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## **State statutes of limitations for old debts**

By [Lucy Lazarony](#) • Bankrate.com

When dealing with an old debt, it's important to know your limits.

Once a debt passes beyond the statute of limitations in your state, a debt collector no longer has the right to sue you for payment. You may still have a moral obligation to pay back an old, forgotten debt, but you can't be sued over it.

Any debt collector who threatens to sue you over a debt that is beyond the statute of limitations in your state is in violation of the [Fair Debt Collection Practices Act](#).

The chart below offers a state-by-state roundup of statutes of limitations for delinquent debt. Keep in mind that some states consider credit card agreements written contracts and other states treat card agreements as oral contracts. Still other states have specific statutes of limitations for credit card accounts.

If you're being hassled about an old debt, the chart below is a great starting point.

For specific details on the statute of limitations on credit card accounts in your state, contact a consumer attorney or the consumer protection division in the office of your state's attorney general.

To find an attorney near you, visit the Web site of the National Association of Consumer Advocates and [search for an attorney with expertise in debt collection in your area](#). To find your state's attorney general, click [here](#).

Statutes of limitations for delinquent debt			
State	Written contracts	Oral contracts	Promissory notes
Alabama	6 years	6 years	6 years
Alaska	3 years	3 years	3 years
Arizona	6 years	3 years	6 years
Arkansas	5 years	3 years	5 years
California	4 years	2 years	4 years
Colorado	6 years	6 years	6 years
Connecticut	6 years	3 years	6 years
Delaware	3 years	3 years	6 years
D.C	3 years	3 years	3 years
Florida	5 years	4 years	5 years
Georgia	6 years	4 years	6 years
Hawaii	6 years	6 years	6 years
Idaho	5 years	4 years	5 years
Illinois	10 years	5 years	10 years
Indiana	10 years*	6 years	6 years
Iowa	10 years	5 years	10 years
Kansas	5 years	3 years	5 years
Kentucky	15 years	5 years	15 years**
Louisiana	10 years	10 years	5 years
Maine+	6 years	6 years	6 years
Maryland	3 years	3 years	3 years
Massachusetts+	6 years	6 years	6 years
Michigan	6 years	6 years	6 years
Minnesota	6 years	6 years	6 years
Mississippi	3 years	3 years	3 years
Missouri	10 years	5 years	10 years
Montana	8 years	5 years	8 years
Nebraska	5 years	4 years	5 years
Nevada	6 years	4 years	6 years

New Hampshire	3 years	3 years	3 years
New Jersey	6 years	6 years	6 years
New Mexico	6 years	4 years	6 years
New York	6 years	6 years	6 years
North Carolina	3 years	3 years	3 years
North Dakota	6 years	6 years	6 years
Ohio	15 years	6 years	15 years
Oklahoma	5 years	3 years	5 years
Oregon	6 years	6 years	6 years
Pennsylvania	4 years	4 years	4 years
Rhode Island	10 years	10 years	10 years
South Carolina	3 years	3 years	3 years
South Dakota	6 years	6 years	6 years
Tennessee	6 years	6 years	6 years
Texas	4 years	4 years	4 years
Utah	6 years	4 years	6 years
Vermont	6 years	6 years	6 years***
Virginia	5 years	3 years	6 years
Washington	6 years	3 years	6 years
West Virginia	10 years	5 years	10 years
Wisconsin	6 years	6 years	6 years
Wyoming	10 years	8 years	10 years

\*Six years if contract is for payment of money.

\*\* Five years if promissory note is added to a bill of sale.

+ The applicable statute of limitations in Maine and Massachusetts on a debt owed to a bank or on a promissory note signed before a witness is 20 years.

Me. Rev. Stat. Ann. tit.14, s 751; Mass. Gen. Laws ch. 260, s 1.

\*\*\*Vermont's statute of limitations on a promissory note signed before a witness is 14 years.

Source: *Money Troubles: Legal Strategies to Cope With Your Debts*, 9th edition (Nolo, 2003).

<http://www.nolo.com>. Used by permission.

The Fair Debt Collection Practices Act was passed in 1977 to protect consumers from abusive debt collectors. Here's a closer look at the rules a third-party debt collector must follow when collecting a debt.

**Contacting a debtor.** A collector may contact you in person, by mail, telephone, telegram or fax. However, a debt collector may not contact you at inconvenient times or places, such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector also may not contact you at work if the collector knows that your employer disapproves of such contacts.

**Contacting a third party about your debt.** If you have an attorney, the debt collector must contact the attorney, rather than you. If you do not have an attorney, a collector may contact other people but only to find out where you live, what your phone number is and where you work. Collectors usually are prohibited from contacting such third parties more than once. In most cases, the collector may not tell anyone other than you and your attorney that you owe money.

**Giving written notice.** Within five days after you are first contacted, the collector must send you a written notice telling you the amount of money you owe, the name of the creditor to whom you owe the money and what action to take if you believe you do not owe the money.

**When a consumer doesn't owe the money.** A collector may not contact you if within 30 days after you receive the written notice you send the collection agency a letter stating you do not owe money. However, a collector can renew collection activities if you are sent proof of the debt, such as a copy of a bill for the amount owed.

### **No harassment**

Debt collectors may not harass, oppress or abuse you or any third party they contact.

Debt collectors may not:

- Threaten violence or harm.
- Use obscene or profane language.
- Repeatedly use the telephone to annoy someone.

### **No lying**

Debt collectors may not use any false or misleading statements when collecting a debt.

Debt collectors may not:

- Falsely imply that they are attorneys or government representatives.
- Falsely imply that you have committed a crime.
- Falsely represent that they operate or work for a credit bureau.
- Misrepresent the amount of your debt.
- Give false credit information about you to anyone, including a credit bureau.
- Send you anything that looks like an official document from a court or government agency when it is not.
- Use a false name.

Debt collectors may not state that:

- You will be arrested if you do not pay your debt.
- They will seize, garnish, attach or sell your property or wages unless the collection agency or creditor intends to do so and it is legal to do so.
- Actions, such as a lawsuit, will be taken against you when such action legally may not be taken or when they do not intend to take such action.

### **No unfair practices**

A debt collector may not engage in unfair practices when they try to collect a debt from you.

Debt collectors may not:

- Collect any amount greater than your debt, unless your state law permits such a charge.
- Deposit a postdated check prematurely.
- Use deception to make you accept collect calls or pay for telegrams.
- Take or threaten to take your property unless this can be done legally.

*Source: Fair Debt Collection, a brochure for consumers from the Federal Trade Commission.*

## **Zombie debt collectors dig up your old mistakes**

There's a hot new growth industry: companies that buy bad debts for pennies and squeeze you to pay in flagrant violation of federal law. Here's how to get them off your back.

By [Liz Pulliam Weston](#)

Debbie made a mistake when she was in college.

As a student in Fort Worth, Texas, she maxed out a Citibank credit card with a \$300 limit and never paid the bill. Debbie said Citibank charged off the debt sometime between 1987 and 1989, and the liability has long since disappeared from her credit report.

Besides that, the statute of limitations -- the amount of time a creditor can sue over an old debt -- expired in the early 1990s. Both her old home state of Texas and her current state of California generally prohibit creditors from suing once a debt is more than four years old.

That's why she was stunned when a collection agency called her last summer, demanding she pay the 17-year-old bill. The calls have continued off and on since then, along with monthly bills listing varying amounts that the collection agency wants her to pay.

"The last time [they called], I told them the statute of limitations had run out on the debt and to stop harassing me," Debbie said. "They said it hadn't. I finally had to hang up on the man."

### **There's money in old debt**

A decade ago, most people who reneged on debts could rest easy after several years passed, since few creditors tried to collect on old bills, particularly for small amounts.

Today, however, collecting on old debts is a rapidly expanding industry. Aggressive companies can buy charged-off credit card accounts from the original lenders for pennies on the dollar. Then, they use credit scoring and other new technologies to identify which debtors are most likely to pay. The players in this "junk debt" market range from fly-by-night outfits to well-established companies funded by Wall Street investors.

It's a business that barely existed 10 years ago. In the last three years, it's been growing at a 30% annual rate, according to credit industry analyst Sean McVity of Keefe, Bruyette & Woods. Among the signs of the industry's maturity:

- Four debt-buying companies have gone public in recent years, including Asset Acceptance of Warren, Mich., which had its \$150 million IPO in February.
- Some buyers have attracted major funding from investment banks such as Bear Stearns and Goldman Sachs.
- Last year, more than \$75 billion in old debts were sold.

The biggest debt buyers			
Debt buyer	Headquarters	2002 revenue	Debt purchased*
Sherman Financial Group	New York	\$325 million	\$7 billion
Risk Management Alternatives	Duluth, Ga.	\$295 million	Not available
Arrow Financial Services	Niles, Ill.	\$156 million	\$2.9 billion
Asset Acceptance	Warren, Mich.	\$101 million	\$5.2 billion
OSI Portfolio Services	Duluth, Ga.	\$100 million	\$3 billion

Figures are self-reported for 2002.

\*"Debt purchased" is the face value of the accounts bought in 2002. Source: Credit & Collections World.

The amount that companies pay for bad debt depends on the type of account and its age. In general, McVity said:

- Debts that have recently been charged off: 6 to 7 cents on the dollar.
- Accounts that are slightly older and on which a collection agency or two has already taken a whack: 1.5 cents to 2 cents on the dollar.
- Years-old, out-of-statute debts: A penny or less.

A growing number of companies are discovering that these very old accounts, once thought to be uncollectible, are just the opposite. Squeezing even a small payment from these debtors can make collection activities worthwhile.

"The economics are pretty simple. For \$100 of (old debt), you pay 25 basis points -- a shiny quarter," said McVity, whose investment banking firm tracks debt-buying trends. "If you get (the debtor) to pay you \$1,

you got your money and covered your costs.”

### **Opportunity frequently turns into abuse**

Where some are finding profits, though, others are spotting abuses. Consumer attorneys say the explosive growth of this industry has led to widespread violations of the federal Fair Credit Reporting Act and the Fair Debt Collection Practices Act.

“I don’t advocate people not paying their bills,” said Shreveport, La., lawyer David Szwak, who specializes in consumer law. “But there’s an element of the debt collections field that is rabid.” Some collectors, he said, “will go to any lengths to harass people and defraud them.”

Among the worst practices attorneys have seen:

- Suing or threatening to sue over debts even though the statute of limitations has long expired.
- Illegally “re-aging” debts on credit reports. The collectors tell credit bureaus that an old debt is, in fact, a new one. The goal: To extend the seven-year limit on reporting negative items and put more pressure on the consumer.
- Promising to delete a negative mark from the consumer’s credit report in exchange for a token payment. Not only does the collector fail to follow through, but the payment can revive the statute of limitations and lead to a lawsuit. Even if the collector does back off, the unpaid debt could be sold to another company that might renew collection activity.
- Bait-and-switch credit cards. Some credit card companies have offered borrowers low-rate credit cards and then tacked old, charged-off debts -- often purchased from other lenders -- onto the balance. The card issuers typically insist they disclosed that the old debts would come with the cards, Szwak said, but the borrowers say no such disclosure was made.
- Verbally abusing and harassing consumers. My readers have reported being cursed, berated and called repeatedly despite requests to stop -- all violations of federal laws.

Mickey, a Virginia resident, said he was the target of “colorful words” when he told a collection agency to cease bothering him about an old debt. Mickey stopped paying on his \$4,000 Discover card balance in 1994; the account no longer appears on his credit report and the statute of limitations ended years ago.

"They would usually start out with a normal tone. . . . It went downhill fast," Mickey said. "They were calling a couple of times a day for awhile."

### **Sometimes, it's smarter just to hang up**

Consumer advocates say this is exactly the kind of behavior Congress and state lawmakers were trying to prevent when they put curbs on collection behaviors such as statutes of limitations, the seven-year credit reporting limit and prohibitions against abusive collection practices.

"We don't have debtors' prisons," Szwak said. "We have laws to protect people from being harassed by debt collectors for the rest of their lives."

In fact, paying these old debts -- or even talking to the collection agency about them -- can make a bad situation worse.

As mentioned above, the smallest payment can revive the statute of limitations in some states, leading to more aggressive collections and lawsuits. Even acknowledging that the debt is yours can restart the clock in some jurisdictions.

That's why Robin Leonard, author of the "[Money Troubles: Legal Strategies to Cope with Your Debts](#)," advises consumers simply to put the phone down and walk away if collectors call about an out-of-statute debt. (This [chart at Bankrate.com](#) summarizes state statutes of limitations, but details can vary by state.)

### **Paying off can hurt your credit score**

What's more, paying an old debt potentially can wreak havoc on a consumer's credit score. Such a payment can update a delinquency so that it looks more recent and takes a heavier toll on a credit score.

Paying the debt is also no guarantee that the nightmare will stop. The collector may decide that if you're willing to pay at all, you could be made to pay more. Settling a debt for a smaller amount than the collectors says you owe could result in another agency trying to collect the unpaid portion. Or the collector might inform the Internal Revenue Service (IRS) that you've received "income" in the form of forgiven debt. (Yes, there are tax consequences to forgiven debt. See my colleague Jeff Schnepfer's article "[5 truly nasty tax surprises](#).")

Even if you manage to wrangle written promises from the collector that none of the above will happen, you would have to be willing to go to court if the agency reneged -- and possibly face an unsympathetic judge or one who doesn't know much about collections law.

If you're being contacted about an old debt, here's what consumer attorneys advise:

**Know the statute of limitations.** If you racked up a debt in another state, you might want to check the statute of limitations there as well. But generally, it's the statute of your current state that applies. If the statute has expired, the collection agencies' legal remedies are limited.

**Know your rights.** Credit and debt collections can be an extremely complicated area of the law. Consider arming yourself with a book such as Leonard's "Money Troubles" and -- if the amounts at stake are considerable or the level of harassment unbearable -- consider contacting an attorney. The [National Association of Consumer Advocates](#) can provide referrals.

**Consider ignoring the call.** If the statute of limitations has expired, Szwak said, put the phone down and walk away. There's little to gain and a lot to lose if you keep talking. You could inadvertently extend the statute of limitations or find yourself roped into a repayment agreement that might not be in your best interest. "The debt collector is a lot smarter than (consumers) are, a lot more savvy," he said. "They don't have any obligation to tell you your rights."

**Write them.** If ignoring them isn't working, consider writing a letter demanding the agency stop contacting you. Send it certified mail, return receipt requested. Federal law requires them to comply with your request. Make sure in the letter you specifically say that you aren't acknowledging you owe the debt.

**Negotiate carefully.** If the statute of limitations hasn't expired, you may want to negotiate a settlement rather than risk a lawsuit. (Again, a lawyer's advice could come in handy here.) Read "[12 tips for negotiating with debt collectors.](#)"

**Keep an eye on your credit report.** If a collection agency tries to repost an old debt or lie about the date it went delinquent, you'll need to fight back vigorously. Dispute the entry with the credit bureaus and with the collection agency.

If the collector persists in its deception, you can demand that the collector produce a copy of the documentation that created the debt, such as the credit card agreement you originally signed, along with an account history, said consumer attorney Daniel Edelman of Chicago. Chances are the collector won't have this documentation, and continuing to report the account without providing proof that you owe the money is a violation of the [Fair Debt Collection Practices Act](#), Edelman said.

Again, an attorney experienced in debt collection law might prove helpful in particularly difficult cases.

*Liz Pulliam Weston's column appears every Monday and Thursday, exclusively on MSN Money. She also answers reader questions in the [Your Money message board](#).*



## THE FAIR DEBT COLLECTION PRACTICES ACT

*As amended by Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996)*

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To amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new title:*

### TITLE VIII - DEBT COLLECTION PRACTICES [Fair Debt Collection Practices Act]

Sec.

- [801.](#) Short Title
- [802.](#) Congressional findings and declaration of purpose
- [803.](#) Definitions
- [804.](#) Acquisition of location information
- [805.](#) Communication in connection with debt collection
- [806.](#) Harassment or abuse
- [807.](#) False or misleading representations
- [808.](#) Unfair practice
- [809.](#) Validation of debts
- [810.](#) Multiple debts
- [811.](#) Legal actions by debt collectors
- [812.](#) Furnishing certain deceptive forms
- [813.](#) Civil liability
- [814.](#) Administrative enforcement
- [815.](#) Reports to Congress by the Commission
- [816.](#) Relation to State laws
- [817.](#) Exemption for State regulation
- [818.](#) Effective date

#### **§ 801. Short Title [15 USC 1601 note]**

This title may be cited as the "Fair Debt Collection Practices Act."

#### **§ 802. Congressional findings and declarations of purpose [15 USC 1692]**

- (a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.
- (b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
- (c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.
- (d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are

purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

### **§ 803. Definitions [15 USC 1692a]**

As used in this title --

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include --

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

#### **§ 804. Acquisition of location information [15 USC 1692b]**

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

#### **§ 805. Communication in connection with debt collection [15 USC 1692c]**

(a) COMMUNICATION WITH THE CONSUMER GENERALLY. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

(1) at any unusual time or place or a time or place known or which should be known to be

inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) **COMMUNICATION WITH THIRD PARTIES.** Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) **CEASING COMMUNICATION.** If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except --

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

#### **§ 806. Harassment or abuse [15 USC 1692d]**

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3)<sup>1</sup> of this Act.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

**§ 807. False or misleading representations [15 USC 1692e]**

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of --

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to --

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this title.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.

#### **§ 808. Unfair practices [15 USC 1692f]**

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true propose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if --

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

#### **§ 809. Validation of debts [15 USC 1692g]**

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

#### **§ 810. Multiple debts [15 USC 1692h]**

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

#### **§ 811. Legal actions by debt collectors [15 USC 1692i]**

(a) Any debt collector who brings any legal action on a debt against any consumer shall --

(1) in the case of an action to enforce an interest in real property securing the consumer's

obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity --

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

### **§ 812. Furnishing certain deceptive forms [15 USC 1692j]**

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.

### **§ 813. Civil liability [15 USC 1692k]**

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of --

(1) any actual damage sustained by such person as a result of such failure;

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors --

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt

collector's noncompliance was intentional.

(c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

#### **§ 814. Administrative enforcement [15 USC 1692f]**

(a) Compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Compliance with any requirements imposed under this title shall be enforced under --

(1) section 8 of the Federal Deposit Insurance Act, in the case of --

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) subtitle IV of Title 49, by the Interstate Commerce Commission with respect to any common carrier subject to such subtitle;

(5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by

the Secretary of Agriculture with respect to any activities subject to that Act.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).

(d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this title.

#### **§ 815. Reports to Congress by the Commission [15 USC 1692m]**

(a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the enforcement actions taken by the Commission under section 814 of this title.

(b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

#### **§ 816. Relation to State laws [15 USC 1692n]**

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

#### **§ 817. Exemption for State regulation [15 USC 1692o]**

The Commission shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

#### **§ 818. Effective date [15 USC 1692 note]**

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

Approved September 20, 1977

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## **ENDNOTES**

1. So in original; however, should read "604(a)(3)."

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## **LEGISLATIVE HISTORY:**

Public Law 95-109 [H.R. 5294]

HOUSE REPORT No. 95-131 (Comm. on Banking, Finance, and Urban Affairs).

SENATE REPORT No. 95-382 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 123 (1977):

Apr. 4, considered and passed House.

Aug. 5, considered and passed Senate, amended.

Sept. 8, House agreed to Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 39:

Sept. 20, Presidential statement.

## **AMENDMENTS:**

SECTION 621, SUBSECTIONS (b)(3), (b)(4) and (b)(5) were amended to transfer certain administrative enforcement responsibilities, pursuant to Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 166; Pub. L. 95-630, Title V, § 501, November 10, 1978, 92 Stat. 3680; Pub. L. 98-443, § 9(h), Oct. 4, 1984, 98 Stat. 708.

SECTION 803, SUBSECTION (6), defining "debt collector," was amended to repeal the attorney at law exemption at former Section (6)(F) and to redesignate Section 803(6)(G) pursuant to Pub. L. 99-361, July 9, 1986, 100 Stat. 768. For legislative history, see H.R. 237, HOUSE REPORT No. 99-405 (Comm. on Banking, Finance and Urban Affairs). CONGRESSIONAL RECORD: Vol. 131 (1985): Dec. 2, considered and passed House. Vol. 132 (1986): June 26, considered and passed Senate.

SECTION 807, SUBSECTION (11), was amended to affect when debt collectors must state (a) that they are attempting to collect a debt and (b) that information obtained will be used for that purpose, pursuant to Pub. L. 104-208 § 2305, 110 Stat. 3009 (Sept. 30, 1996).

## 12 tips for negotiating with debt collectors

It pays to know your rights and keep a record of all your communications when you butt heads with debt collectors. Here are some ways to hold your own.

By [Bankrate.com](http://Bankrate.com)

When you bargain with a debt collector, you're going head-to-head with a tough, professional negotiator. Following these tips can help you come out ahead.

### **Learn your rights.**

When collecting a debt from you, a debt collector must play fair. For details, check out [this consumer brochure](#) on fair debt collection from the Federal Trade Commission.

A free consumer brochure on debt collection also is available from the National Consumer Law Center. Call NCLC's publications department at (617) 542-9595 and ask for a copy of "What You Should Know About Debt Collection."

Many states have their own debt collection laws. For more information, contact the attorney general's office in your state.

"When you know your rights, debt collectors know they can't get away with certain things," says Gerri Detweiler, author of "The Ultimate Credit Handbook." "They're less likely to try aggressive tactics."

### **First things first**

#### **Prioritize your bills.**

No matter what a debt collector says, an unpaid credit card bill is not the most important bill you have to pay this month. Providing necessities for your family comes first.

"It does not make sense to put yourself in a position that you can't pay necessary bills," Detweiler says.

#### **Estimate how much you can pay and offer less.**

"Don't do anything you can't afford to do," says John Ventura, consumer attorney in Brownsville, Texas and author of the e-book "[Stop Debt Collectors Cold](#)." "And don't do anything dangerous."

Avoid sending postdated checks to a debt collector or agreeing to automatic electronic payments from your checking account.

"Presuming goodwill on the other side gets people in trouble," Ventura says.

#### **Don't tell them your life story.**

"Don't go into a lengthy explanation of why you can't pay," Detweiler says. "They don't have a lot of sympathy. This is what they do for their job. They hear down-on-your-luck stories day in and day out."

## **Control the information flow**

### **Keep private information private.**

Don't give a debt collector personal information such as where you work, where you bank or your checking account number.

"Say as little as possible and stick to the facts," Detweiler says.

### **Stay calm and focused.**

No matter what a debt collector says, keep your cool and stay focused on the negotiation.

"The more in control you sound and the less you fall apart, the more likely you are to get what you want out of the negotiation," Detweiler says.

### **Tape the call if you can.**

Flicking on a tape recorder is a great way to keep a debt collector in line. Plus, you get a record of the call.

Thirty-five states and the District of Columbia allow you to secretly tape your phone conversations. In the other 15 states, you can tape with the other party's permission. And if you tell the debt collector you are going to tape and he or she keeps talking, that's considered giving permission.

"Taping the conversation may keep them on their best behavior," Detweiler says.

### **Take notes.**

File all collection letters and keep detailed notes of collection calls. Note the day and time of each call, the name of the collection agency, the first and last name of the caller and what was said.

"Make sure there's a record," Ventura says. "If you've made a deal with them, get proof."

### **Get proof of payment agreement in writing.**

"Get it in writing," says Jerry Jarzombek, a consumer attorney in Fort Worth, Texas. "If they told you half of it satisfies the obligation and that's what you want to do, have it in writing."

Send a letter to the debt collector outlining the payment agreement. You'll want to send this letter via certified mail so you'll receive a receipt once the letter is delivered. Keep a copy for your records.

If you plan to pay by check, add the following disclaimer: "Cashing this check constitutes payment in full." Write this right on the check.

## **Timing it right**

### **Wipe your credit clean.**

Ask a debt collector to remove any negative information they've placed on your credit report. At the very least, insist that your account be listed as paid in full rather than paid in settlement. Once they agree, get it in writing.

### **Don't be rushed.**

A debt collector will push and push for you to send them money immediately. Don't do anything until you have confirmation of a payment agreement in writing.

"Because you need it in writing, you have to resist all those demands and quick offers to do it overnight," says Mary Fons, a consumer protection attorney in Stoughton, Wisc.

### **Negotiate at the end of the month.**

Because commissions for debt collectors are based on what they do each month, you may want to try negotiating near the end of the month. You could land a really good deal.



## Facts for Consumers

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### **Fair Debt Collection**

If you use credit cards, owe money on a personal loan, or are paying on a home mortgage, you are a "debtor." If you fall behind in repaying your creditors, or an error is made on your accounts, you may be contacted by a "debt collector."

You should know that in either situation, the Fair Debt Collection Practices Act requires that debt collectors treat you fairly and prohibits certain methods of debt collection. Of course, the law does not erase any legitimate debt you owe.

This brochure answers commonly asked questions about your rights under the Fair Debt Collection Practices Act.

#### **What debts are covered?**

Personal, family, and household debts are covered under the Act. This includes money owed for the purchase of an automobile, for medical care, or for charge accounts.

#### **Who is a debt collector?**

A debt collector is any person who regularly collects debts owed to others. This includes attorneys who collect debts on a regular basis.

#### **How may a debt collector contact you?**

A collector may contact you in person, by mail, telephone, telegram, or fax. However, a debt collector may not contact you at inconvenient times or places, such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector also may not contact you at work if the collector knows that your employer disapproves of such contacts.

#### **Can you stop a debt collector from contacting you?**

You can stop a debt collector from contacting you by writing a letter to the collector telling them to stop. Once the collector receives your letter, they may not contact you again except to say there will be no further contact or to notify you that the debt collector or the creditor intends to take some specific action. Please note, however, that sending such a letter to a collector does not make the debt go away if you actually owe it. You could still be sued by the debt collector or your original creditor.

#### **May a debt collector contact anyone else about your debt?**

If you have an attorney, the debt collector must contact the attorney, rather than you. If you do not have an attorney, a collector may contact other people, but only to find out where you live, what your phone number is, and where you work. Collectors usually are prohibited from contacting such third parties more than once. In most cases, the collector may not tell anyone other than you and your attorney that you owe money.

#### **What must the debt collector tell you about the debt?**

Within five days after you are first contacted, the collector must send you a written notice telling you the amount of money you owe; the name of the creditor to whom you owe the money; and what action to take if you believe you do not owe the money.

#### **May a debt collector continue to contact you if you believe you do not owe money?**

A collector may not contact you if, within 30 days after you receive the written notice, you send the collection agency a letter stating you do not owe money. However, a collector can renew collection activities if you are sent proof of the debt, such as a copy of a bill for the amount owed.

### **What types of debt collection practices are prohibited?**

**Harassment.** Debt collectors may not harass, oppress, or abuse you or any third parties they contact.

#### **For example, debt collectors may not:**

- use threats of violence or harm;
- publish a list of consumers who refuse to pay their debts (except to a credit bureau);
- use obscene or profane language; or repeatedly use the telephone to annoy someone.

**False statements.** Debt collectors may not use any false or misleading statements when collecting a debt. For example, debt collectors may not:

- falsely imply that they are attorneys or government representatives;
- falsely imply that you have committed a crime;
- falsely represent that they operate or work for a credit bureau;
- misrepresent the amount of your debt;
- indicate that papers being sent to you are legal forms when they are not; or
- indicate that papers being sent to you are not legal forms when they are.

#### **Debt collectors also may not state that:**

- you will be arrested if you do not pay your debt;
- they will seize, garnish, attach, or sell your property or wages, unless the collection agency or creditor intends to do so, and it is legal to do so; or
- actions, such as a lawsuit, will be taken against you, when such action legally may not be taken, or when they do not intend to take such action.

#### **Debt collectors may not:**

- give false credit information about you to anyone, including a credit bureau;
- send you anything that looks like an official document from a court or government agency when it is not; or
- use a false name.

**Unfair practices.** Debt collectors may not engage in unfair practices when they try to collect a debt. For example, collectors may not:

- collect any amount greater than your debt, unless your state law permits such a charge;
- deposit a post-dated check prematurely;
- use deception to make you accept collect calls or pay for telegrams;
- take or threaten to take your property unless this can be done legally; or
- contact you by postcard.

### **What control do you have over payment of debts?**

If you owe more than one debt, any payment you make must be applied to the debt you indicate. A debt collector may not apply a payment to any debt you believe you do not owe.

### **What can you do if you believe a debt collector violated the law?**

You have the right to sue a collector in a state or federal court within one year from the date the law was violated. If you win, you may recover money for the damages you suffered plus an additional amount up

to \$1,000. Court costs and attorney's fees also can be recovered. A group of people also may sue a debt collector and recover money for damages up to \$500,000, or one percent of the collector's net worth, whichever is less.

**Where can you report a debt collector for an alleged violation?**

Report any problems you have with a debt collector to your state Attorney General's office and the Federal Trade Commission. Many states have their own debt collection laws, and your Attorney General's office can help you determine your rights.

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a [complaint](#) or to get [free information on consumer issues](#), visit [www.ftc.gov](http://www.ftc.gov) or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into [Consumer Sentinel](#), a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

*March 1999*

## Safeguard your Social Security number

Protect yourself from identity theft by keeping a tight rein on your Social Security number. Only a few organizations have the right to demand it. Here's how to fend off the rest.

By [Bankrate.com](http://Bankrate.com)

"I think it's spooky. Everybody has that *one number*, and everything about you is tied to it," worries Jim Edwards, program director at WJNO in West Palm Beach, Fla.

"Put it in a computer and poof -- here's your bank account, your phone number, where you work."

The key to all that private information? Your Social Security number.

Edwards was way ahead of most people. Back in the early '80s, he refused to give his Social Security number when he enrolled at Miami Dade Community College. The school wanted to use it as a student identification number, but Edwards held his ground and the school gave him a different number -- all zeros, as he recalls.

Today, schools, phone companies, utilities, health clubs, insurance companies, video stores -- just about everybody wants your Social Security number. Some of the more prevalent uses are to get your credit rating and determine whether you pay your bills, and to keep track of you through name and address changes.

But companies also use your Social Security number to develop marketing lists, which they can sell to other companies. A list with the numbers is more valuable than one without.

Why should you care who sees your Social Security number? The more people who see it, the more susceptible you are to identity theft, where you are victimized by someone fraudulently using your name and credit report to steal money.

Identity theft costs American businesses billions each year, costs that are eventually passed on to all consumers. The toll on victims is heavy, too. The California Public Interest Research Group estimates that, on average, an identity theft victim will spend 175 hours and \$800 trying to clear their record of

fraudulent charges.

"I've seen accounts opened with wrong names and different addresses. As long as there's a SSN, that's all some of them care about," says Linda Foley of the Identity Theft Research Center in San Diego.

### **Who has the right to ask for your digits?**

While any business can ask for your Social Security number, there are very few entities that can actually demand it -- motor vehicle departments, tax departments and welfare departments, for example. Also, SSNs are required for transactions involving taxes, so that means banks, brokerages, employers, and the like also have a legitimate need for your SSN.

Most other businesses have no legal right to demand your number.

"There is no law prohibiting a business from asking for your Social Security number, but people don't know they can say no," says Carolyn Cheezum of the Social Security Administration.

"We recommend that you ask if they'll accept an alternative piece of identification. If they don't, flat-out refuse to do business with them. Bear in mind that there's a possibility they'll refuse to provide whatever product or service you're seeking."

Edwards, for example, won't give his Social Security number to his doctor's office.

"When you go to the doctor's office and fill out the medical information, they ask for the SSN. I leave it blank. Nothing happens. I'm not reporting income from them."

In fact, chances are good that many companies that routinely ask for Social Security numbers will do business with you even if they can't have your number.

"We ask for a Social Security number to open an account, but it's not required," says Michael Lowndes of the Long Island Power Authority.

"The Social Security number is just part of the customer's record. A common problem with utility accounts

is people open an account, default and reopen another account using the same Social. We can use that to discover the problem."

Kimberly Brown at Bell South headquarters in Atlanta says there's a procedure the company follows if someone doesn't want to give his number.

"We ask them to fill out a questionnaire to determine their payment history. We don't do a credit check; we depend on them being honest. The questionnaire determines the Bell South rating for them, and then that determines whether they'll have to pay a deposit to establish service."

### **Your cat is sick? Give us your Social Security number**

Linda Foley of the Identity Theft Research Center says she brought her critically ill cat to a vet's office and balked when she was asked for her SSN.

"I said why? Will it be my cat's ID number? They said no, but if you give us a check we want a driver's license and a SSN in case the check bounces. I said I'd pay by credit card. They said it's our policy to get the number.

"I said if I give you a credit card and refuse to give you my Social Security number, you'd let my cat die right now? They looked at me and the cat and said, 'Give us the card; we'll take care of it.' I was upset about the cat, but I was frustrated by the way I was being treated. It was unnecessary."

### **Social Security numbers and identity theft**

Social Security numbers exist for the purpose of tracking earnings and paying benefits, Cheezum says. Although President Franklin Roosevelt signed an order requiring federal agencies to use SSNs for record-keeping systems, they were never meant to be used by businesses as an identifier, but have taken on that role because everyone has one.

But the snowballing problem of identity theft is spurring some governments to limit the use of SSNs.

California is leading the way with its law barring businesses, health care providers and schools from:

- Publicly posting Social Security numbers or requiring them for access to products or services.

- Printing of Social Security numbers on cards required for accessing products or services.
- Requiring an individual to use his or her Social Security number to access a Web site unless a password is also required to access the site.
- Printing an individual's SSN on any materials that are mailed to the individual.

The state of New York limits the use of Social Security numbers in schools and colleges. New York public and private schools cannot publicly display Social Security numbers. Many are opting to assign students identification numbers. Arizona has passed similar legislation.

Foley says she hopes other states will follow suit and be even more restrictive so that SSNs will eventually be used only for a few selective purposes.

But, Foley says, until that happens, the first defense against the fraudulent use of Social Security numbers are the companies that issue credit.

"Are they verifying that the person applying for credit is the true consumer? Are they looking carefully for red flags that might alert them to possible fraudulent use? If a credit application has a last name spelled incorrectly or an address different from the credit record, that should provoke someone into calling the consumer."

Some privacy rights proponents say Social Security numbers shouldn't be used for obtaining credit. Does that mean a second number would have to be issued for people seeking credit? Would that be any better than the current system?

### **More protections in California**

Perhaps California's newly enacted privacy law offers a better option.

In addition to limiting the use of Social Security numbers, the law allows a consumer to place a "security freeze" on his credit report. The freeze prohibits consumer-credit-reporting agencies from releasing the consumer's credit report or any information from it without express authorization from the consumer.

Time will tell if that provision works better than the more common "alerts" that many people put on their credit reports. With an "alert" a consumer is supposed to be notified that someone is attempting to obtain credit in his or her name. But stories abound of breakdowns in the system.

If someone uses your Social Security number to obtain credit and doesn't pay the bills, you'll discover the fraud as soon as the bill collectors come calling. But sometimes an identity thief actually pays the bills and, in those instances, it could be a long time before you discover the fraud.

The best way to find out if someone is fraudulently using your Social Security number is to request copies of your credit reports at least once a year. There are three main credit-reporting agencies. It's a good idea to get a copy of your report from each agency so you can check for discrepancies. You can order your credit report from: [TransUnion](#), [Equifax](#) and [Experian](#).

## Bounce back fast after bankruptcy

Carefully rebuild your credit and you could qualify for almost-normal rates, even a mortgage, in a year or two. Here's what you need to do.

By [Liz Pulliam Weston](#)

Anita Burleson has had trouble getting credit since her bankruptcy two years ago, but she knows that's not true for every filer. The fact that there are repeat bankrupts tells her that.

"When I was in bankruptcy court, there was a couple that had filed for bankruptcy twice prior to this one," said Burleson, who lives in Emerson, Ark. "How could they get enough credit to get them into this much debt (three times)?"

Actually, almost anyone can get credit soon after a bankruptcy. It's just a matter of knowing how.

It's true that bankruptcy deals a devastating blow to your credit and your credit score, the three-digit number lenders use to gauge your credit-worthiness. But the effects don't have to be lasting. Long before the bankruptcy drops off your credit report, you could be qualifying for loans with good rates and terms.

### Nothing is forever

Ken from Chicago filed Chapter 7 liquidation four years ago after unemployment and overspending caused him to rack up more than \$20,000 in credit card and other unsecured debt. Today his credit scores range from 655 to 719, decent numbers that are just below the cutoff to get most lenders' very best rates.

"I recently applied for a secured credit card (usually reserved for people with troubled credit) and was informed that I qualified for an unsecured card -- a possibility I hadn't even considered," Ken said. "While I am going to be very careful with my new credit (card), I am heartened that creditors consider me an acceptable risk."

If you're a recent bankrupt, here are two things you need to keep in mind:

- **Nothing in credit is "forever."** A bankruptcy legally can remain on your credit report for up to 10 years, but its effect on your credit score can start to diminish the day your case is closed -- if you

adopt responsible credit habits such as paying your bills on time, using only a small portion of your available credit and not applying for too much credit at once.

- **You have to get and use credit to build your credit score.** Living on a cash-only basis may be a smart choice for those who really can't handle credit. But if you want to rebuild your credit score, you can't sit on the sidelines.

## Learn from your mistakes

Although repeat bankrupts show that getting credit after a Chapter 7 or 13 filing is possible, you shouldn't want to emulate those who file more than once.

At first glance, people who file more than one bankruptcy seem to be beating the system: They run up big bills and then walk away.

Think about it a little more, though, and you'll see these multiple bankrupts are really defeating themselves. Their debts and credit history often mean they're paying out big bucks in high interest payments during the time when they're prohibited from filing another bankruptcy (The 2005 bankruptcy law provides that, under Chapter 7, eight years must elapse before you can re-file. If you go for Chapter 13 after a Chapter 7, you must wait four years. Going from one Chapter 13 to another, two years must elapse.)

And most people can't file for Chapter 7 liquidation if they have significant assets to protect, such as home equity or savings. So these folks who are repeatedly going broke often have little to show for all the money that's leaving their pockets. Instead of building wealth over time, they're losing ground.

Instead, use your bankruptcy as a wake-up call to figure out what's wrong with your finances and fix it.

- If your problem was overspending, you'll find plenty of information on this site about creating and sticking to a budget. (See our Decision Center: [Learn to budget](#)).
- If you didn't have enough savings to survive a job loss or other setback, get serious about establishing an emergency fund.

- If you were sunk by medical bills, seek a job with insurance coverage or check to see if your state offers coverage.

### **Clean up your credit report**

One of Burleson's biggest problems is that her credit reports still show several accounts as open and overdue -- when in fact they were closed and the obligations wiped out as part of her bankruptcy.

In order for her credit to recover, she needs to contact the credit bureaus and insist that those accounts be properly reported as "included in bankruptcy."

If you have other serious mistakes on your credit report, those need to be corrected as well. Your credit score is based on information in your credit report, so errors on your report can seriously dampen your score.

### **Get a secured credit card**

You need two types of credit to quickly rebuild your credit score:

- Installment: Auto loans, student loans or mortgages
- Revolving: Credit cards or home equity lines of credit

Most recent bankrupts have trouble qualifying for a regular, unsecured credit card. So the best solution usually is a secured card, which generally gives you a credit limit that's equal to an amount you deposit at the issuing bank.

Typically, that's \$200 to \$500, which may seem like a pittance compared to the credit limits you enjoyed before your bankruptcy. But don't make the mistake of using your available credit. *Maxing out your credit cards hurts your credit score.*

You don't want to charge more than 30% or so of your credit limit, and you want to pay the balance off in full each month. *Light, regular use of a credit card* is what helps build your credit.

And contrary to what you might have heard, you typically don't need to carry a balance or pay credit-card interest to build your score, since the leading credit scoring formula doesn't distinguish between balances

that are paid off and balances that are carried month to month. Get in the habit now of not charging more than you can pay off every month; your credit score and your finances will be the better for it.

You also shouldn't just grab any secured card. Look for the following:

- **No application fee and reasonable annual fee.** Some secured cards tack huge upfront and annual charges onto their accounts; you don't need to pay these to build your credit.
- **Reports to the major credit bureaus.** You're not doing your credit score any good unless your payment history is being reported to the three major bureaus: Equifax, Experian and TransUnion. Call and ask if the card issuer regularly reports to all three before you apply.
- **Converts to an unsecured card after 12-18 months of on-time payments.** Good behavior should get you upgraded to a regular credit card within a year or two.

### Get an installment loan

If you still have student loans (which typically aren't dischargeable in bankruptcy), you can use them to rebuild your score. Make your payments on time, all the time, and try to pay more than you owe whenever possible. Next to making on-time payments, paying down your existing debt is one of the best ways to improve your credit score.

Ken of Chicago took this to heart, making double or triple the minimum payments required to retire his \$23,500 student loan debt within three years of his bankruptcy filing.

"The fact that I had to repay my student loans (rather than having them discharged) might have helped me in the long run," he said.

Ken's credit has recovered enough that he's scheduled to close escrow on a condo purchase later this month. He qualified for a 6.4% interest rate on a 30-year fixed mortgage.

Another option: a mortgage. Interestingly, it can sometimes be easier to get a mortgage after a bankruptcy than to get other types of installment loans.

You may be able to qualify for a high-rate loan as little as six months after a bankruptcy, but you're probably better off waiting until you can qualify for an FHA loan. You can typically get one just two years after your bankruptcy case has closed, as long as you've maintained good credit habits since then. FHA loans have interest rates that are usually only half a percentage point higher than regular mortgage rates.

Just make sure you really can afford a home before you buy one. Many people wind up in bankruptcy court because they stretched too far to buy a house and can't keep up with all the attendant costs of homeownership, said bankruptcy expert Elizabeth Warren of Harvard University. (See "[Don't bite off too much house](#)" for more details.)

Auto loans can also help you rebuild your credit -- just be prepared to pay nose-bleeding rates at first.

"My first vehicle out of bankruptcy (had an interest rate of) 21%," said Chance Nelson of Indianapolis, who applied for the loan just a few months after his debts were discharged. "After paying this for about 2 years, I went and traded it in and purchased another (at) 13.99%."

Nelson refinanced this second loan a year later at 7.95%. Today, five years after his bankruptcy filing, Nelson is paying a reasonable 6% rate for his auto loan.

If you go this route, try to make a big down payment and choose a loan that doesn't have a prepayment penalty. That way, you can refinance the car to a lower interest rate as your credit improves.

Just don't forget: The key is to make sure all your payments are made on time, all the time.

*Liz Pulliam Weston's column appears every Monday and Thursday, exclusively on MSN Money. She also answers reader questions in the [Your Money message board](#).*

## **Beware cut-rate bankruptcy advice**

Bankruptcy has become little more than a few months in purgatory, rather than the seven-year ache -- and lifelong disgrace -- it once was.

By [Liz Pulliam Weston](#)

Deborah and Victor Valle fell behind on their mortgage payments last year after Victor, a 43-year-old union truck driver, was idled by the Southern California grocery workers strike.

When their lender started foreclosure proceedings, the Valles hired a lawyer, David Baran, to file a Chapter 13 bankruptcy so they could keep their home and have time to make up the late payments.

Baran filed the bankruptcy papers on Oct. 3, 2003. Within a few weeks, Victor was back at work and the couple had enough cash to bring their mortgage current.

But the attorney failed to file the necessary paperwork to stop the foreclosure and didn't show up for a key hearing -- all the while, the Valles said, assuring them that everything was fine.

On Dec. 5, 2003, the couple learned that their home had been sold.

### **2 types of bankruptcy mills**

"Somebody comes to your door and says you have four days to move out," said Deborah, 39, the mother of four. "That was a shock."

The Valles now live in a budget Orange County motel. The real estate company that bought their four-bedroom house in La Mirada, Calif., quickly sold it to another family. Deborah sadly watched the new owners move in recently as she was driving by her former home.

As bankruptcy filings have soared to new records, many consumers are turning to high-volume bankruptcy law practices and bankruptcy-petition preparers for help in reorganizing their finances, staving off foreclosure or wiping out debt. Dubbed "bankruptcy mills" by their critics, many advertise heavily on radio and television, while others deluge homeowners in foreclosure by direct mail -- which is how the Valles found their attorney.

Bankruptcy mills can come in two flavors:

- High-volume practices run by attorneys, who may or may not ever meet their clients before appearing in court.
- Storefront bankruptcy-petition preparers who advertise cut-rate services, usually without a lawyer's help.

Either way, critics say, the results can be disastrous. Some mills employ bait-and-switch tactics, advertising a low-cost bankruptcy and then jacking up the fees. Others insist they can help debtors *avoid* insolvency for a fat up-front charge, only to push clients into filing -- or filing the bankruptcy paperwork without the clients' knowledge.

### **Bad advice costs the consumer**

Critics say the mills often give poor advice, causing their clients' cases to be dismissed, leaving them saddled with debts that could have been erased or encouraging them to file when they shouldn't.

Dawn Carr of Phoenix used a paralegal to file Chapter 7 liquidation to wipe out her student loan debt. It wasn't until two years later, when a collection agency started calling, that she learned student loans only rarely can be erased in bankruptcy. Hers wasn't.

"So now I have a bankruptcy on my credit report that is essentially an empty one," Carr fumed. "What makes me more upset about the whole thing is that they should have known and didn't say a word, but they sure didn't have a problem taking my money for all the fees."

Debtors also can lose property that should have been protected. Miguel Vasquez of Lancaster, Calif., lost his home because of a bankruptcy preparer's incompetence, according to his attorney, Oscar Parra.

The preparer talked Vasquez into using his girlfriend's Los Angeles address as his own because the preparer didn't want to drive to Lancaster, more than an hour away, to attend the bankruptcy hearing, Parra said. Vasquez, who speaks little English, didn't understand the repercussions of the decision -- and apparently, neither did the preparer.

Because the Lancaster property wasn't listed as his primary residence, the bankruptcy trustee could -- and did -- seize the home to pay Vasquez' creditors. Had the preparer listed the property correctly, Vasquez' equity in the property would have been protected under state law, Parra said.

### **An increasing problem**

The U.S. Trustee Program, which supervises bankruptcy case administration, says bankruptcy mills are an increasing problem. The program filed 243 actions in fiscal year 2002 for attorney misconduct, up 62% from the year before. Actions against bankruptcy petition preparers rose 43%, to 1,150.

Among the cases:

- A bankruptcy-petition preparer in Woodland Hills, Calif., advertised \$99 bankruptcies, only to use high-pressure sales tactics on low-income elderly and disabled clients to boost the fee to \$650.
- A bankruptcy-petition preparer in Alexandria, Va., called himself a "foreclosure specialist" and charged up to \$3,500 for his services, which included trying to buy clients' homes at below-market prices and then renting the properties back to them.
- An Oklahoma City attorney repeatedly failed to show up for bankruptcy hearings, in one case forcing a disabled client to make a 280-mile journey to attend a rescheduled meeting.
- A Denver attorney in at least five cases redeemed his clients' property from foreclosure proceedings, reselling each time for profits of up to \$50,000.
- In Los Angeles, the U.S. Trustee last year forced attorney Claudia Phillips to sell her practice as part of a settlement agreement after she repeatedly failed to meet with clients or represent them adequately in court. Court papers said Phillips allowed others to forge her signature and those of her clients on documents, adding that Phillips' husband, Kenneth, who was not a lawyer, actually ran the practice and offered legal advice.

Another problem, bankruptcy attorneys say, is lawyers who push clients with few assets into Chapter 13 repayment plans rather than the Chapter 7 liquidation plans that make more sense. The reason? Chapter 13's increased complexity means higher fees -- and the repayment plan puts the attorney first among all the creditors who get repaid.

### **DIY bankruptcy on the rise**

The problem of bad or incompetent advisers has grown so acute in recent years that two years ago the then-U.S. Trustee for the Southern California bankruptcy court, one of the busiest in the nation, took the extraordinary step of warning consumers about the perils of discount advice.

The trustee, Maureen Tighe, now a bankruptcy court judge, said debtors were “routinely” losing property in bankruptcy that should have been protected or were winding up stuck with debts that should have been erased.

The report, co-authored with the Los Angeles County Bar, focused on the rise of bankruptcy-petition preparers in the area. Nearly one in three bankruptcy filings in Southern California is “pro se” (“for self”), which means the filer has no attorney and has typically used a bankruptcy-petition preparer. The rate is nearly one in two in Santa Barbara, home of the largest bankruptcy-petition preparer chain, We the People.

### **Some firms cry ‘foul’**

Some of those dismissed as bankruptcy mills, however, say they’re getting a bum rap.

“We do thousands and thousands of bankruptcy filings a year, and the vast, vast, vast majority have gone through just fine,” said Jason Searns, general counsel for We the People, which has 150 offices in 28 states. “We are serving a huge, underserved market that can’t afford lawyers.”

We the People is the nation’s largest legal self-help chain, advertising \$199 bankruptcies, \$349 divorces and low-priced business incorporation services. The company does not provide legal advice, Searns said, but helps consumers fill out the appropriate forms to represent themselves in court.

“Is it perfect for everyone? No. There are some people who really should go to lawyers,” Searns said. “But people have the right to do it themselves if they want to, just as people have the right to go to Home Depot and do their own bathroom.”

Petition preparers and discount attorneys say they’re being lumped in with incompetents and scam artists as part of a legal turf war by higher-priced attorneys trying to protect their fees. The high-volume operators say they offer consumers a low-cost alternative to regular bankruptcy attorneys, who typically charge \$800 to \$2,500 for a bankruptcy filing.

### **Advice that’s simply wrong**

But critics say too many consumers are being scammed, ending up with botched cases or filing for bankruptcy when they really shouldn’t.

“‘Bankruptcy-petition preparer’ is a nice term for something that’s evil,” pronounces Leon Bayer, a Los Angeles bankruptcy attorney with 25 years’ experience who now represents the Valles. “It’s a street-corner paralegal who thinks that ‘whatever a lawyer can do, I can do,’ and their clients pay the price.”

Then again, bankruptcy-mill attorneys may not be much better. In addition to representing clients whose attorneys have served them poorly, Bayer has collected some of the direct-mail appeals his clients receive when their lenders start foreclosure proceedings, a public process that tips off bankruptcy mills that someone might need their services. Some of the most deceptive letters were sent by attorneys soliciting business, Bayer said.

“Chapter 13 is NOT BANKRUPTCY,” one attorney-sent letter proclaims, “but rather the ‘Wage Earner Plan’ designed to allow financially troubled persons to pay their bills, not wipe them out.”

Of course, Chapter 13 *is* a bankruptcy filing. In return for paying some of their debts over three to five years, consumers can have the rest of their debts erased. In Chapter 7, most unsecured debts (other than student loans and recent taxes) are wiped out without a repayment plan.

Both types of filings put an automatic stop to any foreclosure or eviction proceedings, but Chapter 13s typically make it easier to protect the equity in a home. In a Chapter 7, the home’s equity may be used to pay creditors.

### **For the Valles, justice is more bitter than sweet**

Unlike some bankruptcy-mill victims, the Valles actually knew they were filing for Chapter 13. But the Valles say their attorney failed to act when their lender gave notice that it wanted to reinstitute foreclosure proceedings, a routine procedure known as “a motion for relief from the automatic stay.”

After receiving a letter from the court about the motion, the Valles said they phoned their attorney and visited his office and were reassured the matter would be taken care of. A month after the lender filed its motion, the Valles got notice that the court had granted the lender's request. Court records show no opposition to the motion that was filed, and the Valles said the attorney failed to attend the hearing. Less than 10 days later, the home was sold.

The Valles have received some justice. Bankruptcy court Judge Thomas Brown recommended that Baran be disbarred from bankruptcy practice, ruling that his "failure to perform services competently . . . directly caused the debtor, Victor R. Valle, to lose his home in a foreclosure sale."

The Valles are pursuing a malpractice case against Baran as well. But the most they can hope for is a return of the home equity they lost when their house was sold. They won't be able to get their house back or receive any compensation for the trauma they experienced.

"There's no such thing as 'pain and suffering'" in such cases, Deborah Valle said. "We lost our house, and that's it."

*Liz Pulliam Weston's column appears every Monday and Thursday, exclusively on MSN Money. She also answers reader questions in the [Your Money message board](#).*

## 13 ways to avoid a bad bankruptcy attorney

Don't pick an attorney out of the phone book. Do some hard research to find a lawyer to handle your bankruptcy the right way.

By [Bankrate.com](http://Bankrate.com)

What's worse than declaring bankruptcy? Hiring the wrong attorney for the job.

Handling bankruptcy filings has become a volume business for many lawyers, leaving some of them overworked and unable to attend to the details of all their cases.

Bankruptcy mills -- storefront operations offering cut-rate services -- have set up shop in many places. All this activity means that individuals facing the ultimate financial decision too often find themselves with legal services that are inferior to what they expect or need.

"I've seen cases where the lawyer hired to represent the client didn't show up at the bankruptcy hearing," says Vince Slusher, a shareholder and attorney with Davis Munck, a Dallas-based law firm.

Nobody wants a no-show or incompetent attorney, especially when it's your financial future in the balance. That's why you need to do some research before hiring a bankruptcy lawyer.

### Get going on your research

Here are 13 tips to help you find the best attorney to handle your bankruptcy filing.

#### 1. Don't dawdle.

"Contemplating hiring a bankruptcy attorney has all the allure of selecting your mortician," explains Ray R. Graves, who served 20 years as a federal bankruptcy judge for the Eastern District of Michigan. He now works for BBK Ltd., a business consultancy headquartered in Southfield, Mich.

"People don't want to deal with it. They put it off beyond the last minute when the wolf is at the door."

Waiting until the last minute won't give you the time you need to find a good attorney.

And it won't give a good attorney enough time to adequately prepare for your case.

## **2. Don't ask friends for referrals.**

Unless your fellow churchgoer or golf buddy has gone through a bankruptcy, he or she won't have any leads for you. Asking will just waste time, says Graves. "This is a closed club," he explains.

## **3. Do ask for suggestions from legal professionals.**

Consider who among your circle of acquaintances might know a bankruptcy lawyer. If you have a personal attorney, start there. Keep in mind, however, that bankruptcy law is a specialty, so if your lawyer offers to handle the case as part of your usual retainer, make sure he knows his way around bankruptcy court.

Also check local or state bar associations or professional organizations. Good places to ask include the [Association of Consumer Bankruptcy Attorneys](#), the [American Bankruptcy Institute](#) and your local legal aid society. (Legal aid societies won't handle bankruptcies, but many keep a running list of bankruptcy attorneys.)

## **4. Investigate certifications.**

Attorneys who are certified by the American Bankruptcy Institute have had to meet additional standards. See if your prospective attorney has this added training.

## **5. Spend a day at bankruptcy court.**

Observing the attorneys in action can give you an idea of the lawyer you want representing you. At the court you also can find out which locals specialize in this form of law. And you can get a chance to talk to the debtors and can ask them whether they felt their lawyers did a good job, says Rick Mitchell, partner with Iseman, Cunningham, Riester & Hyde in Poughkeepsie, N.Y.

## **6. Find out who sits on local bankruptcy court panels.**

Mitchell says to check out the trustee panel. "These are attorneys who are regularly in bankruptcy court and are well enough respected to be put on the panel," he says.

Graves recommends you also get the names of lawyers on the local bankruptcy court's debtor or creditor committees. "People on these committees do it to attract business, but they also take their work seriously," says the former judge.

## Look around and pose the right questions

### 7. Check out the law firm's offices.

You're not looking for how tastefully a lawyer's office is decorated, but how well-organized an office is, as well as the general environment. This office appraisal can give you vital clues as to how a lawyer would handle your case.

"Look around the office and see how well organized it is. Is it neat, or are there 25 folders spread around the floor?" asks Judge Graves. "You wouldn't go to a doctor with a dirty examining room and you don't want to go to a lawyer with a disorganized office."

### 8. Ask questions.

Once you have some candidates, interview them or someone at the law firm. Be sure to ask:

- How many bankruptcies do you handle in a month or in a year?
- How many of those bankruptcies are consumer or personal rather than business filings?
- How much access will I have to an attorney during my bankruptcy filing?
- If I'm not working directly with you (the lawyer), who will I be working with?
- Can I interview the person with whom I would be working?
- What time frame do you have for this bankruptcy?
- How will the procedure work?

This is a critical decision, so if you get evasive answers, it's probably a red flag that this is not the firm for you.

### 9. Evaluate the responses.

Because bankruptcy law is a volume business, the time you'll actually be working with a specific attorney may be small. In fact, with most consumer bankruptcies, the client works with a clerk or a paralegal; your actual attorney won't come into play until your day in court.

"In the end, 90% to 95% of people who file for bankruptcy don't have complicated issues and their filings can satisfactorily be handled by most attorneys or their paralegals," says attorney Mitchell. That's why, he says, it's important to use the interview process to determine whether you can work well with the whole firm as well as a particular attorney.

Consider whether candidates answered you fairly and in enough detail so that you can make an informed decision on who to hire.

Make sure the attorney (and firm) has the expertise that you need. Someone can be a great attorney who handles 60 business bankruptcies a month, but that probably isn't the attorney you want to handle your personal bankruptcy.

And while you want an experienced lawyer, you want to make sure the attorney doesn't have too much

work. "You have to make sure that they are not spread too thin," says Vince Slusher, a shareholder and attorney with the firm of Davis Munck in Dallas.

#### **10. Understand your role.**

Go over time frames and filing requirements with the firm, says Rick Hoagland, a partner and shareholder with the CPA firm of Moore, Ellrich & Neal in Palm Beach Gardens, Fla. Make sure you know what is expected of you because if you do your part, you'll increase your chances of a successful filing. So a lawyer who briefs you on your role is probably a keeper.

#### **Avoid the bargain-basement bankruptcy**

#### **11. Don't hire the cheapest lawyer.**

You're obviously filing because you don't have a lot of cash to spare. But like most things in life, taking the cheap route in bankruptcy could cost you even more in the end if a bargain attorney makes mistakes.

"When it's all said and done, you want a lawyer who knows the system and will do the best job of representing you," Graves says. That may end up costing a little more.

Verify what the going rate is in your area. Your local bar association probably can help you determine whether a proposed fee is fair and in line with local standards. Anybody who charges too much or too little probably shouldn't be your lawyer of choice.

#### **12. Get fee specifics.**

Find out exactly what the costs of bankruptcy are. What's included in your lawyer's fees? What's not? In some complicated proceedings, for example, a forensic accountant may be needed, says Hoagland. If that's the case, is it included in your charges or is it an additional fee?

#### **13. Stay involved.**

Once you hire a lawyer, don't be content to let him or her handle it alone. Double check all filings. Did any of your creditors get dropped off the list? Staying on top of your bankruptcy filing will help ensure that the proceedings go smoothly and will keep your lawyer on his or her toes.

"When you're hiring a bankruptcy attorney, you should remember that it's not just who you know, but what you know and what you're willing to learn," says attorney Slusher. (For more on surviving a bankruptcy, read Liz Pulliam Weston's column, "[Bounce back fast after a bankruptcy.](#)")

## 8 steps to take before bankruptcy

New rules will make it tougher to wipe out your debts in court. So before you take that drastic step, here are some ways to dig yourself out.

By [Bankrate.com](http://Bankrate.com)

Anyone who has ever faced a financial crisis has fantasized about getting a fresh start.

That doesn't mean bankruptcy is your only option, especially since the tough new law went into effect in 2005.

There's nothing that says you can't attack your money problems on two fronts instead. Try to improve your situation before you investigate the bankruptcy option. No matter which way you go, here are a few things to bring your debts under control:

### 1. Devise a battle plan.

Set aside one hour and gather all of the bills.

First, look at secured debts such as your home and your car. How much are they costing each month? What are the interest rates?

Second, examine the mandatory incidentals: power, phone, groceries, insurance, etc. What do those cost?

Third, take out your credit card statements. Write down what you owe on each and the interest rate.

Finally, look at the expendables. These are the items you like, but don't need: cable, gym membership, dinners out, clothing and other optional purchases.

Now you have an idea of what your monthly expenses really are. It's time to slice and dice.

Go through each category and look for ways to cut. You need a roof over your head, electricity, food, water, transportation and health insurance. Everything else is negotiable. Always pay the mortgage first and keep it current. The same with a car note.

Only you know what you "need." If exercising keeps you sane and healthy, keep the gym membership. But find another way to save. If things are so tight that you're considering bankruptcy, it's time to get radical.

## **2. Go on a cash diet.**

It's "shock therapy," says Clark Howard, host of a nationally syndicated consumer radio program.

"You go on an allowance system for yourself," Howard says. From each check, you'll take out a set amount in cash.

"And you agree in advance what that amount will be. And that allowance has to carry you to everything you have to do," says Howard, also co-author of "[Get Clark Smart: The Ultimate Guide to Getting Rich from America's Money-Saving Expert](#)." "If you're three days from a pay period and you have \$3, then what's in your pantry is what you take for lunch."

Howard worked with one couple who used this method to dig out from \$35,000 in debt in 18 months. They had a household income of about \$90,000, and sticking with the allowance system, they put \$2,200 a month toward credit card debt. "It was so empowering for them," he says. "And the allowance method can really work. You create a scarce resource."

## **3. Get the family involved, so you're working as a team.**

The couple who went on the allowance system had a big problem at the grocery store: their kids. The little ones would plead for all kinds of products, which their mom would buy. Then at the checkout, she'd pull out the plastic.

Howard convinced them to try a tactic that he's used himself. After the allowance system went into effect, the couple turned saving into a game for the children. They encouraged the kids to go through the paper looking for coupons and specials on the things they liked. In the store, the game was to keep the total as low as possible. And children got to keep one-fourth of the money they saved.

## **4. Sell assets.**

"People tend to forget about this," says Elizabeth Warren, a Harvard Law School professor and co-author

of "[All Your Worth: The Ultimate Lifetime Money Plan](#)." What to target: things that have cash value, but not sentimental value. Think antiques, old clothes or collectibles. Check the closets, garage and storage locker, she says, "and find out what you can live without."

"eBay, garage sales and consignment shops can all be a source of cash," Warren says.

### **5. Go for consumer credit counseling.**

Find a local affiliate of the National Foundation for Credit Counseling and get an appointment. Once you're there, trained credit counselors will help you look at your situation and draft a budget.

If you want, they can also take the process a step further and negotiate a payment plan with your creditors. And while a debt-management plan can have a negative impact on your credit, it's better than bankruptcy. (And if you've already gotten significantly behind on the bills, it probably won't make things any worse.)

### **6. Negotiate with your credit lenders.**

Not yet ready to sign up for a debt-management plan? You can try to do the same thing on your own.

First, you need to gauge the status of each account. Is it open and near the limit? Or has it been closed and turned over to collections? Generally, accounts go to collections somewhere between 120 and 150 days past due, says John Ulzheimer, vice president of the After Bankruptcy Foundation, a nonprofit organization that teaches people how to recover from bankruptcy.

"If you have an excellent credit score, they will be a little more flexible," says Ulzheimer. "If you have a poor credit score, they're not going to let you go 90 days past due."

**If you're behind on payments, but the account hasn't gone to collections:** If your account is open and you can afford to pay something, that's good. "If you can start working with the creditor -- lowering the interest rate, lowering the payment or doing away with interest temporarily -- that can give you enough time to get back on your feet," says Ulzheimer. Some companies have intervention programs allowing them to make "radical changes to your account temporarily," he says. Again, your track record, financial resources and future financial situation will make a difference.

You may not get any offers of help on the first call. Stay with it, be polite and work your way up the food

chain. "It can save your credit rating," says Ulzheimer.

**If your account has gone to collections:** Not as good for your credit rating, but far from hopeless.

At this point, the accounts have gone from being delinquent "to being seriously delinquent," says Ulzheimer. The account has probably been closed, so now they look at you as a debtor, rather than a customer.

Having a collection on your credit report is "bad," says Ulzheimer. "But it opens up some options. Collection agencies have an incentive to collect something from your account. You have leverage to offer them some sort of settlement."

Depending on your situation, shoot for a lump-sum arrangement or a low- or no-interest payment plan. Whatever deal you work out, get all the terms, including what will be reported to the credit bureaus, in writing before you start paying, says Ulzheimer. "Whatever deal they make with you is only as good as what's on paper," he says. And if the company neglects to report your arrangement to the credit bureaus, you have paperwork to correct the error.

The bad news about this arrangement: The collection will stay on your credit report for seven years. Two things you might try:

- Ask that the collections notation show that the account was settled with a zero balance (even if you settled for dimes on the dollar). The notation will stay with you, but future lenders will see that the debt was paid in full. (That's especially important for mortgage lenders, says Ulzheimer.)
- Ask the creditor to take the notation off of your credit report. "I see this work one out of 50 times," says Ulzheimer. But "sometimes you can convince them to wipe the debt clear, clean it off the credit report, if you'll pay the full amount."

### **7. Get a (second or part-time) job.**

"There's nothing wrong with flipping burgers," says Warren. Too many times, out-of-work professionals "engage in all-or-nothing thinking," she says. But even a little money coming in can keep a bad financial situation from getting worse.

Look for hours that give you plenty of time for job hunting and just leave it off the resume. "It brings in some cash, and that can help," Warren says.

8. Try the 30-month plan.

Got one or two debts that are causing you pain? Visit Bankrate's online [amortization calculator](#) and plug in your interest rate and a 30-month payoff period. The calculator will give you the corresponding monthly payment. That's your new monthly minimum.

For instance, say you carry a combined balance on several cards of \$8,000 with interest rates of 15.99%. If you start throwing \$325 at those bills, you'll be debt free in 2.5 years.

Howard admits that it works only when the debt is "moderately worrisome." But if you've only got one or two that are a problem, it works. You can also use the calculator to find other combinations you can live with, such as slightly longer terms or better rates. (Then call the creditor and try to cut a deal.)

Says Howard, "The reason I like 30 months is that people see the progress every month."

## 7 ways to fight off bankruptcy

Single women -- and particularly single moms -- have a tenuous hold on financial security and face a serious risk of bankruptcy. Here are the key warning signs, and 7 ways to avoid it.

By [MP Dunleavy](#)

*Editor's note: Columnist MP Dunleavy and eight other women have come together online to strip away the myths surrounding money, lay bare their assets and liberate themselves from debt. Follow the quest for financial fabulousness of these "[Women in Red](#)" every second Monday in Dunleavy's column on MSN Money.*

Over the last two decades, bankruptcy rates among women have been rising at a frightening rate.

Some 69,000 women filed for either Chapter 7 or Chapter 13 bankruptcy in 1981. By 2001, according to research by Harvard law professor Elizabeth Warren, women filing independently or as part of a couple numbered close to a million.

As part of a small, brave band of Women in Red who struggle against the financial forces of darkness in the world, I have to ask why -- and what can we do to protect ourselves?

### **A lack of financial stability**

Obviously, being female doesn't predispose you to bankruptcy any more than, say, having brown hair. But the research seems to indicate that women are more likely to end up in certain economic straits that can lead to bankruptcy.

Contrary to the stereotype that those who file for bankruptcy have irresponsibly spent themselves into a hole, nine out of 10 women were forced into bankruptcy by a job loss, medical emergency or divorce.

These are the same factors that send many men into bankruptcy, says Warren, co-author of "[All Your Worth](#)." But a woman's hold on economic security tends to be more tenuous to begin with -- particularly if they have children.

Warren's data, based on Chapter 7 and 13 filings, make it scarily clear:

- For unmarried men, the bankruptcy rate was 6.3 cases per thousand.
- For unmarried women, it was 7.2 cases per thousand.
- For married couples without children, it was 7.4 cases per thousand.
- For married couples with kids, the rate about doubles to 15.3 per thousand.
- And for single women with kids, the bankruptcy rate nearly triples to 21.3 cases per thousand.

Single women alone comprise almost 40% of all bankruptcy filings.

### Bankruptcy's red flags

What's going on? "Women often start off with lower incomes, and they're particularly vulnerable after a divorce, when they're typically bearing the brunt of the child-care burden," says Travis Plunkett, legislative director of the Consumer Federation of America.

For example, [Marian](#), the newest member of the Women in Red, has not filed for bankruptcy. But she has many of the classic warning signs:

**She's a single mom.** When Marian's husband left eight years ago, she was left to raise her three children without any child or spousal support. "Divorce isn't a picnic for men or women," says Warren, "but the economic strain falls disproportionately hard on women," who are often left to care for children or aging parents. "They have every cost that married couples do, and they're trying to do it on one income."

**She didn't have a steady income.** Also, like a lot of moms with very young children, Marian worked from home, helping out in her husband's business. In the event of a split, women without a full-time job or the skills to get one are the most financially unstable, says Harlene Miller, a bankruptcy lawyer in Santa Ana, Calif. "They (don't) have a significant employment base so they're less able to get out in the marketplace to start supporting themselves."

**She wasn't paying attention to money matters.** With three children and a struggling business, it's no wonder Marian pushed aside the bigger financial questions -- like how they would repay the family loans that floated their enterprise. Luckily, their families forgave those debts, but many women pay a price for keeping their heads in the sand, says Miller. She cites a client whose husband died suddenly at

age 50, leaving her with over \$100,000 in credit card debt that she'd had no idea about. "It's imperative for all women, as a matter of survival, to be involved in the family's finances," she says.

**She took on more debt than she could handle.** In her 17 years as a bankruptcy attorney, Miller has seen women pile up tens of thousands of dollars in credit card debt to get by. Marian did exactly that, tapping the equity in her home (which had been paid off) to borrow \$100,000. She used the money to pay off a personal loan and medical bills and to cover her son's tuition at a special-needs school.

**Many women don't adjust their lifestyle quickly enough.** This is less true of Marian, who used her college accounting degree to get a job after the divorce and recently started her own business. But Warren says many women are vulnerable to going broke because they don't face the realities of what it takes to survive on one income and adjust speedily.

Nor would women's risk of bankruptcy be lowered much if they got more support from their ex-spouses, Warren says. "The increased cost of raising children has far outstripped the increase in child support."

"You do better if there are two parents, but the reality is that any parent is at much greater risk of collapse," she says. "It's parents who are pushing themselves to their limits to buy houses in decent school districts. It's parents who are struggling to pay for health insurance and a second car and good child care."

"And if a married couple can barely make it on two incomes, a single mother won't be able to make it on one and a quarter," assuming she gets that support from her ex, Warren adds.

### **Steer clear of bankruptcy court**

Obviously, there are some times when filing for bankruptcy may be a woman's best or only solution. But despite being financially at risk, Marian would benefit little from filing for bankruptcy, Miller says.

Most of Marian's debt is secured, i.e. tied to her house. That debt would not be discharged, or forgiven, in a bankruptcy case. Women with unsecured debt, like credit card debt, used to have a better chance at seeing their financial slate wiped clean.

But a new law that took effect in late 2005 is far more stringent and focused on getting people to repay their debts, not walk away debt-free.

If you feel that bankruptcy might be your best choice, Miller advises consulting with a full-time bankruptcy lawyer who can help you decide if it's worth the consequences.

Meanwhile, if you feel you're at risk for bankruptcy based on these five financial risk factors, and especially if you're a married woman on the brink of divorce, act now to protect yourself:

- **Get savvy.** If you're not on top of your finances, now is the time to take a crash course (and read lots of Women in Red articles, of course).
- **Divide your debts.** Cancel all joint credit cards and other debts.
- **Claim your assets.** Make sure your name is on the title to the house and on all investment accounts.
- **Shore up your career now.** Don't wait for divorce, layoff or illness to strain your income.
- **Scale back your lifestyle now.** "If you're getting divorced, you need to live on 50% of what you're used to," says Warren.
- **Know your rights.** In the event of divorce, the IRS allows you to file an "innocent spouse" claim, if you feel you don't owe certain taxes.
- **Get financial counseling.** Depending on your circumstances, you may not need bankruptcy if you can learn to live within your means.