Using Consumer Law to Help Survivors of Elder Abuse

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August 11, 2020
Housekeeping

• All on mute. Use Questions function for substantive questions and for technical concerns.

• Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.

• Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.
About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living’s Administration on Aging.
About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC’s expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.
Key Lessons (1 of 3)

• Older adults with physical or cognitive limitations often rely on caregivers, family members, or friends to manage their finances

• Older adults’ increased reliance on others can make them vulnerable to financial abuse
Key Lessons/Red Flags (2 of 3)

• Bills not being paid (gas, electric, property taxes, water charges, rent, mortgage)
• Unexplained credit card purchases
• Suspicious debit card/ATM transactions
Key Lessons (3 of 3)

• Older adults have legal options!
• Consumer law tools are available to assist survivors of elder abuse
Protecting Credit
Debit Card Rights: Unauthorized Use

• Relevant law: Electronic Funds Transfer Act
• If card reported missing before use, consumer not responsible for unauthorized transactions
• If card used before reported missing, liability depends on how quickly consumer reports ($0, $50, $500, unlimited)
• If unauthorized transactions, but card not lost, consumer not liable if reported within 60 days of statement
Debit Card Rights: Errors on the Monthly Statement

• Relevant law: Electronic Funds Transfer Act
• Dispute error within 60 days of statement
Credit Card Rights: Unauthorized Use

• Relevant law: Truth in Lending Act
• Consumer liability limited to $50
• If loss reported before credit card is used, not responsible for any charges
• If credit card number, but not the card, is stolen, consumer is not liable
Credit Card Rights: Billing Error Procedures

• Relevant law: Truth in Lending Act
• Disputes may include merchant overcharges or charges for products never received
• Dispute **in writing** within 60 days of statement
Credit Card Rights:
Right to Withhold Payment

• Relevant law: Truth in Lending Act
• Can stop payment if legitimate complaint about quality of goods/services and consumer made good faith effort to resolve with merchant directly
Other Ways to Protect Credit: Fraud Alert

• Relevant law: Fair Credit Reporting Act
• Fraud alert warns potential creditor that consumer is victim of ID theft
• Creditor will need to contact applicant to verify ID before opening new account
• Free
• Consumer must contact 1 of big 3 credit bureaus (Experian, TransUnion, and Equifax)
Other Ways to Protect Credit: Security Freeze

• Relevant law: Fair Credit Reporting Act
• Security freeze on credit report will stop all new accounts from being opened
• Free as of 2018
• Consumer must contact 1 of big 3 credit bureaus (Experian, TransUnion, and Equifax)

➢ Beware credit monitoring and other subscription products!
Check Your Credit Report

• Get a copy of your credit report
  • Big 3 credit bureaus are offering free weekly reports through April 2021

• Regularly review report and dispute inaccuracies
Prioritize Debt Payments

• High priority debts include: court judgment debt, criminal justice debt, auto loans or leases, rent payments for your residence, utility bills

• Debts that quickly become high priority include: home mortgage delinquencies, taxes owed to the IRS

• Low priority debts include: medical debt, credit card debt, debt owed to friends/relatives
Protecting Benefit Payments
Alphabet Soup of Consumer Protections

FDCPA

Bankruptcy

EXEMPTIONS
Collection Proof

• Debt collectors can sue but cannot collect from those who are “collection proof”
• Income and assets protected by law
• Exempt income
Protecting Government Benefit Payments

• Most government benefit payments, whether federal or state, are exempt under laws governing the assistance program

• Limit or prohibit seizure of benefits

• State exemption law

• Special rules if federal government collecting federal debt
Examples of Protected Benefits

- Social Security benefits
- Supplemental Security Income benefits
- Public assistance benefits
- Unemployment benefits
- Veteran’s benefits
- Federal employee and civil service retirement benefits
Federal Government Collecting Federal Debt

• Federal agencies collecting debts owed to US can take a part of benefits

• Except for SSI, Veterans, Part C Black Lung

• Not all benefits – the lesser of the first $750/month ($9,000 per year) or 15% of total benefit

• Notice – request hearing with agency and assert defenses to repayment or financial hardship
Exemptions

• Protect property or an amount of equity in the property
• Homestead Exemption
• Amount of equity it protects varies from state to state
• Other property exemptions
• Notice of garnishment
• File notice of exempt property or similar step under state law
• Request a hearing to prove state and federal law protects the money or property
Protecting Wages

• Consumer Credit Protection Act (CCPA)
  • 15 USC §§ 1671-1677

• Wages, salary, commission, bonus, payments from pension or retirement programs, vacation, sick

• Lesser of 25% of disposable earnings or amount by which disposable earnings exceed 30 times federal minimum wage

• State laws may provide greater protection
Protecting Against Abusive Debt Collection Tactics
Debt Collection & Older Adults

- Number one issue for Senior Legal Hotlines
- 15% of all cases
- One of the most common complaint received by the FTC & CFPB
Older Adults at Risk

- Older adults are particularly at risk with the most abusive form of debt collection
  - At home during the daytime hours
  - More accessible by phone
  - Socially isolated
  - Unable to remember the details of stale accounts
Federal Fair Debt Collection Practices Act (1 of 2)

- Restricts debt collection efforts
- Provides specific rights for consumers
- Applies to “debt collectors” activities in 49 states (Maine received an exemption and applies its own laws)
Federal Fair Debt Collections Practices Act (2 of 2)

• The term “Debt Collector” generally includes:
  • Collection agencies
  • Collection attorneys
  • Purchasers of delinquent debts (debt buyers)

• Excludes creditors collecting their own debts
Practices Prohibited by the FDCPA

• Using obscene, derogatory, or insulting remarks
• Any attempt to harass or intimidate
• Falsely representing the amount, character, and legal status of the debt
Most Common Violations of FDCPA

• Obscenities, name calling

• Calling neighbors, relatives, and the workplace

• False threats
  • To arrest or put the debtor in jail, file a lawsuit, or take social security or other exempt property
Debt Collection Options (1 of 2)

• Dispute the debt in writing—debt collector must stop collection efforts and investigate
• Complain to government agencies
• Cease letter
CFPB Sample Letters

We're the Consumer Financial Protection Bureau (CFPB), a U.S. government agency that makes sure banks, lenders, and other financial companies treat you fairly.

Learn how the CFPB can help you

What should I do when a debt collector contacts me?

Answer: There are different ways to respond appropriately to debt collectors. Depending on your situation, we have sample letters you can use if you're experiencing common problems.

When contacted, find out the following:
- Identity of the debt collector, including name, address, and phone number
- The amount of the debt, including any fees such as interest or collection costs
- What the debt is for and when the debt was incurred
- The name of the original creditor
- Information about whether you or someone else may owe the debt

When a debt collector first contacts you in writing regarding a debt, it must provide you a written notice that has certain, legally-required information. If the collection agency first contacts you by phone, insist that they contact you in writing. **Do not give personal or financial information to the caller until you have confirmed it is a legitimate debt collector.**

The following sample letters will help if you’re experiencing common problems that may come up with debt collectors.

consumerfinance.gov/consumer-tools/debt-collection/
Debt Collection Options (2 of 2)

- File a FDCPA lawsuit
  - Seek damages
  - Raise defenses (statute of limitations)
- File an action under state law (tort claims)
Bankruptcy
What is Bankruptcy?

• Bankruptcy is a process designed to help individuals and businesses receive protection from their creditors

• Right to file for bankruptcy is provided by federal law – Title 11 of U.S. Code

• All bankruptcy cases are handled in federal bankruptcy court
Key Bankruptcy Concepts (1 of 2)

• Fresh Start: Goal of bankruptcy to provide help with existing debts and give consumer a second chance financially

• Two key elements to bankruptcy fresh start:
  • Discharge: Elimination of the legal obligation to pay a debt
  • Exemptions: Property which the law allows a bankruptcy “debtor” to keep
Key Bankruptcy Concepts (2 of 2)

• Filing bankruptcy instantly creates an “automatic stay”
• Temporarily stops most all creditor actions to collect debts or take debtor’s property
• Exceptions to the stay include:
  • Criminal actions or proceedings
  • Enforcement of domestic support obligations
How Bankruptcy Can Help Older Adults (1 of 2)

• Bankruptcy may make it possible to:
  • Eliminate legal obligation to pay most or all debts (even if debt has become a court judgment)
  • Stop home foreclosure (including reverse mortgage) and allow consumer to cure default
    • But note that bankruptcy does not automatically eliminate mortgages and liens without payment
  • Prevent repossession of car and other property (and even force creditor to return repossessed property)
How Bankruptcy Can Help Older Adults (2 of 2)

• Stop debt collection harassment, wage garnishment, and similar creditor actions to collect a debt

• Restore or prevent termination of utility service

• Allow consumer to challenge claims of creditors who have committed fraud or are trying to collect more than is really owed
What Bankruptcy Can Not Do

• Bankruptcy does not cure every financial problem; nor is it right step for every individual in financial trouble

• In bankruptcy, it is usually not possible to:
  • Eliminate certain rights of “secured” creditors
  • Discharge some types of debts, such as:
    • child support, most student loans, criminal fines, and most taxes
  • Discharge debts that arise after bankruptcy is filed
The Different Types of Bankruptcy Cases

• There are four types of bankruptcy cases individuals can file:
  • Chapter 7, known as “straight” bankruptcy or “liquidation”
  • Chapter 13 is a type of “reorganization” used by individuals
  • Chapter 11, known as “reorganization,” is used by businesses and a few individuals whose debts are very large
  • Chapter 12 is for family farmers and fishermen

• Most consumers file under either chapter 7 or chapter 13
Federal Bankruptcy Exemptions

- Examples of exemptions under § 522(d):
  - Up to $23,675 in residence
  - Up to $3,775 in one motor vehicle
  - Up to $12,625 household furnishings, goods, clothing, appliances, etc
  - Wild card exemption: $1,250 plus unused amount homestead exemption, up to $11,850
  - Most retirement funds
Visit Our Website: ncler.acl.gov

Search for resources
Read practice tips
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ncler.acl.gov
Elder Justice Toolkit

Practice-oriented, national online resource with information on pursuing civil legal remedies in elder abuse cases, practice tips, and sample documents for attorneys.

Contribute to the Toolkit! Customize a state-specific financial exploitation guide, or share your documents, letters, and pleadings at ConsultNCLER@acl.hhs.gov.

Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.