crd.htm

Federal Deposit Insurance Corporation, *Managing Your Money in Good Times and Bad – Good Ways to Get Started Cutting Back*, available at www.fdic.gov/consumers/consumer/news/cnwin0809/cuttingback.html

Federal Citizen Information Center, *66 Ways to Save Money*, available at www.pueblo.gsa.gov/cic_text/money/66ways/index.html

To report a debt collector:
Federal Trade Commission - Consumer Response Center
(877) FTC-HELP www.ftc.gov

If You Can't Pay Your Debts You Can:

Hire a Professional: If you have faced a significant reduction in your income and you cannot pay your bills, you can hire an accountant, lawyer or financial planner to help you deal with your personal finance issues. If you cannot afford to hire someone, you may be able to receive help from a legal aid organization or self-help court service. You can also contact a Consumer Credit Counseling Service (CCCS), non-profit organizations with counselors who can evaluate your situation, budget, and debts, and set up a plan to help you prepare for the future.

File for Bankruptcy: Bankruptcy is a legal procedure in a federal court to relieve certain debts of a person or a business that is no longer able to pay its debts. Congress enacted the Bankruptcy Code in 1978. It is the uniform federal law that governs all bankruptcy cases. The procedural aspects of the bankruptcy process are governed by the Federal Rules of Bankruptcy Procedure and local rules of each bankruptcy court. The federal courts have jurisdiction over all bankruptcy cases. Bankruptcy cannot be filed in state courts. There is a bankruptcy court for each judicial district in the country. The bankruptcy judge may decide any matter connected with a bankruptcy case.

The primary purposes of the law of bankruptcy are: (1) to give an honest debtor a "fresh start" by relieving the debtor of most debts, and (2) to repay creditors in an orderly manner to the extent that the debtor has the ability to make payments.

Basic Types of Bankruptcy Cases

Chapter 7. Also called "liquidation bankruptcy", Chapter 7 forgives most debts that are not secured by collateral or property while allowing an individual to retain certain exempt assets. Under a Chapter 7 bankruptcy, a court appointed trustee takes possession of your non-exempt property, arranges for its sale or liquidation, and is responsible for paying as many of your debts as possible with the proceeds. Generally, under Chapter 7, most unsecured debts are dischargeable and do not have to be paid back.

Chapter 11. Chapter 11 bankruptcy is referred to as a reorganization bankruptcy. It is for businesses that want to continue operating a business and repay creditors through a court-approved plan.

Chapter 12. Chapter 12 is designed for family farmers or family fishermen with regular annual income. It enables financially distressed family farmers and fishermen to propose and carry out a plan to repay all or part of their debts.

Chapter 13. A Chapter 13 bankruptcy, which is also called "reorganization" or "repayment" bankruptcy, is an option if you have a source of dependable income but are unable to pay your debts. Filing for Chapter 13 bankruptcy allows you to pay your debts in installments over an agreed-upon period. The court must approve your plan to repay all or part of the money you owe (including unsecured debts – this includes credit cards). You generally may keep all of your property as long as you continue to pay the installments. Under Chapter 13, a debtor proposes a 3-5 year repayment plan to the creditors, and the court approves the plan.

Bankruptcy for Most Individuals

Which Bankruptcy is Right for You: Previously, filers could choose the type of bankruptcy that seemed best for them -- and most chose Chapter 7 (liquidation) over Chapter 13 (repayment). However, recent law prohibits some filers with higher incomes from using Chapter 7. Accordingly, the first step in figuring out whether you can file for Chapter 7 is to measure your current monthly income against the median income for a household of your size in your state. Information about median incomes for all fifty states is available on the U.S. Census Bureau website: www.census.gov/hhes/www/income/statemedfaminc.html. If your income is less than or equal to the median income, you can file for Chapter 7. If it is more than the median, then you must pass "the means test" -- another requirement of the new law in order to file for Chapter 7. The purpose of the means test is to figure out whether you have enough disposable income, after subtracting certain allowed expenses and required debt payments, to make payments on a Chapter 13 plan. If the income that is left over after these calculations is below a certain amount, you can file for Chapter 7. Information and forms required for the means test are available on the U.S. Department of Justice website: www.usdoj.gov/ust/eo/bapcpa/meanstesting.htm. Before deciding to file for bankruptcy, you should consult with an attorney.

Note: If you have accumulated recent credit card debt, this debt might not be dischargeable through a bankruptcy action. Credit card companies are more likely to challenge the discharge of a debt if there was increased or heavy activity on the credit account shortly before you filed for bankruptcy. If you make significant charges to a credit card account with the apparent intention of not paying them back, the court may find that the charges were fraudulent, and refuse to discharge them. Some factors that the court MAY consider are: whether you consulted a bankruptcy attorney prior to making the charges, the length of time between when the charges were made and when you filed for bankruptcy, your ability to repay the debt when you made the charges, and whether the charges were made for necessities or luxuries.

Chapter 7 Bankruptcy: By filing for Chapter 7 bankruptcy, you are technically turning in your assets and debt to the Bankruptcy Court. At this point, you cannot sell or give away any property you own without the court's consent. You must complete credit counseling with an agency approved by the United States Trustee. You won't be able to use Chapter 7 if you already received a bankruptcy discharge in the last six to eight years or if you could feasibly complete a Chapter 13 repayment plan. Bankruptcy forms and information on how to file are available on the U.S. Courts website: www.uscourts.gov/bankruptcycourts.html. The site also contains a link that you can use to find the website for the Bankruptcy Court in your area.

When a debt is discharged through bankruptcy, the debtor is no longer responsible for repaying the debt. It is important to note what debts are dischargeable under Chapter 7.

Dischargeable Debts:

- Personal loans
- Credit cards
- Repossession deficiencies
- Auto accident claims
- Medical bills
- Judgments
- Business debts
- Leases
- Guaranties
- Negligence claims
- Tax penalties over 3 years old
- Income taxes that aren't priority taxes

Not Dischargeable:

- Recent taxes
- Trust fund taxes
- Child or family support
- Criminal fine or restitution
- Accident claims involving intoxication
- Debts not scheduled
- Penalties payable to the government other than tax penalties
- Student loans
- Debts listed in prior bankruptcy where debtor was denied a discharge
- Taxes for years where return unfiled or filed for less than 2 years

Possibly Dischargeable:

- Willful and malicious injuries to others
- Embezzlement or debts incurred by fraud or dishonesty
- Debts arising from breach of fiduciary duty
- Creditor contesting discharge of these debts must take prompt action to contest discharge of their claim

Chapter 13 Bankruptcy: In Chapter 13 bankruptcy, you file for a repayment plan with the Bankruptcy Court to pay back all or a portion of your debts over time. The amount you will have to repay depends on how much you earn, the amount and types of debt you owe, and how much property you own. The court will determine if you can afford to meet your payment obligations. You must complete credit counseling with an agency approved by the United States Trustee.

Your repayment plan will describe in detail how (and how much) you will pay towards each of your debts. Your Chapter 13 plan must also include the full payment of certain debts. These debts are called priority debts, because they're considered sufficiently important to jump to the head of the bankruptcy repayment line.

Priority Debts:

- Certain child and spousal support debts
- Restitution orders and criminal fines
- Debts caused by the debtor's drunk driving
- Most student loans
- Recent taxes

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (The Act) made sweeping changes to American bankruptcy laws, affecting both consumer and business bankruptcies.

The Act includes new requirements before filing for bankruptcy, including:

- Implementing a new means test to determine whether a debtor is eligible for Chapter 7 (liquidation) or must file under Chapter 13 (wage-earner repayment plan).
- Mandatory credit counseling and debtor education. Certifying entities to provide the credit counseling that an individual must receive before filing bankruptcy. Certifying entities to provide the financial education that an individual must receive before discharging debts.
- Increased compliance requirements for small businesses. Conducting enhanced oversight in small business Chapter 11 reorganization cases.

Bankruptcy Resources

Federal Trade Commission, *Before You File for Personal Bankruptcy: Information About Credit Counseling and Debtor Education*, available at www.ftc.gov/bcp/edu/pubs/consumer/credit/cre41.shtm

U.S. Trustee Program, *Bankruptcy Information Sheet*, available at www.usdoj.gov/ust/eo/ust_org/bky-info/index.htm

U.S. Trustee Program, *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)*, available at www.usdoj.gov/ust/eo/bapcpa/index.htm

National Consumer Law Center, *Answers to Common Bankruptcy Questions*, available at http://www.nclc.org/images/pdf/older_consumers/bankruptcy_client_brochure.pdf

For credit counseling information:

National Foundation for Credit Counseling
800-288-CCCS www.nfcc.org

To find your local Bankruptcy Court:

U.S. Courts www.uscourts.gov/courtlinks

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