

WHAT TO DO if you are in debt



ACKNOWLEDGEMENTS



THIS GUIDE WAS MADE POSSIBLE BY A CY PRES AWARD that The Chicago Bar Foundation (CBF) received from a class action case in the United States Bankruptcy Court for the Northern District of Illinois.

THIS GUIDE WAS DEVELOPED BY a collaboration that included the CBF, CARPLS (Coordinated Advice and Referral for Legal Services), the Chicago Legal Clinic (CLC), Chicago Volunteer Legal Services (CVLS), Illinois Legal Aid Online (ILAO), Legal Assistance Foundation of Metropolitan Chicago (LAF), and the Sargent Shriver National Center on Poverty Law (Shriver Center).

The “Try to Pay Your Debt off on Your Own” section is derived from “All My Money: A Financial Management Curriculum for Persons Working with Limited—Resource Audiences, Revised 2005,” copyright © 2005 by the University of Illinois Board of Trustees, used with the permission of the University of Illinois Extension.

This guide, originally published in 2009, is available online and will periodically be updated at www.IllinoisLegalAid.org



TABLE OF CONTENTS

Introduction	02
How to use this guide	
What are credit reports and credit scores?	04
I'm in debt. What should I do?	06
• Determine exactly what you owe	
• Try to pay your debt off using your own strategies to reduce debt	
• Get help from a consumer credit counseling service	
• When should I think about bankruptcy?	
How do I stop creditors or collection agencies from bothering me?	11
What can creditors do if collection agencies are unsuccessful in collecting the debt?	14
• Wage garnishment: What should I do if my wages are garnished?	
• What are frozen bank accounts and what should I do if my creditor freezes my bank account?	
Can my government benefits be taken to repay a debt?	19
What do I need to know if I have certain types of debt?	22
• Mortgage foreclosure	
• Repossession	
• Co-signing a contract	
• Medical debt	
• Government subsidized student loans	
Is bankruptcy right for me?	38
• Types of bankruptcy	
• How do I file for bankruptcy?	
• What happens after I file for bankruptcy?	
Legal assistance: how do I get help?	43
Sample letters	45
Appendix: watch out for these tricks, scams and practices	52
• Home equity loans	
• Pay day loans and other high rate debt	
• Tax preparation and instant refunds	
• Mortgage rescue scams	
• Home improvement and repairs	

Helpful TERMS



Here are some words that you may need to know when talking about debt. Throughout this Guide these terms will be marked in green color so that you can look back at the definition in this list later if you need.

Assets: Things that you own which have value (*like a house or a piece of furniture*).

Balance: Total amount of money that you still owe on a debt. The amount will be the original debt amount minus any payments you have made, plus any interest and late fees.

Charged off (also written off): When a creditor takes a debt off its books because it does not think it will be collected. This does not mean that the debt is gone or that the creditor or a collection agency can't try to collect the debt later.

Collection proof: When everything you own is "exempt," so your creditor cannot take anything from you.

FOR MORE INFORMATION, SEE: "Exemptions — what creditors can't take" on page 15

Creditor: Person or company that is owed money.

Credit report: Report that contains the specific information used by credit bureaus to determine your credit score.

Credit score: Number (*usually between 300 and 850*) that is used to grade your credit. The higher the score, the better your credit.

FOR MORE INFORMATION, SEE: "What are credit reports and credit scores" on page 4

Debt: Money owed to a person or company.

Debtor: Person who owes money (*a "debt"*) to another person or company.

Discharge (of debt): When a person gets rid of the legal duty to pay the debt.

Equity: The difference between what something is worth in its current condition (*what you could sell it for*) and what you owe on it. If, for example, you own a home worth \$100,000 and owe \$80,000 on your mortgage, you have \$20,000 worth of equity in the home.

Exempt property (exemption): Assets that cannot be taken by your creditors because the law protects them.

Garnishment: When money is taken to repay a debt. Examples: wage garnishment (*when money is taken out of your paycheck*) and garnishment of a bank account (*when an account is “frozen”*).

FOR MORE INFORMATION, SEE: Wage garnishment: What should I do if my wages are garnished?” on page 16

Interest: The amount that a creditor charges for lending a person money. The amount is usually a percentage of the loan and is added to a borrower’s bill on a regular basis. An example is the interest you are charged on a monthly credit card bill.

Interest Rate: The percentage that is used to figure out how much interest you will be charged to borrow money. The higher the interest rate, the more money you will be charged.

Judgment: A court order. When a creditor sues you on a debt and wins, the court enters a judgment order against you for the amount that you owe. The creditor can take additional steps to collect the debt.

FOR MORE INFORMATION, SEE: “If you are sued by a creditor” section on page 14

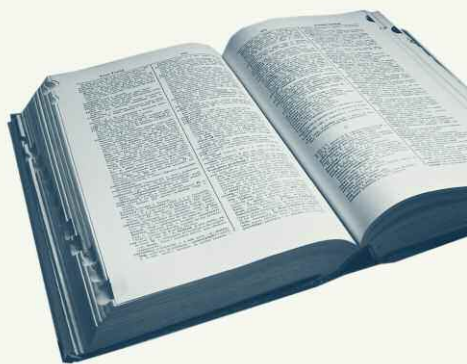
Lien: A claim on property for payment of a debt. When a creditor gives a borrower a car loan, it has a lien on the car. Before the borrower can sell the car, he must pay off the lien.

FOR MORE INFORMATION, SEE: “Home repair or improvement scams” section in Appendix

Minimum Payment: The smallest amount you can pay on a bill without a penalty, such as a late fee.

Secured Creditor: A creditor that gives a borrower a loan to buy something (*a home or other property*) and has the right to repossess or take the item, if the borrower doesn’t make the loan payments.

Unsecured Creditor: A creditor that allows a buyer to buy something without paying for the item at the time it is bought and has no right to repossess or take back the item if the buyer doesn’t make the payment. Credit card debt is unsecured.



FOR MORE INFORMATION ON FINDING A LAWYER, SEE: “Legal assistance: how do I get help” on page 45.

INTRODUCTION



When you owe money, you are in *debt*. Debt is a problem for people when they end up owing much more than they have or earn. This guide is designed to give you some basic information about credit, problems to watch out for and your options if you are in debt. **It is not legal advice.** 🐣 When you are in debt beyond your means, it is always best to talk to a lawyer. Lawyers are trained in what the law says about your problems, what your legal options are, how to help you decide what's best for you, and how to present your case in the best way. In this guide, we'll tell you how you can find out if a lawyer is available to represent you, even if you don't think you can afford one.

HOW TO USE THIS GUIDE

On the back of this guide, there is a list of "Helpful Terms." Look at this list first, and read the definition of any words that you do not understand. Throughout this Guide these terms will be marked so that you can look back at the definition in this list later if you need.

If you are in debt, think about your options before you decide which one is best for you. Depending on your situation, you may be able to:

- Work out a plan and repay the debt yourself
- Get help from a Consumer Credit Counseling Service
- File for bankruptcy

BANKRUPTCY IS A SERIOUS STEP, AND MAY NOT BE THE BEST CHOICE FOR YOU, DEPENDING ON YOUR SITUATION. IF YOU ARE THINKING ABOUT FILING FOR BANKRUPTCY, YOU SHOULD TALK TO A LAWYER AS SOON AS POSSIBLE.

There are sections in this guide to tell you about each of these options. Read each of these sections next.

This guide also contains sections that might or might not apply to you. For example, there is special information you need to know if:

- Your home is in danger of being foreclosed
- Your car is being repossessed
- You want to raise your *credit score*
- You need to have work done on your home

MAKE SURE TO READ CAREFULLY ALL OF THE SECTIONS IN THIS GUIDE THAT MIGHT APPLY TO YOU BEFORE YOU MAKE ANY DECISIONS.



What are **CREDIT REPORTS and CREDIT SCORES?**



- **Credit reports** contain the specific information used by credit bureaus to decide what your *credit score* should be. This includes a record of your history of paying bills, lists of all of your accounts and the amount of money you owe, and other information contained in public records.
- A **credit score** is a number (*usually between 300 and 850*) that is used by *creditors* to decide if they should give you credit. The higher the number, the better your credit rating, and the easier it will be for you to get credit. The score is based on the information in your *credit report*.

HOW CAN I RAISE MY CREDIT SCORE?

You can raise your credit score by doing the following:

- **Inspect your credit report and correct any errors.** Get a copy of your credit report and check it for mistakes. If there are mistakes, you must write a letter to each of the three credit bureaus disputing the report. Send the letters certified mail with return receipt requested.
- **Pay bills on time.** Late payments and collections hurt your score more than anything except not paying your bills or filing for bankruptcy.
- **Apply for credit only when you need it.** Applying for too much new credit is one of the easiest ways to hurt your credit score.
- **Keep balances low on credit cards.** High *debt* can lower your score, so pay down your current balances and keep your balances low in the future.
- **Pay off debt rather than moving it around.** Don't close cards that you aren't using as a short-term plan to raise your score. Owing the same amount but having fewer open accounts actually may lower your score.
- **Budget income and expenses.** Set up an emergency savings account just in case there is a change in your income, so you have funds to pay your bills.

For more information call
1 (877) 322-8228 or visit
annualcreditreport.com/cra/index.jsp



I AM IN DEBT.

What should I do?



If you find yourself in *debt*, you may have several options to help you get rid of your debt. You might be able to put yourself on a budget and pay off the debt. You may be able to get help from a Consumer Credit Counseling Service and pay off your debt that way. Or you might need to file bankruptcy.

A note about bankruptcy. Many people feel overwhelmed by debt. But this doesn't mean that filing for bankruptcy is the best answer to your problem. Every case is different, so you should talk to a lawyer to find out if bankruptcy is right for you. Bankruptcy is a serious step, and how much it can help you depends on your situation. *If bankruptcy is an option that you are considering, you should talk to a lawyer as soon as possible.*

As a general rule, you should **NOT** file for bankruptcy if:

- Your total amount of debt is small
- The type of debt you have cannot normally be discharged in a bankruptcy, such as child support and student loan debt
- All of your current income and assets are exempt from collection
- You think you will continue to go deeper into debt in the future

FOR MORE INFORMATION, SEE: "Is bankruptcy right for me" on page 36

1. DETERMINE EXACTLY WHAT YOU OWE

First, it is important to find out how much debt you have. Start by writing out all of your debts. List all of your bills, including your rent or mortgage, car payments, credit cards, insurance and utilities such as telephone, electricity and gas. You also should write down how much you owe on each bill.



2.

TRY TO PAY YOUR DEBT OFF USING YOUR OWN STRATEGIES TO REDUCE DEBT

You may be able to pay off your *debt* on your own. Review your bills and decide which are the most important to pay.

1. The most important bill is housing, such as rent or a mortgage.
2. Basic services like utilities, transportation and insurance are the next most important bills.
3. Bills that cost money if they are not paid are next. These include bills with a late fee or penalty, disconnect-reconnect charges and repossession options.

When you've paid all of these bills, you can start to work on the rest of your debt.

Next, plan how you will pay off your debts. Do you have loans or credit cards with high *interest rates*? At higher interest rates, more of the amount you pay goes toward finance charges. Quickly paying off loan *balances* with high interest rates can free up cash to pay other bills. Or, maybe you'd rather pay off loans that have small balances. Once they are completely paid off you will have extra money to pay on the bigger balances. Whatever you decide to do, develop and write down a plan to help you manage your debt. Below are some ways that you can reduce your debt.

Strategies to lower your debt.

You can do some things to lower the amount of debt you owe. Some are:

CAN YOU GET RID OF SOME DEBTS?

Did you buy any furniture or electronic equipment as "rent-to-own?" You may be able to return the item so you don't have to make any more payments. Check to see if this is possible and make sure to ask if there is a fee to do so.

Also, you may not have to pay some debts that are very old, because of something called a "statute of limitations." You may want to check with a lawyer before making any new payments on a very old debt.

IF CREDITORS ARE BOTHERING YOU, SEE:
"How do I stop creditors or collection agencies from bothering me?" on page 11.

FOR SAMPLE LETTERS TO YOUR CREDITOR, SEE: "Sample letters" on page 45.

CONTACT YOUR CREDITORS

If you find that you can't pay all of your bills, contact your *creditors*. Let them know what the problem is. Depending on the creditor, they may be willing to work with you and make special arrangements to lower or cancel your payments for a period of time, such as putting you on a payment plan. The worst that can happen is they will continue demanding payment.



EXPLORE WHAT BENEFITS ARE AVAILABLE TO YOU

Find out how to increase your income. You may be eligible for discounts or government benefits. **Maybe you are eligible for:**

- Food Stamps
- WIC (a federal nutrition program for Women, Infants, and Children)
- TANF (*Temporary Assistance for Needy Families*)
- Unemployment benefits
- LIHEAP (*Federal Low Income Home Energy*)
- Lifeline telephone assistance program
- Federal Tax Credits
- Free or reduced price health insurance, if you have children
- Homestead **Exemption**, if you own or are buying your own home
- Illinois Senior Citizens Homestead Exemption, if you're over 65 and own property

CUT BACK ON YOUR SPENDING

Think hard about what you and your family can do to lower the amount of money you spend each month. **Are there any expenses that you can cut out of your budget?**

- Do you eat out often? Eating at home is often cheaper.
- Do you buy more groceries or clothing than you need?
- Can you trade in your car for one that has better gas mileage?
- Can you trade in your car to lower your car payments?
- Can you get a roommate to share in the expenses?
- Can your family members lower their spending in any of these ways?

BE AWARE OF MINIMUM BALANCES AND INTEREST

Paying only the **minimum payment** on a bill which charges **interest** can be a problem. The minimum payment is usually 2-5% of the total amount you owe. Paying only this amount stretches your **debt** over many months or years while interest costs continues to add up. If it seems like you'll never get the bill paid off, you're close to being right. This is known as the "minimum payment trap."

You can get out of this trap by always paying more than the minimum balance that is due.

Paying more than the minimum balance will allow you to pay off the bill faster, and you will pay a much lower total amount in the long run because there will have been less time for the interest costs to add up.



REPAY DEBT FASTER

When you pay off one bill, what will you do with the money you had budgeted for that bill? How you use that extra money can make a big difference in how fast you repay your debt and how much you pay. You can take the money you would have paid on the bill and use it to pay more money on another debt. This way you pay off the second debt faster and save money from interest that would have been charged.

3.

GET HELP FROM A CONSUMER CREDIT COUNSELING SERVICE

Sometimes *creditors* are willing to work out payment arrangements through organizations known as Consumer Credit Counseling Services (CCCS). These groups work with and are often funded by large creditors like credit card companies. CCCSs specialize in coming to agreements with creditors that allow the creditor to get paid back at least some of the money owed.

FIRST, a CCCS will take a look at your income and expenses. If they think you have enough income, they will put you on a budget. **THEN** they will try to work out payment plans with your creditors. If they are successful, you send the CCCS a check for a certain amount each week or month. **THEN** they divide up the payment among your creditors.

Call the National Foundation for Consumer Credit at 1 (800) 388-2227 to get a referral for an organization in your community

THE NATIONAL FOUNDATION FOR CONSUMER CREDIT IS A NATIONAL ORGANIZATION THAT MAKES SURE THAT ALL OF ITS MEMBERS MAINTAIN CERTAIN STANDARDS TO HELP THE PEOPLE WHO USE THEM. ALL OF THE MEMBER AGENCIES OF THE NATIONAL FOUNDATION FOR CONSUMER CREDIT ARE NON-PROFIT, COMMUNITY BASED ORGANIZATIONS OFFERING MONEY MANAGEMENT, EDUCATION PROGRAMS AND CONFIDENTIAL CREDIT COUNSELING.

4.

WHEN SHOULD I THINK ABOUT BANKRUPTCY?

Bankruptcy is a legal procedure that might be able to help you if you're completely overwhelmed by *debt*. But bankruptcy is a serious step that has many consequences. *Every case is different, so you should talk to a lawyer before taking that step.* If bankruptcy is an option that you are thinking about, you should talk to a lawyer as soon as possible. While bankruptcy is usually a last resort, it should not be a last minute decision.

FOR MORE INFORMATION, SEE: "Is bankruptcy right for me" on page 36

How do I
STOP CREDITORS or
COLLECTION AGENCIES
from BOTHERING ME?



When you fail to make your payment, your *creditor* may start to send you past due notices or threatening letters, or call you demanding payment. Your creditor may send your account to a collection agency.

**WHAT TO DO IF
YOU ARE CONTACTED BY A COLLECTION AGENCY?**

A collection agency is an organization that specializes in getting people to pay bills. They are usually aggressive in trying to collect the *debt* because they will keep a certain amount of whatever money they bring in. Still, they cannot force you to pay, and the law puts definite limits on what collection agencies are allowed to do.

A federal law called the Fair Debt Collection Practices Act allows you to:

Tell the collection agency, in writing, that you cannot and will not pay the debt and that they should stop contacting you. This means that they are not allowed to call, write or contact you in any other way in the future.

FOR A SAMPLE LETTERS TO A COLLECTION AGENCY, SEE: "Sample Letters" on page 45





WHAT ARE MY RIGHTS?

The law gives you these rights.

Within 5 days of contacting you about a *debt*, the collection agency must give you written notice which tells you:

- The amount owed and the name of the *creditor*
- That you can challenge or “dispute” the debt or request written proof that the debt exists

Once you have asked for written proof of the debt, the collection agency cannot take further steps until you receive this written proof.

The law makes it illegal for collection agencies to:

- Use abusive or obscene language
- Threaten to harm your reputation or property
- Harass you or your family on the telephone
- Falsely claim to be a lawyer
- Use postcards or envelopes which say the company contacting you is a debt collection agency
- Contact persons other than you about your debt



The Fair Debt Collections Act also allows you to:

- File a complaint against a collection agency with the following organizations:

FEDERAL TRADE COMMISSION

55 East Monroe Street, Suite 1437

Chicago, Illinois 60603

(312) 960-5633

www.ftc.gov

OFFICE OF THE ILLINOIS

ATTORNEY GENERAL CONSUMER
PROTECTION DIVISION

100 West Randolph Street, 13th Floor

Chicago, Illinois 60601

(312) 814-3580

www.illinoisattorneygeneral.gov

- File a lawsuit in federal court to get damages if a collection agency breaks the law.



What can
CREDITORS do if
COLLECTION AGENCIES
aren't SUCCESSFUL
in COLLECTING the DEBT?



If the collection agency does not get you to pay, your *creditor* can either

- Forget about the bill and “write it off” as an uncollectible *debt* or
- Send your account to an attorney, who may sue you in court.

IF YOU ARE SUED BY A CREDITOR

If your creditor sends your account to an attorney and a lawsuit is filed against you, you will be served with court papers called a Summons and Complaint. *If you are served with court papers you should contact an attorney immediately.*

If your creditor wins the case, they will get a “judgment.” A judgment is a court order that says you owe your creditor a certain amount of money. The judgment allows your creditor, for the first time, to force you to pay the debt by allowing them to take what you own (your *assets*). Assets include such things as your paycheck, bank account, and property.

Just getting a judgment does not mean that the creditor is actually going to collect anything, however. Illinois has strict laws as to what assets a creditor can take. In order to find out if they can collect anything from you, your creditor must find out what you own. They do this through a legal proceeding called a Citation to Discover Assets.

IF YOU ARE SERVED WITH “CITATION PAPERS,” YOU MUST GO TO COURT TO ANSWER YOUR CREDITOR’S QUESTIONS ABOUT WHAT YOU OWN. IF YOU DO NOT SHOW UP FOR THE CITATION HEARING, A JUDGE CAN SEND THE SHERIFF TO ARREST YOU.

When you go to court for a citation proceeding, you may be required to bring certain documents with you such as tax returns, check registers and pay stubs. You will meet with the creditor's attorney who will look at all of your documents and ask you questions to find out what you own.

If it turns out that you do not own any assets your creditor can take, your creditor cannot collect anything from you. You are “collection proof.”

FOR MORE INFORMATION, SEE: “Exemptions—what creditors can’t take” on page 15

EXEMPTIONS — WHAT CREDITORS CAN'T TAKE

Illinois law allows you to keep certain *assets* (property and income) no matter how much you owe. These assets are called *exempt*, meaning they cannot be taken by your *creditors*. If everything you own falls under these exemptions, then your creditor cannot take anything.

Your most important *exemptions* are

- “Take-home pay” (that is pay after all taxes have been taken out) up to \$348.75 per week (this amount will increase to \$371.25 per week as of July 1, 2010)
- Income from Social Security, Unemployment Compensation, public assistance, Veteran’s Benefits, disability benefits and private pensions
- Alimony and child support payments
- Earned income tax credit
- \$15,000 worth of *equity* in the home you live in (including a mobile home or condominium) if you are single, or \$30,000 worth of equity if you are married

FOR EXAMPLE, IF YOU OWN A HOME, EVEN IF YOU HAVE LESS THAN \$15,000 WORTH OF EQUITY, A CREDITOR CAN PUT A *lien* AGAINST YOUR REAL ESTATE. THIS MEANS THAT IF YOU TRY TO SELL YOUR HOUSE YOU WOULD HAVE TO PAY OFF THE DEBT IN ORDER TO COMPLETE THE SALE. IF YOU HAVE A VERY LARGE AMOUNT OF EQUITY IN YOUR HOME THE CREDITOR MIGHT EVEN ATTEMPT TO FORECLOSE ITS LIEN AGAINST YOUR HOME. THIS MEANS THAT THE CREDITOR COULD FORCE A SALE OF THE HOUSE.

- Motor vehicles (car, truck, etc.) in which you have less than \$2,400 worth of equity

FOR EXAMPLE, IF YOU OWN A CAR WORTH \$10,000 BUT YOU OWE \$9,000 ON IT, YOU ONLY HAVE \$1,000 WORTH OF EQUITY AND A CREDITOR CANNOT TAKE IT TO SATISFY ANOTHER DEBT.

- Tools of your trade worth \$1,500 or less, total
- Money in a 401K, IRA or other retirement account
- Necessary clothing, bible school books and family pictures of the debtor and the debtor’s family
- \$4,000 worth of any other property (“wildcard” exemption)

YOU CAN CHOOSE WHAT PROPERTY TO INCLUDE. FOR EXAMPLE, YOU COULD CHOOSE A BANK ACCOUNT, FURNITURE, EQUITY IN A CAR, JEWELRY, OR ANY COMBINATION OF THOSE THINGS AS LONG AS THE TOTAL VALUE IS NOT MORE THAN \$4,000. YOU ALSO CAN COMBINE THIS WITH OTHER EXEMPTIONS. FOR EXAMPLE, IF YOUR CAR IS WORTH \$5,400, YOU COULD COMBINE \$3,000 FROM THE WILDCARD EXEMPTION WITH THE \$2,400 CAR EQUITY EXEMPTION AND KEEP YOUR CAR.

WHAT CREDITORS CAN TAKE

When a *creditor* gets a court *judgment* against you, the creditor can try to:

- Collect from any *assets* you own that are not *exempt*. *This means that they can take anything not in the list of the previous page.*
- “Garnish your wages” — require your employer to set aside part of your paycheck to pay the creditors for your *debt*.
- “Freeze” your bank account.

WAGE GARNISHMENT: WHAT SHOULD I DO IF SOME OF MY WAGES ARE GARNISHED (set aside to pay a creditor)?

A *creditor* can garnish your wages in two ways:

- Wage deduction order
- Wage assignment

Wage deduction order

A wage deduction order is an order from the court. The creditor can get this order only after they sue you and win the case.

The wage deduction order directs your employer to take part of your wages (15% after taxes) to pay the debt. When a wage deduction order is sent to your employer, the deductions will continue until the debt is fully paid off. (FYI — It is a Class A Misdemeanor for an employer to fire a debtor for **ONE** wage *garnishment*. *(It is not against the law or an employer to fire for multiple wage garnishments.)*)

The creditor also has to send notice of this wage deduction to your last known address.

If your pay after taxes is less than 45 times the Illinois minimum wage (*currently \$348.75, as of July 1, 2008 and will be \$371.25, as of July 1, 2010*), nothing can be taken from your wages for an ordinary debt. But some special rules apply to child support payments and tax levies by the IRS. For example, a child support garnishment will usually take at least 20% of net pay, and is given priority over other debts, so it must be paid first.



Child support debt

In Illinois, child support *debt* is collected through wage *garnishment*. Child support takes priority over all other debts you owe. This means that child support jumps to the front of the line of other people or companies trying to collect from you. Additionally, the amount that can be garnished for child support is greater than the amount that can be garnished for a “regular,” non-child support debt like a medical bill. If a court has ordered a second garnishment for a regular debt, this creditor cannot get anything if 15% (*or more*) of your gross pay already is being garnished for child support. A child support garnishment usually will not leave enough of your paycheck for any other garnishments.

If your child support garnishment is already taking at least 15% out of your gross pay, but your employer takes money from your paycheck for the second garnishment anyway, you can ask for a court hearing in the “regular” collection case to straighten it out. You should talk to a lawyer if this happens.

Wage assignment

A wage assignment usually is something you sign when you buy an expensive item on credit, like a car or furniture, or when you take out a loan. The wage assignment says that if you fail to pay the debt as you promised, you give the creditor permission to take either

- 15% of your wages; or
- the amount of your take-home pay over and above \$348.75 weekly, whichever is less (*this amount will increase to \$371.25 per week as of July 1, 2010*).

Your *creditor* does **NOT** have to go to court to garnish your wages if you have signed a wage assignment. They only need to send a “Notice of Intent to Assign Wages” to you and your employer to start the collection process. You usually receive the “Notice of Intent to Assign Wages” at your job. It says that the creditor will send the wage assignment to your employer within a number of days unless you bring all your payments up to date or you fill out the “Affidavit of Defense” which is attached to the Notice.

Stopping a wage assignment

There is an easy way to stop a wage assignment. A wage assignment is “revocable at the will of the signer.” This means that even though you signed a wage assignment you can decide to end the creditors' right to use it at any time. The creditor will still have the right to sue you to collect the debt, but stopping the wage assignment can give you more time to come up with a solution to your overall debt problems.

To stop a wage assignment, you must send a letter to the creditor by certified mail and send a copy to your employer.

FOR A SAMPLE LETTER TO REVOKE YOUR WAGE ASSIGNMENT, SEE: “Sample Letter” on page 50

**WHAT ARE
FROZEN BANK ACCOUNTS,
AND WHAT SHOULD I DO IF MY CREDITOR
FREEZES
MY BANK ACCOUNT?**

Another way to collect on a *judgment* is to *garnish* or take money from your bank account. Once your bank has received notice from the *creditor*, your bank must freeze money in your account. If you make any deposits into your account after the freeze has started, the bank may freeze those deposits as well.

IF A CREDITOR FREEZES YOUR BANK ACCOUNT, THEY MUST MAIL YOU A NOTICE OF YOUR RIGHTS TO APPEAR IN COURT AND CONTEST THE FREEZE. THE NOTICE MUST TELL YOU THE DATE, TIME AND PLACE THE CASE IS TO BE HEARD IN COURT (called a return date). ON THE RETURN DATE, A JUDGE WILL DECIDE WHETHER YOUR BANK SHOULD TURN THE MONEY IN YOUR ACCOUNT OVER TO THE CREDITOR.



How do I protect the money in my account?

If a creditor freezes your bank account, you should tell the bank and the creditor if any money in the account is *exempt*. You also need to go to court. Even if the bank agrees to remove the freeze on your account, you should go to court on the return date to make sure that the freeze is lifted and that the bank is ordered to return your money and pay any bank fees if the money was direct deposited exempt funds like social security, unemployment or child support.

FOR MORE INFORMATION, SEE: “Exemptions — what creditors can’t take” on page 15

* * * * *

Can my
GOVERNMENT BENEFITS
be taken to REPAY a
GOVERNMENT DEBT?



Certain types of government benefits can be taken in order to repay a *debt* owed to the government. But only part of your benefits can be taken.

What kind of federal payments can be taken to repay a debt?

- Social Security, Veteran’s Compensation, Part B Black Lung and Railroad Retirement Benefits are examples of types of benefits that can be reduced to repay a debt to the federal government
- Supplemental Security Income (SSI) and Veterans Pension Benefits usually cannot be reduced to collect a debt

How much can be taken from my social security or other benefits? The amount that can be taken each month is either

- the amount of money you owe; or
- 15% of your government benefit, whichever is less.

Do I get any advance notice that my benefits will be reduced?

FOR ALL DEBTS OTHER THAN FEDERAL TAXES

You should get a notice from the Treasury Department telling you how much you owe, which government agency you owe money to, and a contact person at that agency who can answer questions. You should get a notice 60 days before the reduction goes into effect. During the 60-day period you can try to work out a repayment agreement with the agency to which the debt is owed or look for other alternatives.

Find more information at the Debt Management Service’s website, www.fms.treas.gov/debt

FOR FEDERAL TAXES

The IRS must give you 30 days advance notice. You can try to work out a repayment plan with the IRS either during or after this 30-day period. If you are able to work out a plan during the 30-day period, then the levy, or reduction of your benefits, will not go into effect; if a repayment plan is reached after the 30 days, the levy will be suspended.

You can also ask for relief based on “significant hardship.” “Significant hardship” means that it would be very hard to support yourself and/or your family on the reduced amount of money. Requests for hardship *exemptions* are reviewed by the IRS’ Taxpayer Advocate Service. The IRS will stop reducing your benefits while the Taxpayer Advocate Service reviews your request. You may ask for relief even after your benefits have been levied.

The toll free number for the Taxpayer Advocate Service is 1 (877) 777-4778. Form 911, Application for Taxpayer Assistance Order, is available on their web site, at www.irs.gov/advocate/index.html

If you have a problem with the IRS, contact the Center for Economic Progress-Midwest Tax Clinic at www.economicprogress.org/index.php/c/Tax_Help



WHAT *do I* NEED TO KNOW *if I have* CERTAIN TYPES *of* DEBT?



Some types of *debt* have special rules. If you are experiencing or may experience mortgage foreclosure, repossession of property, co-signing a loan, child support debt, medical debt, or student loan debt, make sure to read the section on that topic.

1.

MORTGAGE FORECLOSURE

A **mortgage** is a written agreement between a mortgage company and a home buyer. The mortgage makes your house collateral for your home loan. Collateral is security for a loan, so if you do not pay the mortgage, the company can try to take your house. This process is called a mortgage foreclosure.

What are my options if I am sued for foreclosure?

You may have many options for dealing with foreclosure, including setting up a repayment plan, refinancing, or bankruptcy. You should talk to a lawyer about your legal options. Defending a foreclosure case is usually very complicated.

Visit the Illinois Legal Aid Online website at www.illinoislegalaidonline.org for videos and additional resources about mortgage foreclosure



2.

REPOSESSION

Repossession takes place when the *creditor* takes your property from you. This happens most often with cars, but can happen with other property, such as appliances. Repossession can happen if you miss even one payment or if you break any agreement in the contract you signed. Illinois law allows the creditor to repossess your car without giving you any notice beforehand.

Wrongful repossession

A wrongful repossession is a repossession that is against the law. There are two types of wrongful repossessions:

- A repossession that is not done in a peaceful manner. If a “repo-man” breaks into your garage to repossess your car or threatens you with physical violence, for example, that is a wrongful repossession. But if the “repo-man” repossesses a car that is parked on the street or in your driveway, it is not a wrongful repossession.
- Sometimes creditors will repossess your property even though you have not missed a payment or broken any agreement in the contract. This is a wrongful repossession.

Preventing repossession

If you make all your payments on time and you follow all the other requirements of the contract you signed, the creditor cannot repossess the item. So, make sure when you buy an item that it has payments you can afford and then pay them on time.

OTHER THINGS TO KNOW

- *Car contracts usually require you to keep the car insured.* If your contract requires insurance and you don't keep up the insurance, the creditor can repossess your car.
- *If you miss a payment it is important to try to work out a payment plan with the creditor.* Sometimes the creditor will accept a partial payment or give you extra time to make a payment, but do not send a partial payment unless you first get the okay of the creditor **IN WRITING**. The bank or finance company does not have to accept a partial or late payment.
- *If you have made many payments on a contract but are now having trouble, you can ask for a new contract (called a renewal or re-finance agreement) that will lower your monthly payment amount. But this will also cost you extra finance charges.*



Can I get my car back after repossession?

If you paid more than 30% of the total payments due, you can get your car back by paying the **creditor** the past due payments, the repossession fees (*usually \$300 to \$500*), plus late charges. ***You only have 21 days to do this, and you can only do this once. The second time the car is repossessed, the creditor does not have to accept this money and return your car.***

In some cases you can use Chapter 13 bankruptcy to get your car back. Bankruptcy is a serious step, and how much it can help you depends on your situation. If bankruptcy is an option that you are considering, you should talk to a lawyer as early as possible.

FOR MORE INFORMATION, SEE: "Is bankruptcy right for me" on page 36

Visit the Illinois Legal Aid Online website at www.illinoislegalaidonline.org for specific information about car repossession.



3.

CO-SIGNING A CONTRACT

What is a co-signer?

Sometimes a buyer needs to have a “co-signer” or “guarantor” to buy something. This is usually the case if the buyer has bad credit or no credit history at all. Finance companies will ask them to bring another person with income or good credit (*such as a parent, spouse, sister, or friend*) to sign the retail installment contract (or “contract”).

If the buyer does not make the payments, the finance company can sue the buyer and may also be able to sue the co-signer. But a creditor cannot legally force a co-signer to pay on a contract if they are not liable.



Can I be held responsible for a debt if I am a co-signer?

If you are the co-signer of a contract for the purchase of an item, you can be held responsible for the *debt*, but **only** if one of the following 5 conditions apply:

- You received the goods sold (*the car or other item*). ***Illinois law states that you have “received” the item and may be liable as a co-signer when you physically possess, make of, or benefit from the use of the item.***
- You are the parent of the buyer.
- You are the spouse of the buyer.
- You are listed as an owner on the Certificate of Title.
- You have signed as a “guarantor of collection.” ***You are considered a guarantor if:***
 1. You have signed the contract for the purchase of the item, AND
 2. You signed a special document entitled “Explanation of Guarantor’s Obligation.” This document guarantees that you will pay the seller the total amount of the item if the buyer does not make the payments.



What are my rights if I have been sued as a co-signer?

If you are sued in court but you believe none of the 5 conditions above apply to you, you must state this as a defense in court. You also may have a legal claim or counter-claim against the creditor if they break certain laws. You should contact a lawyer as soon as possible.



OTHER PROTECTION FOR GUARANTORS

Even if the conditions listed above do apply to you, you can only be sued as guarantor after the creditor has tried to collect from the buyer in court. If the creditor does not get 100% payment after trying to collect from the buyer, then he or she can sue the guarantor if they can show one of the following:

- The guarantor has diligently taken all ordinary legal means to collect from the buyer and not been able to collect full payment.
- Service of summons cannot be completed against the buyer.
- The primary buyer has no money.
- It otherwise is useless to proceed against the buyer.



4.
MEDICAL DEBT

If you have large hospital or doctor bills you should think about the following possibilities:

1. Are you sure you owe the *debt*?

- If you had insurance at the time of the medical services, or if you were eligible for Medicaid or Medicare, it may be possible to get the bill paid under these programs. The law might set time limits for insurance claims so you should move quickly.
- Under Illinois law a parent is responsible for the medical bills of a child, and a husband or wife is responsible for the medical bills of his or her spouse. But you may not be responsible for a bill if, for example, the services were provided to your adult child or your grandchild.

2. Get an audit

Some hospital bills contain mistakes and overcharges. Ask the hospital to review or “conduct an audit” of your bill. If they refuse or if you are not happy with their audit, you can hire a medical bill auditor to review your bill. The auditor reviews the accuracy of the charges and the necessity of the care provided. An audit can result in huge reductions to a hospital bill.

3. Ask for a price reduction or payment schedule

Most hospitals give huge price discounts to insurance companies and no price discounts to uninsured patients. So an insurance company might pay a hospital \$3,000 for an operation while an uninsured patient pays \$10,000 for the same operation.

Patients can ask hospitals or doctors to reduce their charges. Many hospitals and doctors will agree with these requests. You also can ask for an affordable payment schedule.

In Chicago, contact the Legal Assistance Foundation at **(312) 341-1070** or **lafchicago.org** to find out about free help with medical debt relief



4. Charity care/financial assistance programs

Most hospitals are non-profit charitable institutions. A non-profit hospital does not have to pay taxes to the government. In return for its tax-exempt status, the non-profit hospital must provide free services to low-income patients. All non-profit hospitals have programs to do this. They call these programs “charity care” or “community care.”

Ask the patient accounts department of the hospital if you are eligible to apply for financial assistance. While doctors usually do not have to provide financial help, many will do so if the hospital has written off or lowered your bill.

5. Bankruptcy

If none of the above has worked, you may want to think about bankruptcy. If you have large medical *debts* and few *assets*, a bankruptcy can sometimes wipe out all the medical bills and give you a fresh start. However, bankruptcy is a serious step, and how much it can help you depends on your situation. If bankruptcy is an option that you are considering, you should talk to a lawyer as soon as possible.

FOR MORE INFORMATION, SEE: “Is bankruptcy right for me” on page 36

OTHER THINGS TO KNOW...

- **Never pay a medical bill with your credit card unless you can pay it off right away.** Medical bills do not cost you interest, like the 20% interest, you may be paying on your credit card.
- If a collection agency contacts you about your bill, you can write them a letter telling them to stop contacting you.

FOR DETAILS, SEE: “How do I stop creditors or collection agencies from bothering me?” section on page 11

- Some hospitals will sue patients on unpaid debts. If you are sued on a hospital bill, you should get a lawyer.

5.

GOVERNMENT SUBSIDIZED STUDENT LOANS

Student loans are subsidized if while you are in school, the United States Department of Education pays the *interest* on your loan and when you leave school and start to pay the loan back yourself, the United States Department of Education still pays part of the interest. This lets you pay a low interest rate.

If you have private student loans (*not given or guaranteed by the federal government*), they generally will be subject to the same rules as other debt, with one important exception: even private student loans generally cannot be discharged in bankruptcy under the current law.

FOR MORE INFORMATION, SEE: "Will bankruptcy get rid of my student loans" on page 36

Search **Illinois Legal Aid Online** at www.illinoislegalaid.org for some basic information on "The student loan process and what happens if you can't pay."

Where can I get information about these loans if I have lost my records?

Getting records of your federal or state student loans, especially if they are more than 2-3 years old, can be hard because the records can be sent to a lot of different agencies. Always try contacting your lender first. If they do not have the information you need, contact the following:

FEDERAL STUDENT AID OMBUDSMAN OF THE UNITED STATES
DEPARTMENT OF EDUCATION

Call 1 (877) 5557-2575 or www.ombudsman.ed.gov/about/contactus.html or 1 (800) 4-FED-AID or access this information on the internet at the National Student Loan Data System, www.nslds.ed.gov/nslds_SA

ILLINOIS STUDENT ASSISTANCE COMMISSION

The agency that guarantees most but not all Illinois residents' student loans is the Illinois Student Assistance Commission (ISAC), at 1 (800) 899-4722



What happens if I miss a payment?

If you miss one or more payments on your government subsidized student loan and you did not apply for and receive a “deferment” or “forbearance” (*two ways that your payments can be postponed*), your loan may be in “default.”

When you are in default, the loan agency or the United States Department of Education can do any or all of the following:

REFER YOUR LOAN FOR COLLECTION

The Department of Education or loan agency may refer your loan to a collection agency. The collection agency will usually contact you by letter and/or by phone asking you to pay the full amount.

FOR MORE INFORMATION, SEE: “How do I stop *creditors* or collection agencies from bothering me” on page 11

REPORT YOUR FAILURE TO PAY TO A CREDIT BUREAU

Your failure to pay your student loan can be reported to a credit bureau (*a credit reporting agency*) and will go on your *credit report*. Before your loan can be reported to the credit bureau, you must be given notice and a chance to enter into a repayment agreement. The notice also will tell you that you have 60 days to ask the government for an “administrative review” to make sure that their information about the *debt* is correct.

TAKE YOUR INCOME TAX REFUNDS

The United States Department of Education or a guaranty agency (*a middleman between the lender and the United States Department of Education*) can take, or intercept, your income tax refund, including your earned income tax credit, if you fail to pay on your student loan. First they must send you a notice that says that they are going to intercept or take your tax refund and give you a chance to fight this decision. You may be able to stop the tax intercept if

- The debt has been paid
- The Social Security number is wrong
- The school closed while you were going there
- The school did not pay you a refund when one was due
- The loan was *discharged* (legally removed) in bankruptcy
- The loan agreement was forged (*someone faked your signature*)

Sometimes a husband and wife file their tax return jointly, but only one of them worked during the year. If your tax refund is intercepted or taken because of your spouse’s student loan debt, notify the Department of Education to get the tax refund released. You can stop this from happening by filing Form 8379 with your tax return.

Visit the Internal Revenue Service website at www.irs.ustreas.gov or call at **1 (800) TAX-1040** taxpayers' assistance for information

In Chicago, contact the Center for Economic Progress-Midwest tax clinic at: www.economicprogress.org/index.php/c/Tax_Help to find out about free help with your taxes

GARNISH YOUR WAGES

Money can be taken out of your paycheck to pay back your government subsidized student loans. This is called wage *garnishment*. You have a right to a hearing before the money is garnished. To get this hearing, you must fill out the Request for Review form that is sent to you. This form will be sent to the address that the United States Department of Education has on file for you, so you should make sure that the listed address is correct.

According to The Higher Education Act, your employer cannot take any money out of your paycheck if your income is less than \$196.50 per week, which is 30 times the federal minimum wage of \$6.55 (*as of July 24, 2008*). If you earn more than this amount per week, the employer can take out the smaller of these two amounts:

- 15% of your weekly wages; or
- The amount of your weekly take-home pay over \$196.50 weekly.

TAKE YOUR SOCIAL SECURITY BENEFITS

The government can take some of your Social Security benefits each month to pay back your student loans.

- If your monthly benefit check is less than \$750: Nothing can be taken.
- If your monthly benefit check is in between \$750 and \$882: The amount above \$750 can be taken.
- If your monthly benefit check is over \$882: 15% of your monthly benefit payment can be taken.

While part of your Social Security benefits can be taken as described above, none of your Supplemental Security Insurance (SSI) benefits can be taken.

SUE YOU IN COURT

Like any other bill, you can be sued if you do not pay your student loans. If you are sued, you will get served with a complaint and summons by your local sheriff. If you get a complaint and summons, you should talk to a lawyer right away.

Can I get rid of my student loan?

Find out if you qualify to **discharge** your loan. Discharges are not easy to get, but if your loan is discharged it will be treated as if it never existed.

THERE ARE 5 TYPES OF DISCHARGES:

Closed school discharge

If the school closed, or if you left your school within 90 days of its closing, you may be able to get a “closed school discharge.”

Inability to benefit discharge

If your school falsely certified your ability to benefit from its instruction, you may be able to get your loan discharged. The most common example of this is if you did not have a high school degree or a GED, when you entered the school, and you did not pass an ability-to-benefit test given by the school.

False certification discharge

If your signature was forged (*faked*) on either your loan application or a loan check, you may be able to get your loan discharged.

Unpaid refund discharge

If you enrolled in a school but never attended, or withdrew early enough to get a refund but no refund was given to you, you may qualify for a discharge equal to the amount that should have been refunded to you by the school.

Disability discharge

If you are totally and permanently disabled, and unable to find work because of your disability, you may be able to get a disability discharge.

For an application to discharge your student loans, call the U.S. Department of Education at **1 (800) 433-3243**, or ask the holder of your loans for one.



Loan consolidation

If you cannot get your loans *discharged*, then you should think about “consolidating,” or combining, all of your loans into one Federal Direct Consolidation Loan. Consolidation can help because it replaces all of your old loans with one new loan on which you make payments. You can consolidate all of your loans even if you only have one student loan.

Consolidation also takes your loans out of default, stops all future wage *garnishment* and tax intercepts, and even helps your credit history. Finally, if you make six monthly payments in a row, you can get new student loans if you go back to school.

To apply for consolidation, call the United States Department of Education at 1 (800) 557-7392 or apply online at loanconsolidation.ed.gov



Will bankruptcy get rid of my student loans?

The law makes it very hard to get your student loans *discharged* through bankruptcy. You can only discharge your student loans if paying them off creates an “undue hardship” on you and your dependents (*children*). To do this, you must show the court both of the following:

- You cannot keep a “minimum standard of living” if you have to repay the loans. This means, for example, that you cannot afford to pay the loans and pay for your rent and food; and
- You have made “good faith efforts” to repay the loans. This means that you have done everything you can to make the payments, but have still not been able to pay them.
- Also, student loans that first became due more than seven (7) years before you file for bankruptcy usually cannot be discharged in a bankruptcy.

FOR MORE INFORMATION, SEE: “Is bankruptcy right for me” on page 36

Can a lender still collect if I haven’t heard anything about my loans for years?

Yes. There is no expiration date (or “*statute of limitations*”) on student loans. Until the loans are paid or discharged, they will never go away.



IS BANKRUPTCY RIGHT *for me?*



Bankruptcy is a legal process which may help you get rid of some or all of your debt. But it will stay on your credit report for up to ten years. This may mean you may not get a loan when you want one. **Bankruptcy is a serious step, and how much it can help you depends on your situation. If you are thinking about bankruptcy you should talk to a lawyer as early as possible.**

If you choose to file bankruptcy on your own, visit www.ilnb.uscourts.gov for a guide

COMMON BANKRUPTCY QUESTIONS

1. Can bankruptcy stop foreclosure on my home?

Temporarily, yes. However, in the long-term it may not protect your home. When you file for bankruptcy creditors must temporarily stop trying to collect the debt. This may give you time to catch up on your mortgage payments, so that you can keep your home. In a Chapter 13 bankruptcy, you may be able to keep your home if you can repay the debt on the property. But if you cannot repay the debt, you may have to sell your home to pay the debt.

2. Can bankruptcy get rid of my student loan debt?

In most situations, no. Student loans are very hard to discharge, even after filing for bankruptcy. You must prove that paying your student loans create an “undue hardship.” This is very hard to prove.

FOR MORE INFORMATION, SEE: “Student loans” on page 29

WHAT CAN BANKRUPTCY DO FOR ME?

Bankruptcy may make it possible for you to:

- Get rid of the legal duty to pay some kinds of *debt* (called a *discharge of debt*), including:
 - Medical debt;
 - Utility bills; or
 - Credit card debt.
- Temporarily stop certain actions by *creditors*, including:
 - Foreclosure on your home, and give you a chance to catch up on missed payments. **BUT BANKRUPTCY DOES NOT GET RID OF MORTGAGES AND OTHER LIENS ON YOUR PROPERTY WITHOUT PAYMENT.**
 - Repossession of a car or other property, or force the creditor to return property even after it has been repossessed
 - Wage *garnishment*, debt collection harassment, and similar creditor actions
- Get time to catch up on your rent and keep your below-market-rent lease
- Get your utility service back or keep it from being cut off
- Reinstate or prevent suspension of a driver's license, if the reason for suspending the license is failure to pay a debt
- Challenge the claims of creditors who have committed fraud or who are trying to collect more than you really owe
- Keep *exempt* property



FOR MORE INFORMATION, SEE: "Exemptions-what creditors can't take" on page 15

WHAT CAN'T BANKRUPTCY DO FOR ME?

Bankruptcy cannot fix every financial problem. In bankruptcy, you usually cannot:

- Get rid of *debts* owed to some “secured” *creditors*. A “secured” creditor is a creditor that gives you a loan to buy something (a home or other property) but gets the right to repossess the item if you don't make your loan payments.
- Protect co-signers on your debts.
- Stop you from going into debt in the future if your income is less than your expenses.
- Get rid of debts that are singled out by the bankruptcy law for special treatment, such as:

- Child support



- Court orders entered because of drunk driving that injured someone

- Criminal fines



- Alimony (now called “maintenance”)

- Some taxes

- Most student loans

- Debts that are created after you file for bankruptcy

- Court restitution orders

TO UNDERSTAND WHAT SPECIAL TREATMENT THE BANKRUPTCY LAW PROVIDES FOR EACH OF THE ABOVE SITUATIONS, YOU MUST CONSULT WITH AN ATTORNEY.

TYPES OF BANKRUPTCY

There are two kinds of bankruptcy, **Chapter 7** and **Chapter 13**. In many cases you can choose between a Chapter 7 bankruptcy and a Chapter 13 bankruptcy.

Chapter 7

A Chapter 7 is known as a “straight bankruptcy.” It will *discharge* or wipe out most, but not all *debts*. For example, a bankruptcy will never wipe out back child support or maintenance (*alimony*) payments. It will not discharge your mortgage debt unless you are willing to give up your house. It also will not discharge your government-subsidized student loans, except in very rare cases.

FOR MORE INFORMATION, SEE: “Student loans” on page 29

Other debts, however, including medical bills, utility bills, credit cards and other personal loans may all be discharged. Different rules apply to different types of debts.

In exchange for discharging your debts, you would have to give up all of your non-exempt *assets*. If your assets are greater than the allowable *exemptions*, your non-exempt assets may be sold to pay the debts.

FOR MORE INFORMATION, SEE: “Exemptions—what creditors can’t take” on page 15

Can I file for a Chapter 7 bankruptcy?

If your family’s income is lower than the median income in Illinois (“*median*” is like an average) then you may file a chapter 7 bankruptcy. **THE 2009 ILLINOIS MEDIAN INCOME FOR A FAMILY OF 4 IS \$78,182.**

Find out the median income for your family by searching for “Illinois median income (*year*)” at www.usdoj.gov

If your income is more than that level, there is a complicated way to figure out whether you are allowed to file a chapter 7 bankruptcy. This is called the “means test.” If you “fail” the means test, then you will not be allowed to file a Chapter 7 bankruptcy. If you file a Chapter 7 bankruptcy and find out that you fail the means test, you will be given the option of switching to Chapter 13 bankruptcy.

Chapter 13 bankruptcy

A Chapter 13 bankruptcy allows you to propose a plan to the court to pay your *creditors* all or part of what you owe them, depending on your income. If the court approves your plan, you make payments to the “Chapter 13 Trustee” who then distributes the money to your creditors. It is similar to a *debt* repayment plan drawn up by a Consumer Credit Counseling Service (CCCS), but with the power of the Bankruptcy Court behind it. Because this is a court proceeding, your creditors have to keep to your plan if it is approved by the court.

To get a Chapter 13 plan approved you must show the court that you have enough steady income to meet your regular monthly expenses (*such as food, clothing, utilities and rent*) and have enough money left over to pay on your bills. A Chapter 13 plan can last up to 5 years. If at any time during the plan, you cannot make your payments your Chapter 13 bankruptcy may be dismissed by the court. You would then still owe any debts which were not paid off during your plan.

HOW DO I FILE FOR BANKRUPTCY?

- The process of filing bankruptcy is very complicated, and you must take certain steps before you can file. It is a very serious step, and once you file for bankruptcy you may not be able to take it back.
- Actions that you take in the year before you file bankruptcy can make your case more successful, or they can make it much worse. Also, the rules on when it is okay to pay one debt instead of other debts can be very complicated. **ALTHOUGH YOU ARE NOT REQUIRED TO HAVE A LAWYER TO FILE BANKRUPTCY, YOU ARE TAKING A BIG RISK IF YOU TRY TO FILE BANKRUPTCY ON YOUR OWN.**

FULL FINANCIAL DISCLOSURE IS REQUIRED

When you file bankruptcy, you must:

- List all of your *assets* and debts;
- Fill out forms showing your income over the last six months, your current income and expenses; and
- Answer questions about your financial actions in the last two years, such as lawsuits, closed accounts, job changes, etc. You cannot leave a creditor off your list because you want to give that creditor special treatment. If you don’t want to file bankruptcy against a particular creditor, you may be able to do this **AFTER** you have filed bankruptcy.

In order to prepare the bankruptcy documents properly, you will need:

- All of your bills
- A recent copy of your credit report, so you can list all of your creditors
- Your most recent tax return
- Pay stubs for at least the last 60 days
- Recent bank statements

CREDIT COUNSELING

Before you file bankruptcy, you **MUST** get credit counseling from an approved agency. There are only two exceptions to this rule:

1. The severely incapacitated; and
2. Military personnel in a combat zone.

The credit counselors cannot give you legal advice. In most situations it makes more sense to see a lawyer first, because the lawyer's advice may be that you should not or cannot file bankruptcy. If you choose to file for bankruptcy after meeting with a lawyer, you still have to complete an approved credit counseling session.

FILING FEE

- The current filing fees are \$299 for a Chapter 7 bankruptcy and \$274 for a Chapter 13 bankruptcy.
- If you don't have the full filing fee amount, you can pay the filing fee in up to four (4) payments. If you are low-income and can't afford to pay the filing fee at all, you can apply to have the fee waived in a Chapter 7 case, but you cannot waive the filing fee in a Chapter 13 case.

Find a list of approved agencies at: www.usdoj.gov/ust/eo/bapcpa/ccde/CC_Files/CC_Approved_Agencies_HTML/cc_illinois/cc_illinois.htm



**WHAT HAPPENS
AFTER I FILE FOR BANKRUPTCY?**

The automatic stay

Once you file bankruptcy, the “automatic stay” goes into effect. This means that all collection activity by your *creditors* or collection agencies must stop. Creditors cannot repossess or seize your property. Lawsuits to collect money or to foreclose on property are frozen and cannot go ahead unless the bankruptcy court gives permission.

But, there are some exceptions to the automatic stay. A government agency can go ahead with an action to make you obey the law, for example, to clean up property that is a safety hazard. Also, the automatic stay does **NOT** apply to child support.

Property of the bankruptcy estate

When you file a bankruptcy case, all of your property comes under the jurisdiction of the bankruptcy court. This means that your property will be property of the “bankruptcy estate.” No creditor can sell, seize, or exercise any control over this property, even if the creditor has a lien on the property, without permission from the bankruptcy court. You cannot sell or transfer the property without permission from the bankruptcy trustee or the court, but you can use the property until the trustee asks you to turn it over to him or her.

Other protections if you file bankruptcy

UTILITIES

After you file bankruptcy, a utility must restore service, but you must pay a deposit.

NO DISCRIMINATION

It is illegal for your employer to fire you for filing bankruptcy. A government agency cannot deny a license or discriminate against you because you have filed bankruptcy. You can be denied credit if your credit is otherwise bad.

DRIVER’S LICENSE

If your driver’s license was suspended for not paying a *debt* that is *dischargeable* in bankruptcy, you can get your license reinstated.

※※※※※※※※※※※※

LEGAL ASSISTANCE:

How do I get help?



The following is a listing of possible sources of legal assistance first by your physical residence and second by certain legal topics:

1.

YOUR PHYSICAL RESIDENCE

THE CHICAGO BAR ASSOCIATION offers referrals to **Cook County residents** through its Lawyer Referral Service. Visit www.chicagobar.org or call (312) 554-2001. The Chicago Bar Association will put you in touch with a knowledgeable consumer lawyer, who will provide an initial consultation to determine your best course of action. If your case is accepted, there is a \$30 administrative fee. The private attorneys who are part of the program charge varying rates, which they will discuss with you during the initial consultation.

- **Illinois residents** can contact the Illinois State Bar Association's Illinois Lawyer Finder service at 1 (800) 922-8757 or www.illinoislawyerfinder.com.
- **Low and modest-income Cook County residents** can receive free or low-cost legal advice from CARPLS (*Coordinated Advice and Referral Program for Legal Services*) at (312) 738-9200.
- **Cook County residents:** free legal assistance is available from several agencies including
 - Legal Assistance Foundation of Metropolitan Chicago at (312) 341-1070
 - Chicago Volunteer Legal Services at (312) 332-1624
 - Chicago Legal Clinic at (773) 731-1762

- **Illinois residents outside of Cook County:** free or low cost legal assistance is available from
 - Northern Illinois-Prairie State Legal Services www.pslegal.org or 1 (877) 342-7891
 - Central or Southern Illinois — Land of Lincoln Legal Assistance www.lollaf.org/home.html or 1 (815) 965-2134



2.

ASSISTANCE WITH CERTAIN LEGAL TOPICS

Information about mortgage foreclosure is available at

- Chancery Division Advice Desk located at the Richard J. Daley Center, Room 1303. The Desk, operated by the Chicago Legal Clinic, is open Monday through Friday from 9:00 am to 3:30 pm
- Legal Assistance Foundation of Metropolitan Chicago at (312) 341-1070
- Chicago Volunteer Legal Services at (312) 332-1624
- Chicago Legal Clinic at (773) 731-1762
- The Illinois Attorney General’s website also has information about mortgage foreclosure at www.illinoisattorneygeneral.gov/consumers/index.html



Information about bankruptcy is available at:

- U.S. Bankruptcy Court Self Help Assistance Desk, located at 219 S. Dearborn, Room 622. The Desk, operated by the Legal Assistance Foundation of Metropolitan Chicago, is open Monday through Friday from 9:30 am to 1:00 pm.
- Legal Assistance Foundation of Metropolitan Chicago at (312) 341-1070
- Chicago Volunteer Legal Services at (312) 332-1624
- Chicago Legal Clinic at (773) 731-1762



For information about consumer problems, the following government offices may be able to help:

- The Illinois Attorney General, Consumer Protection Division at 1 (800) 386-5438; Spanish at 1 (866) 310-8398 or TTY at 1 (800) 964-3013
- Chicago Department of Consumer Services at (312) 744-9400
- Cook County State’s Attorney, Consumer Fraud Unit at (312) 603-8600



Sample LETTERS



The following letters in this section may be used as samples when writing to your creditors or a collection agency. ***Always keep a copy of any letter that you send.*** If there is a cc: at the bottom of a letter, you should also send a copy of the letter to that address.

- **Letter to creditor** *(for non-collection proof debtor)*
- **Letter to collection agency** *(for non-collection proof debtor)*
- **Letter to creditor** *(for collection-proof debtor)*
- **Letter to collection agency** *(for collection-proof debtor)*
- **Letter to revoke wage assignment**

Letter to creditor: *(for non-collection proof debtor)*

If you are not “collection proof,” meaning you have assets that creditors can take, you can use this sample letter to tell your creditors that you can't pay them.

Date

Your name

Address

Creditor's name and

Address

Re: Your account number

Dear Sir or Madam,

I am writing to ask that you stop contacting me about my account with [name of company]. I am not able to make payment on my account right now. The reason is that [explain why you cannot make payments right now].

I will try to take care of this debt as soon as I am able to do so, and I appreciate your cooperation in the meantime. Thank you.

Sincerely,

[Your signature]

cc: Correspondence Branch

Federal Trade Commission

Washington, D.C. 20058

Letter to collection agency *(for non-collection-proof debtors)*

If you are not “collection proof,” meaning you have assets that creditors can take, you can use this sample letter to tell a collection agency that you can't pay them and you do not want them to contact you any more.

Date

Your name

Address

Debt collection agency name and
Address

Re: Your account number

Dear Sir or Madam,

I recently received a bill from you, a copy of which is attached. I am writing to inform you that I am not going to pay the amount billed, and that you should stop all further communication with me pursuant to the Fair Debt Collection Practices Act.

I am writing to ask that you stop contacting me about my account with [name of company]. I am not able to make payment on my account right now. I will try to take care of this debt as soon as I am able to do so, and I appreciate your cooperation in the meantime. Thank you.

Sincerely,

[Your signature]

cc: Correspondence Branch
Federal Trade Commission
Washington, D.C. 20058

Enclosure [enclose a copy of the last bill with the letter.]

Letter to creditor *(for collection-proof debtor)*

If you are “collection proof,” meaning that you have no assets that can be taken by your creditors, you can use this sample letter to tell your creditors that you can't pay them.

FOR MORE INFORMATION, SEE: “Exemptions—what creditors can't take” on page 15

Date

Your name

Address

Creditor's name and

Address

Re: Your account number

Dear Sir or Madam,

I recently received a bill from you, a copy of which is attached. I am writing to tell you that I am unable to pay this debt. My income comes solely from [fill-in what applies to you: Public Aid, Social Security, pension, Unemployment Compensation, etc.]. I do not own a home or any real estate. I do not have any bank accounts. My [year, make and model] car is valued at less than \$2,400.00. [Or: I do not own a car]. The value of my personal property does not exceed \$4,000.00. As all my income and property are exempt under the laws of Illinois, any attempt to collect this debt will not be successful.

I am sorry that I cannot pay this bill, but I hope that you will understand my situation.

Sincerely,

[Your signature]

cc: Correspondence Branch
Federal Trade Commission
Washington, D.C. 20058

Enclosure [enclose a copy of the last bill with the letter.]

Letter to collection agency *(for collection-proof debtors)*

If you are “collection proof,” meaning that you have no assets that can be taken by your creditors, you can use this sample letter to tell a collection agency that you can't pay them and you do not want them to contact you any more.

Date

Your name

Address

Debt collection agency name and
Address

Re: Your account number

Dear Sir or Madam,

I recently received a bill from you, a copy of which is attached. I am writing to tell you that I am unable to pay this debt. My income comes solely from [fill-in what applies to you: Public Aid, Social Security, pension, Unemployment Compensation, etc.]. I do not own a home or any real estate. I do not have any bank accounts. My [year, make and model] car is valued at less than \$2,400.00. [Or: I do not own a car]. As all my income and property are exempt under the laws of Illinois any attempt to collect this debt will not be successful.

This letter will also serve to inform you that I am not going to pay the amount billed, and that you should stop all further communication with me pursuant to the Fair Debt Collection Practices Act.

[Your signature]

cc: Correspondence Branch
Federal Trade Commission
Washington, D.C. 20058

Enclosure [enclose a copy of the last bill with the letter.]

Letter to revoke wage assignment

If you want to stop a wage assignment at any time you can use this sample letter. Remember, the letter must be sent to your creditor by certified mail, return receipt requested. A copy must also be sent to your employer.

FOR MORE INFORMATION, SEE: “Stopping a wage assignment” on page 17

Date

Your name

Address

Creditor’s name and

Address

Re: Your account number

Dear Sir or Madam,

I hereby revoke your right to use the wage assignment I signed on [date you signed the wage assignment]. You no longer have my permission to use this wage assignment.

Sincerely,

[Your signature]

APPENDIX



WATCH OUT FOR THESE TRICKS, SCAMS AND PRACTICES

Sometimes the same people or businesses that claim to want to help you save money or get out of debt, end up getting you get into even more debt! Here are some things to watch out for, including some common tricks and scams:

Home *equity* loans

With home equity loans you mortgage or promise the lender some of the equity in your home in order to get a loan. This means that if you do not make your loan payments you could lose your home. It is never a good idea to take out a home equity loan in order to pay off debt owed to *unsecured creditors*, such as credit card companies!

High rate *debt*: “Pay day loans” and “Title store loans”

Payday lenders offer both payday loans and installment loans. Pay day loans and installment loans from payday lenders are loans with enormously high *interest* rates, ranging from 200% to 1000%, usually payable in less than a year. For example, you might borrow \$500 and have to pay back \$1237.42 over 10 months, in ten monthly payments of \$123.49 each. That’s an interest rate of 701.75% — more than 30 times higher than what credit card companies charge!

Title store loans are loans where the title loan company lends you several thousand dollars at high interest rates (*typically* 200-300%) and keeps a security interest in your car. Most title loans require you to make monthly payments for a number of months and then require a “Balloon Payment” equal to the entire loan amount after at least 60 days. When you cannot make this Balloon Payment, the company repossesses your car.

YOU SHOULD AVOID TAKING OUT A PAYDAY OR TITLE LOAN IF POSSIBLE.

**IF YOU’VE ALREADY TAKEN OUT A PAYDAY LOAN,
YOU CAN:**

Ask for a “repayment plan”

All payday loans signed after December 6, 2005 have a “repayment plan.” If you have not paid off a payday loan after 35 days, you can ask the payday lender for a repayment plan. The repayment plan will give you at least 55 days to repay the loan in installments with no more finance charges or other charges of any kind. If you and the payday lender agree, the repayment plan can be extended even longer, to 90 days.

TALK TO A LAWYER

IF YOU HAVE BORROWED MONEY FROM A PAYDAY LOAN COMPANY OR A TITLE LOAN STORE, TALK TO A LAWYER TO SEE IF HE OR SHE CAN HELP YOU.



Tax preparation and instant refunds

Some companies offer to help you prepare your federal and state income tax returns but they charge a percentage of your tax return as a fee. Also, many tax-preparation businesses offer an “instant tax refund,” where they tell you that you can get your refund right then or in a day or two. The tax-preparer charges you a fee to fill out your taxes for you and then charges you another fee to give you an “instant tax refund.” But the tax refund is actually a high *interest* loan. The tax preparer gives you a loan and then keeps your tax refund. In exchange for doing this, they charge you 10-20% of the return, plus fees. This means that if your tax refund is \$500, you might only get about \$350.

Before you choose this option, think carefully about whether it is worth losing part of your refund just to get the money a few weeks earlier. Usually you will be much better off waiting to get your full refund from the IRS. Your tax return will arrive directly from the government within a few weeks—maybe sooner if you file online – and ask the IRS to deposit the refund into your bank account.

Tax preparation and instant refunds *(continued)*

You can get help with your taxes for free or at a very low-cost from the IRS or community organizations in your area.

- In Chicago, contact the Center for Economic Progress-Midwest Tax Clinic at www.economicprogress.org/index.php/c/Tax_Help to find out about free help with your taxes.
- Visit the Internal Revenue Service website at www.irs.ustreas.gov or call at 1 (800) tax-1040 taxpayers' assistance for information.

Mortgage Rescue Scams

Sometimes, people who say they are trying to help you keep your house are actually trying to trick you. These “scam artists” often find homeowners who are in danger of losing their home through public foreclosure notices or government offices.



Two common tricks are

- **“Sale-leaseback”**— You give up the title to your home, thinking you can become a renter and buy the property back over the next few years. But the scam artist usually sets the rental or buy-back price so high that he can evict you when you can't make the “rent” payments, or when you can't afford to buy the home back. The sale-leaseback often is advertised as a loan, so sometimes you don't even know that you're signing away the title to your home.
- **“Phantom help”**— Promising to negotiate with your *creditors* for very high upfront fees and providing little or no help.

HOW TO PROTECT YOURSELF

Don't...

- Trust a person or company that tells you to transfer your property deed or title to their company.
- Make payments to anyone other than the lender.
- Sign a quitclaim deed unless your own independent lawyer specifically tells you to sign.
- Agree to any deal that allows you to rent the property and then buy it back at a later date.
- Accept an offer from somebody who wants to “make good” on your missed payments and “take the house off your hands” in exchange for documents that assigns them the surplus, i.e., gives them any extra money from the foreclosure sale.
- Trust a person or company that calls itself a “mortgage consultant,” “foreclosure service,” or something similar.

Do...

- Get your own independent lawyer.
- For additional help, visit the Illinois Attorney General’s website at www.illinoisattorneygeneral.gov/consumers/index.html or call the Consumer Fraud Hotline at 1 (800) 386-5438.
- Protect yourself from home repair or improvement acams.

UNSCRUPULOUS CONTRACTORS OFTEN TRY TO TAKE ADVANTAGE OF PEOPLE WHO EITHER ARE IN DEBT OR DO NOT HAVE A LOT OF MONEY TO SPEND ON NEEDED HOME REPAIRS. AS YOU PLAN FOR YOUR HOME REPAIR OR IMPROVEMENT PROJECT, IT IS IMPORTANT TO ASK THE RIGHT QUESTIONS AND TAKE CERTAIN STEPS TO PROTECT YOURSELF.

Before you sign a contract for any home improvement project be sure to do the following:

- Get more than one estimate and get them in writing.
- Get the name and address of the business, and ask how long they have been in business.
- Check the Illinois Secretary of State’s database to determine if the business is in good standing at cyberdriveillinois.com/departments/business_services/corp.html, or by calling (312) 793-3380 or with the county clerk to see if the business has registered under the Assumed Business Name Act.
- *If the contractor does business under a name other than the contractor’s real name, the business must either be incorporated or registered under the Assumed Business Name Act.*
- Ask whether the contractor will guarantee his or her work and products and get copies of any warranties.
- Check with the Attorney General’s office for complaints by calling (312) 814-3000.
- Ask whether the contractor has the proper insurance and licenses.
- Include in the contract that the general contractor must provide *lien* waivers before you are required to make payments. *Suppliers and subcontractors have a right to file a lien against your property if the general contractor does not pay them. To protect your property, request lien waivers from the general contractor.*
- Check with your local and county governments to see if permits or inspections are required.

ALSO

- Never sign a contract that you do not fully understand or with blank spaces in it.
- If you are taking out a loan, do not sign the home repair or improvement contract before your lender approves the loan.
- Do not sign a “certificate of completion” or make final payment until the work is done to your satisfaction.

Danger Signs

Below are some danger signs that someone may be trying to scam you:

- Door-to-door salespersons not from your local community who offer to do home repair work for less than others in your area;
- Companies that list only a telephone number or P.O. box number as a way of contacting them;
- Contractors who do not give references when asked;
- People who offer to inspect your home for free;
- Contractors who ask for cash payments for a job or ask you to write a check to someone other than the owner or company name; or
- Contractors who offer to drive you to the bank to take out money to pay for the work.



What can I do if the contractor only does part of the work?

You have to pay the contractor for work that is finished. But don't make the final payment until you are happy with the work and all subcontractors have been paid.

If the contractor does not start or finish work within the time period given in the contract, then you may cancel the contract. You may also have the right to get back your down payment or other payments made towards the work. Send a written demand by certified mail to get this refund.

For additional help, visit the Illinois Attorney General's website at www.illinoisattorneygeneral.gov/consumers/index.html or call the Consumer Fraud Hotline at 1 (800) 386-5438

CBF MISSION



THE CHICAGO BAR FOUNDATION (CBF) is dedicated to bringing our legal community together to ensure that everyone in the Chicago metropolitan area has equal access to justice, particularly the low-income and disadvantaged people who are in most critical need of the protections of our civil legal system. 🌱 Through grants, advocacy and other leadership, the CBF takes a system-wide approach to improving access to justice and focuses on those objectives that are best achieved by working together as a community.

Specifically, the CBF strives to:

1. Engage the legal community to contribute their money and time and to use their influence to improve access to justice;
2. Advance the work of our community's pro bono and legal aid organizations;
3. Enable dedicated lawyers to pursue careers in legal aid and help pro bono attorneys most effectively supplement their efforts; and
4. Make the courts and legal system more user-friendly and accessible for all.

As the charitable arm of The Chicago Bar Association, the CBF's work is made possible by the generous financial contributions of thousands of dedicated individuals, more than 150 law firms and corporations, and many other committed supporters.

FOR MORE INFORMATION ABOUT THE CBF
please go to www.chicagobarfoundation.org or
call (312) 554-1204.





321 South Plymouth Court
Suite 3B
Chicago, Illinois 60604
Phone: (312) 554-1204
Fax: (312) 554-1203
www.chicagobarfoundation.org

