

HOW TO MANAGE CREDIT AND DEBT IN MASSACHUSETTS

Prepared by the Mental Health Legal Advisors Committee

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Credit can help you buy “big-ticket” items. Unwise use of credit, however, will lead to big financial problems. Knowing your legal rights and remedies is a first step to resolving those problems.

Disability status in and of itself does not exempt a person from having to pay debts. While income from disability benefits and some basic necessities may be protected from most (but not all) creditors, a person with disabilities may still be sued for an unpaid debt and may have other property or other income that can be taken to pay that debt.

DEBT COLLECTION

If you are having money problems, it is important to know what creditors and collection agencies may and may not do to collect debts. The state Consumer Protection Act prohibits some debt collection practices. (M.G.L. c. 93A, §2(c), 940 CMR 7.00) When dealing directly with you, creditors and collection agencies may not:

- Call you more than twice for each debt in each 7 day period at home, or call you more than twice for each debt in each 30 day period at someplace other than your home.
- Call you without identifying both the name of the creditor and the name of the person calling.
- Call you at times other than your normal waking hours. If your waking hours are unknown, then the creditor or collector may only call between 8:00 a.m. and 9:00 p.m.
- Visit your home at times other than those mentioned above. A collector cannot visit more than once in any 30 day period for each debt, unless you give permission for additional visits.
- Cause you to be charged for long distance calls (or other similar costs).
- Call you at work if you requested that they not call. Your oral request is valid for only 10 days, unless you confirm it in writing within 7 days of making the request. Written requests are valid until you write to the collector removing the restriction.
- Contact you directly, if you have told the creditor or collection agency to only contact your attorney.
- Falsely threaten to take legal action.
- Use profane or obscene language.

Additionally, creditors and collection agencies may not:

- Tell anyone (including friends, neighbors, relatives, or employers) about your debt.
- Send collection notices in a way that openly indicates or implies that you owe a debt (for example, using postcards or descriptive return addresses.)

Federal law provides some additional protections against debt collection agencies. These laws are specific to debt collectors, rather than creditors. A debt collector is someone who is collecting the debt on behalf on your creditors, and can include lawyers who do this on a regular basis.

- Collectors must verify your debt. Collectors must stop calling you if, within 30 days after you are first contacted, you send the agency a letter indicating that you do not owe the debt. (15 USCA §1692(g)).
- They can only renew their collection activities if you are sent proof of the debt. (15 USCA §1692(g)).
- You may stop a debt collector from contacting you. Write a letter to the collector telling them to stop contacting you. Once the collection agency receives your letter, they may not contact you again except to say there will be no further contact. They also may contact you to inform you if they are going to take some specific action, such as suing you. (15 USCA §1692(c)).

If you think that a creditor or debt collector is in violation of these laws, then you should contact an attorney or advocate to determine whether you have grounds for a lawsuit (see Sources of Help below). It will be important for you to document any contact you have with creditors or debt collectors, and you should keep a log of the date and times of any contact, the name (first and last) of the person who contacted you, and what was said. It is also important to answer the calls from creditors in order to assert your right to be free from harassing calls. You can verbally ask them to stop contacting you, and follow this up with a letter. If your income is judgment proof (see below), then you should also state this. Keep the conversation brief, but be clear.

ARE YOU JUDGMENT PROOF? – INCOME AND PROPERTY PROTECTED FROM DEBT COLLECTION

Fortunately, not all property or income can be taken from you by your creditors. Some income and property is too essential, and cannot be taken by court order to pay a debt. If all your income and possessions are protected you are called “judgment proof.”

What Kind Of Income Cannot Be Taken To Pay Debts?

The laws specifically exclude certain income from collection of most debts. The following is a list of income sources which are protected in most cases. That means they cannot be taken to pay a debt and you cannot be ordered to make payments out of them. But even this income CAN be taken to pay taxes, court ordered child support or alimony, or a fine or restitution in a criminal case.

- Unemployment Compensation M.G.L. c. 151A, § 36
- Workers Compensation M.G.L. c. 152, § 47 *
- Veterans Benefits 38 U.S.C., § 3100 & (both state and federal) M.G.L. c. 224, § 16
- Pensions, Retirement Funds, IRAs, etc. M.G.L. c. 235, § 34A
- Public Employees' Pensions M.G.L. c. 32, §§ 19, 41
- Railroad Retirement 45 U.S.C., § 231m
- OASDI, SSDI (Social Security) 42 U.S.C., § 407
- SSI (Supplemental Security Income) M.G.L. c. 235, § 34
- Public Assistance (Any government benefit to the poor) M.G.L.c. 235, § 34
- Welfare Benefits (Any benefit given by the Mass Dept. of Transitional Assistance) M.G.L. c. 118, § 10

* This income is subject in certain circumstances to claims for reimbursement by Veterans Administration and Department of Transitional Assistance.

If you want to keep the above income protected, you must keep it in a separate bank account from all other sources of income. It helps to have the checks direct deposited into an account so that you have proof that the account holds only protected income.

In addition, the law exempts from collection small amounts of income to cover basic expenses. For example, you may have wages or interest income. The law allows you to keep \$75 per month for heat, hot water and lights and \$200 per month for rent, (M.G.L. c. 235, § 34). In addition, you can keep at least \$125 in wages weekly. If your income is \$26,500 or more after federal and state taxes are withheld, you may keep 75% of the after tax income, (M.G.L. c. 224, § 16; U.S.C., §§ 1671-7).

What About My Belongings?

Although some of your property can be taken to pay your debtors, some is protected. For example, tools of a trade and certain necessary personal items are exempt. These include clothes, bedding, furniture, some books, and food. A car is also exempt if it is worth no more than \$700, and if you need it to go to work or to look for work. As a practical matter, creditors are not usually interested in your personal belongings unless they are particularly valuable. You can file a Homestead Form with the Registry of Deeds in your county to protect your home from debts incurred *after* you file the form. If you live in a mobile home you can file the Homestead Form at your town hall.

What Should I Do If My Income Or Property Is Protected?

If your income or property falls into the above exempt categories, you should write to the creditor and explain your situation. Be sure to describe the source of your income clearly. Include the citations to the specific law which protects you. These citations are listed above. You can use these citations to look up the law in your local public library. (M.G.L. stands for Massachusetts General Laws; U.S.C. stands for United States Code). Also include in your letter any information which makes your case more sympathetic, such as disability, advanced age, dependent children, or extreme poverty. This letter should make it clear to a creditor that you have no money he or she can reach. Often creditors will not bother trying to collect from judgment proof debtors. Even though your income and property cannot be reached, creditors may sue you for the money anyway. If so, the creditor will have a court document stating that you owe the money but will not be able to get at your protected income.

What Happens If A Creditor Sues Me?

The following explains rather briefly how the process works. It is a complicated matter. If you do not reply to the creditor's complaint, you will lose your right to dispute the amount of the debt, although later you can act to explain to the court and the creditor that your income is protected by the law. The laws were written to protect people like you, but you must go to court to be sure that the law is applied in your case. Don't be afraid to ask the court clerks office for help.

Ordinarily, if you owe money and do not pay it, the creditor can go to court to begin a lawsuit to force you to pay. She can start the lawsuit in either District or Superior Court. If the debt is for less than \$25,000, the case will probably be heard in District Court. If the debt is less than \$1,500, the creditor can go to Small Claims Court, which is discussed later on. A creditor begins her action by filing a

complaint which is a statement of the facts which she claims show that you owe her money. You should be sent or “served” with a copy. Look over the complaint to see if all the facts are correct, especially the amount owed.

If you wish to correct any errors or take the position that you owe nothing, you will have to file an answer, a document which sets out your version of the facts. It does not have to be typewritten or elaborate. Check with the clerk’s office to find out if the format of your answer is acceptable. The clerk can tell you how to file the answer with the court, and how to send a copy to the creditor. The clerk’s office can explain the procedures to you, although they can’t give you other legal advice. You have to file an answer within twenty days after you have been served with the creditor’s complaint or the court may automatically decide the entire case in the creditors favor. If that happens, you will not have a trial and you will not be able to explain to the judge your side of the case.

The court will notify you of a trial date when you and the creditor can present your cases. On the trial date, the issue will be whether you owe any money and if so, how much. If you are involved in such a lawsuit, you should go to court on the day of trial. Bring all the papers you have about the case with you. It is important to make sure that the judge determines that the debt is for the correct amount. When and if the court decides that you really do owe the creditor money, it will enter a judgment. A judgment is a final decision about the law and the facts of your case. Although a time is allowed for you to file an appeal, we do not advise you to do so unless a genuine mistake has been made.

After the time to file an appeal has passed, the court will issue an execution. An execution is a piece of paper authorizing a sheriff to take action on the judgment. The sheriff will then levy on the execution, which usually means the sale of the debtor’s property. (See above for what property and income the creditor can’t touch.) More often the creditor will use a separate court procedure, called supplementary process. This is another court hearing where the creditor asks the judge to order you to make payments from your income. Again, you will receive notice of a hearing. Be sure to attend. The judge should ask if you can afford to make payments. You should tell him or her how much of your income is exempt. Be prepared to show how much your monthly expenses are and how little income you have after paying these expenses. If a payment order is issued wrongly – for example if you are not allowed to keep enough to pay minimum expenses – do not simply ignore it. You should ask the court to vacate it or set it aside by filing a motion and requesting another hearing.

A judgment is good for 20 years. Interest is charged on the judgment, so the amount you owe will grow over time unless you start paying it off. If your income increases, your creditor may try again to get your money through another supplementary process hearing. On the other hand, if your income goes down or stops altogether, you should request a hearing to ask the court to reduce or eliminate any installment payments previously ordered.

Small Claims Court is more informal. If you wish to file an answer, it may be written simply as a letter to the judge, although you should send your creditor a copy. Even if you file no answer, you will have a trial. The trial itself is usually quick, the two sides each telling their stories as in People’s Court. If you lose, the judge can issue a payment order immediately. Again, you should be ready to show the judge how much of your income is protected and how you cannot afford to pay the debt.

Although the court process can be scary, you should make an effort to have your side of the story heard. Most judges have a little extra patience for the person who represents herself or himself. Before your court date, you may wish to go to the courthouse and watch other cases like yours. This will give you an

idea about what you should do and say when your turn comes. Before your case is heard, the attorney for the creditor will probably try to convince you to come to an agreement. Do not be intimidated and do not agree to a payment plan you cannot afford. Be sure that you explain to the creditor or her lawyer that your income cannot be taken. If you and the creditor cannot agree, you should feel free to explain the situation to the judge.

WILL BANKRUPTCY HELP ME?

Before filing bankruptcy or asking an attorney to file bankruptcy for you, ask an attorney *if* filing bankruptcy will accomplish your goals (e.g., saving your home). If none of your income or property can be taken by a court order, then bankruptcy will not give you any more protection than you already have. But remember a judgment is good for 20 years. If you go back to work, you may be required to pay or you may seek to file bankruptcy at that time.

Bankruptcy may help you, if you are not completely judgment proof, but not always. Some people hope that bankruptcy will help them avoid foreclosure of their homes. Unfortunately, bankruptcy probably won't save your home for long unless you can afford to make the current payments and a little more towards the payments you already missed. We recommend that you discuss your problems with your bank long before a foreclosure is started to see if you can find a solution.

IMPORTANT RECENT CHANGES IN CREDIT CARD LAWS

Recent changes have been made to credit card laws to ensure greater consumer protection. Under the new laws, your credit card company must give you 45 days notice before increasing your rate or other fees, and must tell you how long it will take for you to pay off your balance. Your credit card company also cannot increase your interest rate for the first year, and any increased rates may apply only to new charges. The new laws require that you opt-in to allowing your credit card company to authorize over-the-limit transactions. If you do not opt-in, and your credit card company authorizes an over-the-limit transaction, it may not charge you an over-the-limit fee. The laws also cap the application or annual fees at 25% of the initial credit limit. Consumers under the age of 21 now need to prove they are capable of making the payments or must have a cosigner before being approved for a credit card. Lastly, the new laws specify that your credit card company abide by standard payment dates and times, provide you with your bill at least 21 days before it is due, prohibits double-cycle billing, and specifies that your credit card company must apply any payment in excess of the minimum to the balance with the highest interest rate.

Starting August 22, 2010, more new laws will take effect. These laws will provide additional consumer protections. Under these new rules, your credit card company cannot charge you more than \$25 for a late payment fee unless one of your last six payments was late, or the company can show that the cost it incurs as a result of your late payment justifies a higher fee. The new laws prohibit credit card companies from charging you inactivity fees, and from charging you more than one fee for a single transaction or event. Your credit card company will also be required to explain why it is raising your card's Annual Percentage Rate (APR) if it chooses to do so, and it also must re-evaluate that rate increase every six months. It must also reduce your rate within 45 days of completing an evaluation if appropriate.

STUDENT LOANS

If you are unable to make payments on your student loans, it is important to contact your loan servicer and discuss your options. One option is to change your repayment plan. There are several repayment plans available, including an Income Based Repayment Plan that is geared towards low-income borrowers. Another option is to request a deferment, which would temporarily suspend your loan payments. Deferments are only granted for specific reasons, including economic hardship, and last for a specific period of time. Economic hardship deferments last a maximum of 3 years for Direct, FFEL, or Federal Perkins Loans. During a deferment, interest does not accrue on your loan. If you do not qualify for deferment, then you may be able to get forbearance. Like the deferment, forbearance temporarily suspends your payments, and is specifically available for those having financial difficulty. However, unlike deferment, interest will still accrue during the suspended period, and you will be responsible for paying that once the forbearance is over.

Student loans may be discharged if you have become totally and permanently disabled. Totally and permanently disabled means that you are unable to engage in substantial gainful activity (which means unable to work and earn money) by reason of physical or mental impairment that can be expected to result in death, or has lasted for a continuous period for at least 60 months, or can be expected to last for at least 60 months. Proof of the disability must be documented by a doctor. If you feel that you meet these criteria, then you must submit an application for discharge. If you have a Federal Perkins Loan, then you must submit your application to your school, or to the loan servicer your school has designated. If you have a Direct, FFEL, or PLUS Loan, you must contact your loan servicer. The application can be found at: <http://ifap.ed.gov/dpccletters/attachments/GEN1015Attach.pdf>.

If you are found to be totally and permanently disabled, then your loan will be placed in a conditional discharge period for three years from the date your disability began. During the conditional discharge period you do not have to make payments, and at the end of that three year period if you are found to still be totally and permanently disabled, then your loan will be cancelled.

YOUR CREDIT REPORT

Your credit report is a summary of your history of borrowing and repaying. Some of the things that affect your credit rating are whether you have paid bills on time or at all, how much debt you have, and whether or not you are employed. Landlords, employers, insurance agencies, and future lenders may use the report to obtain information about you. The law gives you certain protections against the reporting of incorrect information.

It is important to note that while your credit report is very important with respect to borrowing money and in certain other limited situations, *it is not so important to a person who does not anticipate borrowing money, does not expect to be employed, and is living in public housing, their own home, or is in stable rental housing.*

How To Get a Copy of Your Credit Report:

If you were denied credit, you should obtain a copy of your report to verify that the information is correct. You have the right to know which credit reporting agency prepared the report that was used to deny you credit. Under state law, you have the right to a free copy of your credit report within sixty

days of being denied credit, (M.G.L. c. 93, § 59). You are also entitled to one free copy of your credit report per calendar year, even if you were not denied credit. Consider getting a copy every year to ensure your report is correct.

Correcting Your Credit Report:

If there is incorrect information in your credit report, you may ask the credit reporting agency to investigate. The agency must investigate your claim within 30 business days by asking the creditor to review its records, unless the agency believes that the dispute is “frivolous or irrelevant.” The credit reporting agency must correct, complete, or delete any information that is erroneous, incomplete, or unverified, (M.G.L. c. 93, §58).

Additionally, negative information that is more than seven years old cannot be included in your credit report. There are several exceptions to this rule; the main one is bankruptcy, which may be reported for up to 14 years, (M.G.L. c. 93, §52).

If you disagree with the results of the credit bureau’s investigation, you have the right to prepare a brief statement that explains your version of the dispute. The credit reporting agency will then include this statement with your credit report each time it sends out the report, (M.G.L. c. 93, §58).

If You Have Credit Problems:

If there is legitimate negative information in your credit report, there is nothing you can do to change it. Negative information includes late payments, bankruptcy, liens, and accounts given to a collection agency. Negative information in your files does not necessarily mean that you will be denied additional credit. Different creditors review your credit history in different ways.

If you are unable to obtain credit on your own, you can try to obtain a credit card or consolidated loan with a low credit limit from a local bank. If you pay promptly and that creditor reports this to a credit reporting agency, this information could improve your credit record. Another option is to obtain a secured credit card. With this type of card, you place a certain amount of money in a bank to guarantee your credit, and the lender gives you a small credit line.

Credit repair clinics offer to “fix” your credit record for a certain fee. These clinics cannot remove or change correct information on your credit record. You can do at little or no cost anything that a credit repair clinic can do.

If you are having trouble paying your bills, you should first attempt to work out a budget that details your income and expenses. After you have identified where your money is going, identify your spending priorities. Your public library has information on how to draw up a sound budget. Many local community organizations sponsor counseling programs as well.

You should immediately contact creditors if you are having trouble making payments. Many creditors will try to work out a more suitable payment schedule if they believe you are acting in good faith. If you are unable to pay anything, have no or only protected assets and have judgment proof income, tell the creditor that. Don’t agree to pay anything you can’t afford to pay because you feel pressured to pay something.

If you are still having serious problems after attempting these steps, another option is to contact a credit counseling services to create a debt repayment plan. In these plans, you work out a payment agreement with a counselor, and the service distributes your payments to the creditors. Bankruptcy laws now require credit counseling by an approved agency prior to filing a “Chapter 7” bankruptcy.

Another method of dealing with financial problems is to consolidate debt through loans or file bankruptcy. These are steps with serious consequences, and should be taken only after consultation with an attorney. Usually, low-income people on disability benefits will not benefit from bankruptcy because their assets and income are judgment proof. Be careful of offers to consolidate debts through a loan (through credit card companies as well as banks and credits unions) that ultimately charges more interest than you’re currently paying.

GETTING OFF CREDIT CARD MAILING LISTS

Credit reporting agencies allow businesses to prescreen your credit report to determine whether they want to send you a credit card offer. For example, offers from credit card companies that say, “You’ve been pre-approved,” use a prescreening process. If you do not want to allow your credit report to be prescreened, you can now “opt out” of the process by calling 1-888-5-OPT-OUT. There is no way to stop all junk mail, but this step can eliminate offers from companies that use the credit reporting agencies.

SOURCES OF HELP

Complaints about businesses

Office of Consumer Affairs
10 Park Plaza, Suite 5170
Boston, MA 02116
617-973-8787
888-283-3757
www.ma.gov/consumer

Complaints about creditors:

Attorney General’s Consumer
Protection Division
1 Ashburton Place, 19th Fl.
Boston, MA 02108
(617) 727-8400
www.ma.gov/ag

Complaints about collection agencies:

Division of Banks
1 South Station, 3rd Floor
Boston, MA 02110
(617) 956-1500
www.ma.gov/dob

Foreclosure assistance:

Low-income Massachusetts residents who are facing foreclosure on their homes may call (800) 342-5297 or (617) 603-1700 and leave a message in the “foreclosure assistance” voice mail box. Each day, Legal Advocacy and Resource Center (LARC) will return the calls, determine how to best assist the caller and provide general advice. If the homeowner meets the eligibility criteria, LARC will refer the homeowner to Volunteer Lawyers Project (VLP), who will assign each case to a pro bono lawyer.

Credit Counseling:

Consumer Credit Counseling Service
8 Winter Street, 10th Floor
Boston, MA 02108
(617) 426-6644 or (800) 208-2227

To opt out of marketing lists: toll free (888) 567-8688

Credit Reports: You may order your credit report from any of the three agencies listed below.

Experian

P.O. Box 2104
Allen, TX 75013-2104
(888) 397-3742

To Report Fraud:
(888) 397-3742

Trans Union

P.O. Box 1000
Chester, PA 19022
(800) 888-4213

To Report Fraud:
(800) 680-7289

Equifax

P.O. Box 740241
Atlanta, GA 30374
(800) 685-1111

To Report Fraud:
(800) 525-6285