

The Missouri Bar

# Money Guide



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# FTC Consumer Alert: Out of Work? How to Deal with Creditors

It's become an all-too-familiar headline and lead story – job cuts, dot.com failures, corporate restructuring and lay-offs.

If you've recently lost your job, your first thoughts may be, "how will I make ends meet?" Money matters are a source of stress and frustration for many people. The Federal Trade Commission (FTC) publishes free brochures spelling out your rights when it comes to fair debt collection and credit reporting practices.

## FAIR DEBT COLLECTION

If you find that you can't pay your bills on time, contact your creditors immediately. Try to work out a modified payment plan that reduces your payments to a more manageable level. Don't wait until your accounts have been turned over to a debt collector. At that point, your creditors have given up on you. The federal Fair Debt Collection Practices Act requires debt collectors to treat you fairly by prohibiting certain methods of debt collection. To learn more, call the FTC's Consumer Response Center for a free copy of Fair Debt Collection, or visit [www.ftc.gov](http://www.ftc.gov).

## FAIR CREDIT REPORTING

Non-payment and late payments may affect your credit rating and your ability to get credit in the future. Although creditors usually consider a number of factors in deciding whether to grant credit – most creditors rely



heavily on your credit history. That's one reason it's important to make sure your credit report is accurate. For example, if your file showed that you were once late in making payments, but didn't show that you are no longer delinquent, it would be inaccurate.

The credit reporting agency must show that your payments now are current.

The Fair Credit Reporting Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance or a job.

For more information, request a free copy of Fair Credit Reporting.

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.

**Source:** Federal Trade Commission  
<http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt086.shtm>

# Facts for Consumers

## Debt Collection FAQs: A Guide for Consumers

If you're behind in paying your bills, or a creditor's records mistakenly make it appear that you are, a debt collector may be contacting you.

The Federal Trade Commission (FTC), the nation's consumer protection agency, enforces the Fair Debt Collection Practices Act (FDCPA), which prohibits debt collectors from using abusive, unfair, or deceptive practices to collect from you.

Under the FDCPA, a debt collector is someone who regularly collects debts owed to others. This includes collection agencies, lawyers who collect debts on a regular basis, and companies that buy delinquent debts and then try to collect them.

Here are some questions and answers about your rights under the Act.

### WHAT TYPES OF DEBTS ARE COVERED?

The Act covers personal, family, and household debts, including money you owe on a personal credit card account, an auto loan, a medical bill, and your mortgage. The FDCPA doesn't cover debts you incurred to run a business.

### CAN A DEBT COLLECTOR CONTACT ME ANY TIME OR ANY PLACE?

No. A debt collector may not contact you at inconvenient times or places, such as before 8 in the morning or after 9 at night, unless you agree to it. And collectors may not contact you at work if they're told (orally or in writing) that you're not allowed to get calls there.

### HOW CAN I STOP A DEBT COLLECTOR FROM CONTACTING ME?

If a collector contacts you about a



debt, you may want to talk to them at least once to see if you can resolve the matter – even if you don't think you owe the debt, can't repay it immediately, or think that the collector is contacting you by mistake. If you decide after contacting the debt collector that you don't want the collector to contact you again, tell the collector – in writing – to stop contacting you. Here's how to do that:

Make a copy of your letter. Send the original by certified mail, and pay for a "return receipt" so you'll be able to document what the collector received. Once the collector receives your letter, they may not contact you again, with two exceptions: a collector can contact you to tell you there will be no further contact or to let you know that they or the creditor intend to take a specific action, like filing a lawsuit. Sending such a letter to a debt collector you owe money to does

not get rid of the debt, but it should stop the contact. The creditor or the debt collector still can sue you to collect the debt.

### CAN A DEBT COLLECTOR CONTACT ANYONE ELSE ABOUT MY DEBT?

If an attorney is representing you about the debt, the debt collector must contact the attorney, rather than you. If you don't have an attorney, a collector may contact other people – but only to find out your address, your home phone number, and where you work. Collectors usually are prohibited from contacting third parties more than once. Other than to obtain this location information about you, a debt collector generally is not permitted to discuss your debt with anyone other than you, your spouse, or your attorney.

### WHAT DOES THE DEBT COLLECTOR HAVE TO TELL ME ABOUT THE DEBT?

Every collector must send you a written "validation notice" telling you how much money you owe within five days after they first contact you. This notice also must include the name of the creditor to whom you owe the money, and how to proceed if you don't think you owe the money.

### CAN A DEBT COLLECTOR KEEP CONTACTING ME IF I DON'T THINK I OWE ANY MONEY?

If you send the debt collector a letter stating that you don't owe any

or all of the money, or asking for verification of the debt, that collector must stop contacting you. You have to send that letter within 30 days after you receive the validation notice. But a collector can begin contacting you again if it sends you written verification of the debt, like a copy of a bill for the amount you owe.

## WHAT PRACTICES ARE OFF LIMITS FOR DEBT COLLECTORS?

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

- use threats of violence or harm;
- publish a list of names of people who refuse to pay their debts (but they can give this information to the credit reporting companies);
- use obscene or profane language; or
- repeatedly use the phone to annoy someone.

**False statements.** Debt collectors may not lie when they are trying to collect a debt. For example, they may not:

- falsely claim that they are attorneys or government representatives;
- falsely claim that you have committed a crime;
- falsely represent that they operate or work for a credit reporting company;
- misrepresent the amount you owe;
- indicate that papers they send you are legal forms if they aren't; or
- indicate that papers they send to you aren't legal forms if they are.

**Debt collectors also are prohibited from saying that:**

- you will be arrested if you don't pay your debt;
- they'll seize, garnish, attach, or sell your property or wages unless they are permitted by law to

take the action and intend to do so; or

- legal action will be taken against you, if doing so would be illegal or if they don't intend to take the action.

**Debt collectors may not:**

- give false credit information about you to anyone, including a credit reporting company;
- send you anything that looks like an official document from a court or government agency if it isn't; or
- use a false company name.

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

- try to collect any interest, fee, or other charge on top of the amount you owe unless the contract that created your debt – or your state law – allows the charge;
- deposit a post-dated check early;
- take or threaten to take your property unless it can be done legally; or
- contact you by postcard.

## CAN I CONTROL WHICH DEBTS MY PAYMENTS APPLY TO?

Yes. If a debt collector is trying to collect more than one debt from you, the collector must apply any payment you make to the debt you select. Equally important, a debt collector may not apply a payment to a debt you don't think you owe.

## CAN A DEBT COLLECTOR GARNISH MY BANK ACCOUNT OR MY WAGES?

If you don't pay a debt, a creditor or its debt collector generally can sue you to collect. If they win, the court will enter a judgment against you. The judgment states the amount of money you owe, and allows the creditor or collector to get a garnish-

ment order against you, directing a third party, like your bank, to turn over funds from your account to pay the debt.

Wage garnishment happens when your employer withholds part of your compensation to pay your debts. Your wages usually can be garnished only as the result of a court order. Don't ignore a lawsuit summons. If you do, you lose the opportunity to fight a wage garnishment.

## CAN FEDERAL BENEFITS BE GARNISHED?

Many federal benefits are exempt from garnishment, including:

- Social Security Benefits
- Supplemental Security Income (SSI) Benefits
- Veterans' Benefits
- Civil Service and Federal Retirement and Disability Benefits
- Service Members' Pay
- Military Annuities and Survivors' Benefits
- Student Assistance
- Railroad Retirement Benefits
- Merchant Seamen Wages
- Longshoremen's and Harbor Workers' Death and Disability Benefits
- Foreign Service Retirement and Disability Benefits
- Compensation for Injury, Death, or Detention of Employees of U.S. Contractors Outside the U.S.
- Federal Emergency Management Agency Federal Disaster Assistance

But federal benefits may be garnished under certain circumstances, including to pay delinquent taxes, alimony, child support, or student loans.

## DO I HAVE ANY RECOURSE IF I THINK A DEBT COLLECTOR HAS 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, the judge can require the collector to pay you for any damages you can prove you suffered because of the illegal collection practices, like lost wages and medical bills. The judge can require the debt collector to pay you up to \$1,000, even if you can't prove that you suffered actual damages. You also can be reimbursed for your attorney's fees and court costs. A group of people also may sue a debt collector as part of a class action lawsuit and recover money for damages up to \$500,000, or one percent of the collector's net worth, whichever amount is lower. Even if a debt collector violates the FDCPA in trying to collect a debt, the debt does not go away if you owe it.

### **WHAT SHOULD I DO IF A DEBT COLLECTOR SUES ME?**

If a debt collector files a lawsuit against you to collect a debt, respond to the lawsuit, either personally or

through your lawyer, by the date specified in the court papers to preserve your rights.

### **WHERE DO I REPORT A DEBT COLLECTOR FOR AN ALLEGED VIOLATION?**

Report any problems you have with a debt collector to your state Attorney General's office ([www.naag.org](http://www.naag.org)) and the Federal Trade Commission ([www.ftc.gov](http://www.ftc.gov)). Many states have their own debt collection laws that are different from the federal Fair Debt Collection Practices Act. Your Attorney General's office can help you determine your rights under your state's law.

### **FOR MORE INFORMATION**

To learn more about debt collection and other credit-related issues, visit [www.ftc.gov/credit](http://www.ftc.gov/credit) and MyMoney.gov, the U.S. government's portal to financial education.

The FTC works 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 get free information on consumer issues, visit [ftc.gov](http://ftc.gov) or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. Watch a new video, How to File a Complaint, at [ftc.gov/video](http://ftc.gov/video) to learn more. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

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**Source:** Federal Trade Commission <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre18.shtm>

# Protect Yourself From Overdraft Fees

## HOW DO OVERDRAFTS AND BOUNCED CHECKS HAPPEN?

When you write a check, withdraw money from an ATM, use your debit card to make a purchase, or make an automatic bill payment or other electronic payment for more than the amount in your checking account, you overdraw your account. Your bank (or your savings and loan or credit union) has the choice to either pay the amount or not. If it pays even though you don't have the money in your account, you may be charged an "overdraft" fee. If your bank returns your check without paying it, you may be charged a "bounced-check," or "nonsufficient funds," fee. And the person or company that you wrote the check to--for example, a store, your landlord, or the phone company--may charge you a "returned-check" fee in addition to the fee your bank charges you.

## HOW CAN YOU AVOID OVERDRAFT AND BOUNCED-CHECK FEES?

The best way to avoid overdraft and bounced-check fees is to manage your account so you don't overdraw it.

Keep track of how much money you have in your checking account by keeping your account register up-to-date. Record all checks when you write them and other transactions when you make them. And don't forget to subtract any fees.

Pay special attention to your electronic transactions. Record your ATM withdrawals and fees, debit card purchases, and online payments.

Don't forget about automatic bill payments you may have set up for utilities, insurance, or loan payments.

Keep an eye on your account balance. Remember that some checks and automatic payments may not

have cleared yet.

Review your account statements each month. Between statements, you can find out which payments have cleared and check your balance by calling your bank or by checking online or at an ATM. Be sure to find out the actual amount in your account--your account balance not including



any funds available to you through "courtesy overdraft-protection," or "bounce coverage," plans.

Sometimes mistakes happen. If you do overdraw your account, deposit money into the account as soon as possible to cover the overdraft amount plus any fees and daily charges from your bank. Depositing money into your account can help you avoid additional overdrafts and fees.

## WHAT ARE "COURTESY OVERDRAFT-PROTECTION," OR "BOUNCE COVERAGE," PLANS?

Many banks (as well as savings and loans and credit unions) offer "courtesy overdraft-protection," or "bounce coverage," plans so that your checks do not bounce and your ATM and debit card transactions go through. With these plans, you'll still pay an overdraft fee or a bounce coverage fee to the bank for each item.

But you will avoid the merchant's returned-check fee and will stay in good standing with the people you do business with.

## HOW MUCH DO COURTESY OVERDRAFT-PROTECTION, OR BOUNCE COVERAGE, PLANS COST?

Plans vary, but most banks charge a flat fee (often \$20 to \$30) for each item they cover. And many set a dollar limit on the total amount your account may be overdrawn at any one time. For example, the bank might cover overdrafts up to a total of \$300, including all the fees. In addition, some banks charge a daily fee--say \$5 a day--for every day your account is overdrawn.

Example: Suppose you forgot that you had only \$15 in your account and wrote a check for \$25, used an ATM to get \$40 cash, and used your debit card to buy \$30 worth of groceries. In these 3 transactions you've spent a total of \$95--and overdrawn your account by \$80 ( $\$95 - \$15 = \$80$ ).

## HOW MUCH WILL YOUR FORGETFULNESS COST YOU?

If you have a courtesy overdraft-protection plan, your bank may decide to cover all 3 transactions. And each of the 3 overdrafts will trigger a fee. You will owe your bank the \$80 that you spent even though it wasn't in your account, plus the 3 overdraft fees. If your overdraft fee is \$25 per overdraft, you will owe your bank \$155:  $\$80 + \$75 (3 \times \$25)$ .

## WHAT ARE SOME OTHER WAYS TO COVER OVERDRAFTS?

Banks, savings and loans, and credit unions may provide other ways of covering overdrafts that may be less expensive. Ask your bank about

these options before making your choice. You may be able to:

Link your checking account to a savings account you have with the bank. If you overdraw your checking account, the bank can transfer funds from your savings account to your checking account. Ask your bank about transfer fees.

Set up an overdraft line of credit with the bank. You need to apply for a “line of credit” just as you would apply for a regular loan. If you overdraw your account, the bank will lend you the funds by using your line of credit to cover the overdraft. You will pay interest on this loan, and there may be an annual fee. But the overall costs may be less than the costs for courtesy overdraft-protection plans.

Link your account to a credit card you have with the bank. If you link your account to a credit card, any overdraft amount becomes a cash advance on your credit card. You will probably be charged a cash-advance fee, and interest charges on the advance will start immediately. The cost of this option depends on the interest

rate on your credit card and how long you take to pay back the advance. The choice is yours. Consider these ways to cover your overdrafts:

### **WHAT DO YOU NEED TO KNOW ABOUT COURTESY OVERDRAFT-PROTECTION, OR BOUNCE COVERAGE, PLANS?**

Avoid using these plans as short-term loans--they are costly forms of credit.

If you overdraw your account, get money back into your account as soon as possible. Remember that you need to put enough money back into your account to cover both the amount of your overdraft and any bank fees.

Even if you have one of these plans, there is no guarantee that your bank will cover your checks, ATM withdrawals, and debit card and other electronic transactions that overdraw your account.

Good account management is the lowest-cost way to protect your hard-earned money. If you need overdraft

protection every now and then, ask your bank about the choices and services that are right for you.

### **WHAT SHOULD YOU DO IF YOU HAVE A PROBLEM OR COMPLAINT ABOUT COURTESY OVERDRAFT-PROTECTION, OR BOUNCE COVERAGE, PLANS?**

If you have a complaint, first try to resolve the problem directly with your bank, savings and loan, or credit union. If you are unable to resolve the problem, you may want to file a complaint with one of the state or federal agencies responsible for enforcing consumer banking laws.

For more information, contact the federal agency responsible for regulating your financial institution.

**Source:** Federal Reserve <http://www.federalreserve.gov/pubs/bounce/>



# How to Cope with Medical Bills – An Interview with Attorney Lawrence W. Ferguson

Thousands of Missourians are struggling to pay mounting medical bills--but do you really owe what the hospital says? What if you find you simply cannot make payments anymore? Attorney Lawrence Ferguson shares what you need to know.

**The Missouri Bar:** Mr. Ferguson, what are the first steps to take when you receive medical bills?

**Attorney Ferguson:** Well, of course, I think that everyone who receives medical bills should review those bills to see that the treatment outlined on those bills reflects what was actually done for them. Now, in the case of a physician's bill, that usually is not difficult to deal with, but where we find it more problematic is with a hospital bill or a procedures bill from an outpatient clinic. These will have a lot of itemized charges on them for various things, and sometimes there are duplicates. Additionally, there may be charges made for things that the patient didn't really receive. If you get a hospital bill even if you have insurance, it's not a bad idea to go through the bill and check whether there are items you were charged for but didn't receive. There are a number of side issues that go into a hospital facility billing that can have the potential for error, and we usually see those errors are in the favor of the institution. If there are things on the bill that aren't true or accurate, they will readily remove them.

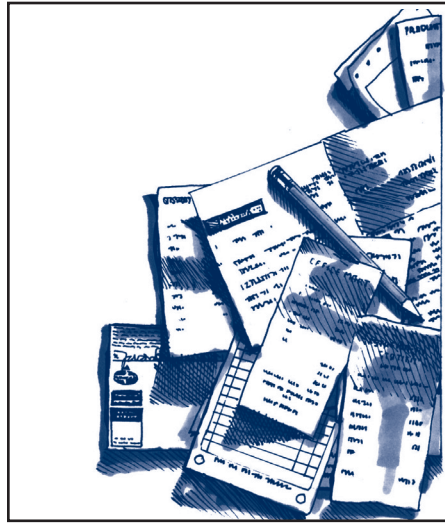
**The Missouri Bar:** Really?

**Attorney Ferguson:** They know that the process that they're using isn't necessarily all that accurate. For example, with the birth of one of our children, my wife was charged for anesthesia and a procedure, an episiotomy, and she didn't have one at all. When she brought this to the attention of the hospital, they said *oh, well most women do, but you didn't*

*have one?* They took those charges off.

**The Missouri Bar:** And it wasn't a problem; it wasn't like she had to get into a big fight with them or anything?

**Attorney Ferguson:** No, no, no and you know what else, it was about



\$700.

**The Missouri Bar:** That's a pretty big amount.

**Attorney Ferguson:** One of the things that has happened in health care in our country and probably everywhere is that health care has moved to a third-party payer system. In our country the third-party payer is generally a private or group insurance plan or Medicare or Medicaid. Whoever it is, the patient is not paying the entire bill. Therefore most patients tend not to scrutinize the bill in the same way that you see people in the grocery store, coming in with coupons. If they think they're being overcharged for any item that's being rung up, they take it up with the clerk right there.

**The Missouri Bar:** And a lot of people don't realize that ultimately as a consumer who purchases health insurance they're paying for it anyway.

**Mr. Ferguson:** That's the point.

You are paying for it, and therefore it behooves you as the consumer to see to it that at least you got the services you're billed for in the first instance.

**The Missouri Bar:** And if you have a large bill, aren't there firms that will do this for you?

**Mr. Ferguson:** Oh sure.

**The Missouri Bar:** There are firms that will go over these bills and check each one and actually deal with the hospital for you?

**Mr. Ferguson:** Absolutely. There are medical review firms that review bills out there. Most of them deal with workers' compensation insurance companies, and workers' compensation group plans as well as health insurers and HMOs. But there are some that will take private clients. You can go to them with your big hospital bill, and the beauty of it is that a lot of times these firms might be willing to work for you on the basis of 10 percent of the amount that they get taken off the bill.

**The Missouri Bar:** What if you've gone through your hospital bill and you realize you can't afford to pay this big chunk of money for this bill. Do hospitals work with you? Do they set up payment plans?

**Mr. Ferguson:** That's not a problem for most people who are fortunate enough to have somebody else that's going to pay this bill. The bill goes on to those people; they get whatever reductions are appropriate and they pay it. But if you're one of those unfortunate people--and they're getting to be about 40 million of us or more in the country today--who have no health insurance, no coverage whatsoever and who don't qualify for a government program, then the hospital is going to look to you to pay that bill. That's when you are going to have to be a little creative about the situation to see the best arrangement you could make to cope financially

with this problem. I've seen people with astronomical bills, people who had the misfortune to get a cancer that needed to be removed. And while the good news is everything went fine, the bad news is they find themselves with an \$80,000 bill.

**The Missouri Bar:**What do you do if you can't pay a bill?

**Mr. Ferguson:** And this presumes that they've done what they could to be sure that the bill is accurate. Now, there's always the option of taking a bill like that to one of the services we talked about to see if they can make a reduction in it. But let's assume that all those have been done and we're still stuck with this huge bill. The health insurance providers have a billing department. That is where you start. You try to negotiate with the billing department about what makes sense and what sort of terms can be arranged to pay this bill. Now, right upfront, there are a number of health care providers who will write off all or part of a bill in certain situations. What they often ask is that you fill out some financial disclosure forms that detail your financial situation. They may be willing to write off some part of this bill and then put you on a payment plan to pay the rest of it.

Everything I'm going to say now has got to be evaluated in light of what is feasible for you in your financial situation. For instance, if a person finds themselves with an \$80,000 bill that no one will write off, and they have no cash and don't have any substantial assets to protect, such as equity in a home, they might just as well go to see their friendly local bankruptcy lawyer. That's because they are probably going to come out better going through that process than they will otherwise. But that makes a presumption that they find themselves with no substantial assets to protect. Most people have some assets to protect. They have a credit rating that they want to protect that they worked hard to keep clean, and so

their situation is different. They have to evaluate every step of the way in this process whether what they're being offered as a way to pay these bills makes sense to them. In other words, let's just use a hypothetical. Let's say we have this person with the \$80,000 bill, and let's say that the health care provider says no, we're not going to write that off because you make good money, you can pay that bill -- we're going to put you on a payment plan that will have you paying us \$1,000 a month, plus we'll have you signed up to a note that bears 6 percent interest. *Is that a good deal? Doesn't sound like it to me.* What makes us all sad is when you realize that this same \$80,000 bill might have been reduced by 75 percent if the person had insurance or been in an HMO

**The Missouri Bar:**But if you're an individual without insurance you're actually charged more for services.

**Mr. Ferguson:** Theoretically. The way it works is everybody's charged this big amount but then all these insiders have deals. They're called PPOs, preferred purchasing organizations, HMOs, various acronyms, but they are all pricing arrangements where these people have gone out to the providers and signed contracts with pricing arrangements that substantially reduce the provider's return.

Here's an example of a case I had that astounded me. I had a lady with \$60,000 of medical bills. These were solid bills from the hospital that we were presenting as damages in her case, and it turned out that Medicare on those bills had paid all the bills and the providers weren't due any money and they had paid about \$3,200 on \$60,000 of the gross amount of the bill. I was floored.

The example I am using here is typical of many cases that I've seen. So back to the person who has an \$80,000 bill. The first thing they need to realize is that if they had health insurance their health insurance company might have paid \$25,000 and that's all. Do I feel bad

if they offer to discount this down to 25,000? Not at all -- if they don't agree to take a big cut on it then maybe I don't want to deal with them at all. I'm saying they ought to dramatically slash that amount. They ought to slash it by half. They ought to take that \$80,000 bill and say look, we'll write off \$40,000, and we'll put you on a payment plan for that, and how much can you pay each month and what might be a reasonable interest rate? If the person is timely on their payments then the hospital may agree to not charge them the interest. That's the sort of deal that would make sense. But let's assume that they don't do any good at the billing department or they don't know that they should do this, then they start getting calls from the collection agency --

**The Missouri Bar:** And what do you do then?

**Mr. Ferguson:**Well, you have to realize what's happening on the other side of the table. The hospital has now taken your bill and given it to a collection agency that has a deal with the hospital. It gets a percentage of everything it collects on these bills.

**The Missouri Bar:**Which is why they are so pushy when they call people.

**Mr. Ferguson:**This is how they make their money. We see those percentages vary from 15 percent on the low side to as high as 33 percent. What you have to understand about these people is that they didn't provide the care; they don't have any issues about the bill. It's just a money transaction to them. You owe; they want to collect; and this is what I try to get people to understand: These people are interested in cash. They really don't want to set up you up on monthly payments. They will do that if the monthly payments are large enough, but if you could have afforded to make those large monthly payments, you probably would have done some good with the billing department. These people want to deal in cash, and cash is magic to

these people. So what you need to think about is how much cash you can come up with if you used every resource you have -- maybe your mother can give you something from what would have been an inheritance. You need to put together as much cash as you can to tempt these people to settle. Once you have the cash, the way to approach these people is to say, *I would like to settle this, but I want to settle it for cash. I think this bill is way out of line. I don't want to litigate it. I just want to see what kind of a cash deal I could make to settle this thing. So make me an offer.*

**The Missouri Bar:** And then negotiate down from there?

**Mr. Ferguson:** Very often, they will say, you have an \$80,000 bill and you've got interest running at thus and so. You should respond by saying *make me a realistic offer of what you would take to settle this bill if I could write you a check tomorrow. I'm not saying I can, but if I could, what would you accept to settle this?* Then you start talking about terms. If these people say *well look if you could pay \$40,000 in cash I think the hospital would be willing to do it*, then you come back to them and you say, *you know, I can't do that, but maybe I could pay \$10,000.* You see, all these negotiations are conducted not as offers, but as ifs and possibilities.

**The Missouri Bar:** So you have to wait for them to say okay, we'll take \$10,000 and then you get that money together.

**Mr. Ferguson:** What you've got to do ahead of time is to be sure of the amount of cash you could theoretically raise.

**The Missouri Bar:** In following your example, though, let's say all you could get together was \$10,000 on this \$80,000 bill. What if collections doesn't take that money?

**Mr. Ferguson:** The scenario I'm giving you is from a real case. Let's say that you fail there, that you can't make a deal with the collection people for whatever reason, or you get

angry and slam the phone down on them. The collection people throw up their hands finally and then the case goes to the next step, which is to the attorney. These attorneys come in all shapes and sizes. They're specialists. We've got a couple of people here in town who are specialists doing this kind of work. And believe it or not they're some of the nicest, most cheerful lawyers you're ever going to meet. It's just about money.

**The Missouri Bar:** Exactly.

**Mr. Ferguson:** The lawyer either gets the case because of an arrangement with the collection agency or the lawyer may have an arrangement directly with the hospital. If the hospital's collection agency says to the hospital that they are going to close their file because they can't get anywhere with it, the hospital has the collection agency hand the case to an attorney. Now, it will be the attorney who will receive a percentage of what they can settle this case for. The attorney knows the law, especially the bankruptcy laws and the credit laws, and therefore, the attorney knows what's feasible. In all these cases where we've got a substantial amount, there's always the bankruptcy alternative and it's a pretty sure bet that the health care provider will only get a fraction of this bill if the situation leads to bankruptcy, and everybody knows that. But the person has to go through bankruptcy, ruin their credit rating, lose a bunch of the other things and deal with the stress. So, they would like to avoid that. I tell the people that I'm representing at this point that they have to tell me the amount of cash they can raise without ruining their life. Once I have that number then I negotiate with the attorney. Any person could do the same thing, of course -- there's nothing magic about the fact that I'm an attorney doing it.

**The Missouri Bar:** Know how much cash you can access so that you can --

**Mr. Ferguson:** It's just like

anything else -- if you're going to the store, or you're going to shop for a house, you have to first determine what kind of payments you can afford to make. And you have to do the same thing here. You must decide what is the most cash that I can put together on short notice. If that means borrowing it from your retirement account or whatever, you have to know what it is and you have to know how soon you can have the money in hand. Now let's take my \$80,000 example. What had happened in that particular case was (and this is what will happen all the time) that the attorney for the hospital gets this case in, and that attorney is probably not going to call you. The attorney will write you one letter, maybe. But if you get the letter from the attorney he's going to say, *'I represent X hospital. I've been asked to collect this \$80,000 bill against you. If you want to discuss the possible settlement of this matter call me, otherwise we're going to be filing against you in the circuit court of X county.'* If you don't call them, that's exactly what they're going to do because they file ten of these a day.

**The Missouri Bar:** And that's a really scary prospect for someone. When they get this letter in the mail, that has to really stress them out even more --

**Mr. Ferguson:** Particularly people who've never been in the legal system before. The next thing is the sheriff comes and finds them at work or at home and brings in these scary-looking documents. Basically you are sued and you have 30 days to appear. So here we go. -- We've got the lawsuit and what happens now? Well, some people go into denial mode and they throw the lawsuit over in the corner and they don't do anything. If you don't do anything, there's going to be a judgment against you.

**The Missouri Bar:** And that's a default.

**Mr. Ferguson:** Yeah, but guess what? If you do show up and you

don't have any defenses to the bill, what are you going to say? If in fact you have some defenses, if you think the bill is too big, you can raise them at this stage. But probably you've done that already, and, if in fact, this is the amount of the bill and all you have to say is it isn't fair because if I had insurance they would have taken half of this, that's not much of a defense. You're going to get that same judgment against you anyway.

**The Missouri Bar:** So it's better to –

**Mr. Ferguson:** You can show up and be a nice guy and tell the court how bad you feel and that this isn't fair, and the judge has no choice. You're going to get that same judgment against you, and in the case that I'm telling you about, by the time my client came to me, he had gone through the whole thing and had the judgment against him.

**The Missouri Bar:** There's nothing you can do then, though, is there?

**Mr. Ferguson:** Well, wrong.

**The Missouri Bar:** So you can?

**Mr. Ferguson:** A judgment is no more than a piece of paper that says you owe something and that gives people the right to do execution and garnishment. They could execute against his assets and they could garnish his wages, etc., but he's self-employed and doesn't really have any assets. He rents an apartment. So there was the judgment. This judgment was a big black blot on his credit rating that kept him from ever buying a house, buying a car, getting anything. It made him a pariah in our system because he has an \$80,000 judgment against him and this judgment can be renewed every ten years and be there for the rest of your life.

And the only way out of it is bankruptcy. So at this stage I say to my client, *I need to know how much cash you can put together because I'm going to try to negotiate you out of this.* When you have a judgment like this the other party who owns it must file something in court called a

satisfaction of judgment. That means you have to come to terms with it. If you had an amount of money that you could walk into court and pay, you could do that, but you don't or you wouldn't be here in the first place. I told my client to get together the most money he could and tell me what it is so I have something to work with. It turned out in this instance that my client, by pulling every string he could pull, was able to get together about \$20,000. I called the attorney and said, *here's the situation for this guy, he's self-employed, la-di-dah.* He says, *I know all that -- I've run his credit rating; I know what you're telling me.* I said *well, then you know that his choices are to take bankruptcy or make a deal.* I said *what kind of cash would it take to settle this?* Negotiations took place, and long story short, I was able to get him out of that for about \$16,000.

**The Missouri Bar:** And once he paid that, what happens to his credit?

**Mr. Ferguson:** The judgment is satisfied; it's gone; it's like it never happened. He goes back to having whatever credit rating he deserves, and life is better. What I've described is the anatomy of how the process works. I hope that's helpful to people because at every stage you have the opportunity to negotiate. The amount of the debt isn't carved in stone. When this man paid the \$16,000 on the \$80,000, the hospital wrote off \$64,000.

**The Missouri Bar:** Is this what they do when they're dealing with somebody with insurance?

**Mr. Ferguson:** When they're dealing with the HMO or the PPO and they bill out \$80,000 and then they settle that with the HMO or the insurance carrier for \$37,000 or \$40,000, the rest of it is written off in a different way. It's a contractual write-off as opposed to a bad debt, but it all comes off in some fashion. People have the mistaken idea that if I pay so much a month they can't sue me and get a judgment. Wrong. There's no

magic amount. The magic amount is the amount of the bill. If you pay that, they can't sue you and get a judgment. If you pay anything less, they can. To summarize, if you can't make an agreement with the health care provider's own billing collection department, if you can't make a deal with the collection agencies, then you're left with dealing with the lawyer. If you can't make a deal with the lawyer and he takes a judgment against you, then you're down to either trying to deal on the judgment or file for bankruptcy.

**The Missouri Bar:** So people need to stick up for themselves? They need to be not afraid to negotiate and not allow their anger and frustration to get in the way of settling this debt.

**Mr. Ferguson:** It's about money and the people. I mean even the, obnoxious person at the collection agency probably has a spouse and kids to feed, too, and this is just how he happens to be making his money. Remember, he deals with a lot of true deadbeats, people who are out there who can afford to pay things, who are living in the cash economy and who are just ripping people off. There are people like that out there.

**The Missouri Bar:** And they make it harder for everybody else.

**Mr. Ferguson:** Of course they do. You can tell the collection person, *"Look, I'm going to do my best to see if we can settle this matter, but you're not going to advance your ball a bit by harassing me, okay, and if you harass me too much, you could step over the line and get yourself in trouble so let's not go that route, let's just talk about this person to person, let's determine whether I'm going to be able to make a deal with you or not. If I'm not I'll tell you so and you can send it on to the lawyer because I know that's the next step."*

**\* Mr. Ferguson practices with the firm of Lawrence W. Ferguson & Associates, Columbia, Mo.**

# Vehicle Repossession: Understanding the Rules of the Road

Chances are you rely on your vehicle to get you where you need to go — and when you need to go — whether it's to work, school, the grocery store, or the soccer field. But if you're late with your car payments, or in some states, if you don't have adequate auto insurance, your vehicle could be taken away from you.

When you finance or lease a vehicle, your creditor or lessor has important rights that end once you've paid off your loan or lease obligation. These rights are established by the contract you signed and the law of your state. For example, if you don't make timely payments on the vehicle, your creditor may have the right to "repossess" — or take back your car without going to court or warning you in advance. Your creditor also may be able to sell your contract to a third party, called an assignee, who may have the same right to seize the car as the original creditor.

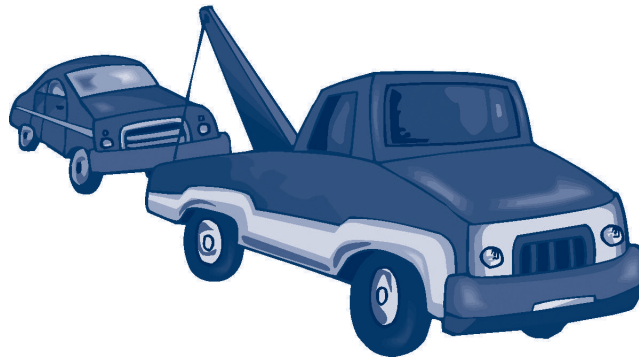
The Federal Trade Commission, the nation's consumer protection agency, wants you to know that your creditor's rights may be limited. Some states impose rules about how your creditor may repossess the vehicle and resell it to reduce or eliminate your debt. Creditors that violate any rules may lose other rights against you, or have to pay you damages.

## SEIZING THE VEHICLE

In many states, your creditor can seize your vehicle as soon as you default on your loan or lease. Your contract should state what constitutes a default, but failure to make a payment on time is a typical example. However, if your creditor agrees to change your payment date, the terms

of your original contract may not apply any longer. If your creditor agrees to such a change, make sure you have it in writing. Oral agreements are difficult to prove.

Once you are in default, the laws of most states permit the creditor to repossess your car at any time, without notice, and to come onto your



property to do so. But when seizing the vehicle, your creditor may not commit a "breach of the peace." In some states, that means using physical force, threats of force, or even removing your car from a closed garage without your permission.

Should there be a breach of the peace in seizing your car, your creditor may be required to pay a penalty or to compensate you if any harm is done to you or your property. A breach of peace also may give you a legal defense if your creditor sues you to collect a "deficiency judgment" — that is, the difference between what you owe on the contract (plus repossession and sale expenses) and what your creditor gets from the resale of your vehicle.

## SELLING THE VEHICLE

Once your vehicle has been repossessed, your creditor may decide to either keep it as compensation for your debt or resell it in a public or private sale. In some states, your

creditor must let you know what will happen to the car. For example, if the car will be sold at public auction, state law may require that the creditor tell you the time and place of the sale so that you can attend and participate in the bidding. If the vehicle will be sold privately, you may have a right to know the date of the sale.

In any of these circumstances, you may be entitled to "redeem" — or buy back — the vehicle by paying the full amount you owe (usually, that includes your past due payments and the entire remaining debt), in addition to the expenses connected with the repossession, like storage, preparation for sale, and attorney fees. Or you could try to buy back the vehicle by bidding on it at the repossession sale.

Some states have consumer protection laws that allow you to "reinstate" your loan. This means you can reclaim your car by paying the amount you are behind on your loan, together with your creditor's repossession expenses. Of course, if you reclaim your car, your future payments must be made on time, and you must meet the terms of your reinstated contract to avoid another repossession.

Any resale of a repossessed vehicle must be conducted in a "commercially reasonable manner." Your creditor doesn't have to get the highest possible price for the vehicle — or even a good price. But a resale price that is below fair market value may indicate that the sale was not commercially reasonable. "Commercially reasonable" may depend on the standard sales practices in your area. A creditor's failure to resell your car in a commercially reasonable manner may give you a claim against that creditor for damages or a defense against a deficiency judgment.

## PERSONAL PROPERTY IN THE VEHICLE

Regardless of the method used to dispose of a repossessed car, a creditor may not keep or sell any personal property found inside. In some states, your creditor must tell you what personal items were found in your car and how you can retrieve them. Your creditor also may be required to use reasonable care to prevent anyone else from removing your property from the car. If your creditor can't account for articles left in your vehicle, you may want to speak to an attorney about your right to compensation.

## PAYING THE DEFICIENCY

Any difference between what you owe on your contract (plus certain expenses) and what your creditor gets for reselling the vehicle is called a "deficiency." For example, if you owe \$10,000 on the car and your creditor sells it for \$7,500, the deficiency is \$2,500 plus any other fees you owe under the contract. Those might include fees related to the repossession and early termination of your lease or early payoff of your financing. In most states, your creditor is allowed to sue you for a deficiency judgment to collect the remaining amount owed as long as it followed the proper procedures for repossession and sale. Similarly, your creditor must pay you if there are surplus funds after the sale proceeds are applied to the outstanding contract obligation and related expenses, but this situation is less common.

You may have a legal defense against a deficiency judgment if, for example, your creditor breached the peace when seizing the vehicle, failed to sell the car in a commercially reasonable manner, or waited too long before suing you. An attorney will be able to tell you whether you have grounds to contest a deficiency judgment.

## ELECTRONIC DISABLING DEVICES

Some creditors might not provide you with financing unless you agree to the installation of an electronic device that prevents your car from starting if you do not make your payments on time. Depending on your contract with the lender and your state's laws, using that sort of device may be considered the same as a repossession or a breach of the peace. How your state treats the use of these devices could affect your rights. Contact your state consumer protection agency or an attorney if you have questions about the use of these devices in your state.

## TALKING WITH YOUR CREDITOR OR LESSOR

It's easier to try to prevent a vehicle repossession from taking place than to dispute it after the fact. Contact your creditor as soon as you realize you will be late with a payment. Many creditors work with consumers they believe will be able to pay soon, even if slightly late. You may be able to negotiate a delay in your payment or a revised schedule of payments. If you can reach an agreement to change your original contract, get it in writing to avoid questions later.

However, your creditor or lessor may refuse to accept late payments or make other changes in your contract — and may demand that you return the car. If you agree to a "voluntary repossession," you may reduce your creditor's expenses, which you would be responsible for paying. But even if you return the car voluntarily, you still are responsible for paying any deficiency on your contract, and your creditor still may enter the late payments or repossession on your credit report.

Finally, if you are facing, or already in, bankruptcy, ask an attorney for information about your rights to the vehicle during that process.

## FOR MORE INFORMATION

To learn more about your rights and specific repossession requirements in your state, contact your state Attorney General ([www.naag.org](http://www.naag.org)) or local consumer protection agency ([www.consumeraction.gov](http://www.consumeraction.gov)). You can get the phone numbers for these organizations in your phone book, through directory assistance, or through Web directories.

If you need help in dealing with your contract, consider contacting a credit counseling organization. Many credit counseling organizations are nonprofit and work with you to solve your financial problems. "Nonprofit" status is no guarantee that an organization's services are free, affordable, or even legitimate. In fact, some credit counseling organizations charge high fees, which may be hidden, or urge consumers to make "voluntary" contributions that can cause more debt. To learn more about credit counseling, see *Fiscal Fitness: Choosing a Credit Counselor* at [ftc.gov/credit](http://ftc.gov/credit).

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 [ftc.gov](http://ftc.gov) or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

**Source:** Federal Trade Commission  
<http://www.ftc.gov/bcp/edu/pubs/consumer/autos/aut14.shtm>

# Payday Lending Basics

## WHAT IS A PAYDAY LOAN?

Payday loans are small cash advances, usually of \$500 or less. To get a loan, a borrower gives a payday lender a postdated personal check or an authorization for automatic withdrawal from the borrower's bank account. In return, he receives cash, minus the lender's fees. For example, with a \$300 payday loan, a consumer might pay \$45 in fees and get \$255 in cash.

The lender holds the check or electronic debit authorization for a week or two (usually until the borrower's next payday). At that time, the borrower has the option of (1) paying back the \$300 in exchange for the original check, (2) letting the lender deposit the check for \$300, or (3) renewing or rolling over the loan, if he is unable to repay it. Some lenders accomplish the same effect with "back-to-back transactions," having the borrower write a check for a new advance, and using these funds to repay the prior loan. In renewal and back-to-back transactions, the borrower gets no "new" money, but pays another \$45 in fees.

## WHO USES PAYDAY LOANS?

The payday industry advertises these loans as quick and easy ways to get cash, and targets low-income working consumers, including welfare-to-work women, military personnel, and others who have little to no savings and live paycheck to paycheck. Most cash-strapped borrowers who get payday loans are not able to repay the whole loan within two weeks, and end up rolling over their loan and paying renewal fees multiple times. Trapped on this "debt treadmill", consumers typically pay much more in fees than the amount they originally borrowed.

Although payday loans are marketed as one-time assistance during

a financial emergency, a [2003 study \(PDF\)](#) by the Center for Responsible Lending found that 91% of all payday loans are made to borrowers with five or more payday loans per year. Borrowers, on average, receive 8 to 13 payday loans from a single payday lender per year. And, most payday



borrowers go to more than one lender, dramatically increasing their total number of payday loans per year. Only one percent (1%) of all payday loans are made to one-time emergency borrowers.

## WHAT IS REQUIRED TO GET A PAYDAY LOAN?

To get a payday loan, most consumers only need to show personal identification, have a personal checking account, and provide proof of income from employment or government benefits, such as Social Security or disability payments. Unlike conventional lenders, payday lenders do not look at a borrower's monthly expenses or her ability to repay the requested loan.

## WHAT ARE THE COSTS OF A PAYDAY LOAN?

For a two-week payday advance, a borrower will pay at least fifteen dollars for every \$100 borrowed. But with such a short duration these loan

fees are equal to roughly a 400% annual percentage rate (APR). And as the chart below shows, consumers who renew their loans often end up paying more in fees than they have borrowed!

For borrowers with five, ten, or even twenty repeat loans per year, payday lending functions as chronic debt, instead of helpful credit. These borrowers pay additional loan fees for no new money each time the loan is renewed. CRL estimates that predatory payday lending costs five million Americans **\$3.4 billion annually**.

The societal costs are also great. Since the payday lender is holding a "live check" as collateral, borrowers struggle to renew their payday loans every two weeks while falling behind on other bills, like rent, mortgage, electricity, and even groceries. As borrowers slide deeper and deeper into trouble, payday lenders get paid while other merchants and lenders do not. Social service agencies and faith-based groups pick up the tab for families in trouble.

## HOW BIG IS THE PAYDAY LENDING INDUSTRY?

Payday lending grew rapidly through the first half of the past decade, leveling off in recent years. In 2000, the industry consisted of 7,000 to 10,000 payday loan offices, rising to a peak of about 24,000 storefronts in 2006. Industry growth has slowed recently, with about 22,000 payday locations currently located in 35 states, which originate an estimated \$27 billion in annual loan volume. The great majority of payday loans are originated shortly after a previous loan is paid back, with half of new loans opened at the borrower's first opportunity, and 87 percent opened within two weeks. This borrower

churn inflates payday loan volume by over \$20 billion, each year, with three of every four loans generated by the debt trap. The churning of loans to borrowers each pay period costs these households \$3.5 billion in extra fees each year.

### **WHO MAKES PAYDAY LOANS?**

In the early 1990s, payday loans were made by small independent shops that primarily offered check-cashing services. Today, the industry is dominated by large regional or national “monoline” lenders that provide only payday loans, and multi-service lenders that offer an array of fringe banking services such as check

cashing, money orders, and bill paying services.

Banks are also becoming more active in this industry, by providing capital to payday lenders and entering into partnerships to originate payday loans in states that prohibit stand-alone payday lending (called “rent-a-charter” deals.)

### **HOW ARE PAYDAY LENDERS REGULATED?**

State laws generally govern whether payday lending is permitted in a state. Currently, some 36 states allow payday lending. However, several large payday lenders are using brokering arrangements or rent-a-charter

agreements with commercial banks to circumvent state bans and limits. In these cases, payday lenders evade state laws by invoking federal pre-emption through the Federal Deposit Insurance Act.

This practice is now under attack by some federal regulators and state attorneys general. For example, in Georgia and in Maryland, legislation has been enacted to prevent this kind of arrangement.

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# Steps You Can Take to Avoid Foreclosure

The thought of possible foreclosure is guaranteed to stress or alarm anyone having trouble making payments. It may feel like the end of the world, but it isn't. The better you understand the laws and business practices affecting real estate, the better able you will be to cope with the stresses and to find ways to avoid losing your home.

Perhaps you're having trouble making ends meet because you or a family member lost a job or received medical treatments that insurance didn't cover. Maybe you're one of the many people who took out a mortgage that has an adjustable rate, and you are now struggling with a higher payment. Regardless of the circumstances leading to your financial troubles, you can act to either avoid foreclosure or reduce its impact on your life and finances.

## Keep Informed; Don't Ignore the Problem

- The further behind you become, the harder it will be to hold onto your house.
- Contact your lender as soon as you realize that you have a problem.
- Lenders do not want your house. They have options to help borrowers through difficult financial times.
- Open and respond to all mail from your lender.

The first notices you receive will offer important information about foreclosure prevention options that can help you weather financial problems. Later mail may include notice of pending legal action. Your failure to open the mail will not be an acceptable excuse in court.

## Know Your Mortgage Rights

Find your loan documents and read them so you know what your lender may do if you can't make your

payments. Depending on what those documents say, you may face one of two different types of foreclosure – judicial foreclosure or a nonjudicial foreclosure under a power of sale. Nonjudicial Power of Sale Foreclosures — This is by far the most common type of foreclosure in Missouri. It can occur if a person misses payments on his/her house. The lender



may accelerate the loan and call the full balance to be due.

Judicial foreclosure – The lender must go to court and file a suit in order to foreclose.

## Contact a HUD-Approved Housing Counselor

The U.S. Department of Housing and Urban Development (HUD) funds free or very low cost housing counseling nationwide. Housing counselors can help you understand your options, organize your finances and represent you in negotiations with your lender if you need this assistance. To find a HUD approved housing counselor call (800) 569-4287 or TTY (800) 877-8339.

## Prioritize Your Spending

Review your finances and see where you can cut spending in order to make your mortgage payment. Look for optional expenses — cable TV, memberships, entertainment —

that you can eliminate. You might decide to delay payments on credit cards and other “unsecured” debt until you have paid your mortgage.

## Avoid Foreclosure Prevention Companies

You don't need to pay fees for foreclosure prevention help — use that money to pay the mortgage instead.

Many for-profit companies will contact you promising to negotiate with your lender. While these may be legitimate businesses, they will charge you a hefty fee (often two or three months' mortgage payments) for information and services your lender or a HUD approved housing counselor will provide free if you contact them.

## Don't Lose Your House to Foreclosure Recovery Scams!

If any firm claims they can stop your foreclosure immediately if you sign a document appointing them to act on your behalf, you may well be signing over the title to your property and becoming a renter in your own home! Never sign a legal document without reading and understanding all the terms and getting professional advice from an attorney, a trusted real estate professional, or a HUD approved housing counselor.

## Read the Small Print. Know What Kind of Mortgage You Have

Do you know what kind of mortgage you have? Do you know whether your payments are going to increase? If you can't tell by reading the mortgage documents you received at settlement, contact your loan servicer and ask. A loan servicer is responsible for collecting your monthly loan payments and crediting your account.

Here are some examples of types

of mortgages:

- **Hybrid Adjustable Rate Mortgages (ARMs):** Mortgages that have fixed payments for a few years, and then turn into adjustable loans. Some are called 2/28 or 3/27 hybrid ARMs: the first number refers to the years the loan has a fixed rate and the second number refers to the years the loan has an adjustable rate. Others are 5/1 or 3/1 hybrid ARMs: the first number refers to the years the loan has a fixed rate, and the second number refers to how often the rate changes. In a 3/1 hybrid ARM, for example, the interest rate is fixed for three years, then adjusts every year thereafter.

- **ARMs:** Mortgages that have adjustable rates from the start, which means your payments change over time.

- **Fixed Rate Mortgages:** Mortgages where the rate is fixed for the life of the loan; the only change in your payment would result from changes in your taxes and insurance if you have an escrow account with your loan lender.

If you have a hybrid ARM or an ARM and the payments will increase – and you have trouble making the increased payments – find out if you can refinance to a fixed-rate loan. Review your contract first, checking for prepayment penalties. Many ARMs carry prepayment penalties that force borrowers to come up with thousands of dollars if they decide to refinance within the first few years of the loan. If you're planning to sell soon after your adjustment, refinancing may not be worth the cost. But if you're planning to stay in your home for a while, a fixed-rate mortgage might be the way to go. Online calculators can help you determine your costs and payments.

### **Missed Payments? Here is What to Expect on Some Loans**

- **First month missed payment.** Technically, the foreclosure process can begin when you miss your first payment. Typically, your lender will

contact you by letter or phone. A housing counselor can help.

- **Second month missed payment** – your lender is likely to begin calling you to discuss why you have not made your payments. **It is important that you take their phone calls.** Talk to your lender and explain your situation and what you are trying to do to resolve it. At this time, you still may be able to make one payment to prevent yourself from falling three months behind. A housing counselor can help.

- **Third month missed payment** – after the third payment is missed, you can expect to receive a letter from your lender stating the amount you are delinquent, and that you have 30 days to bring your mortgage current. This is called a “Demand Letter.” It could be sent sooner, so don't assume you can miss up to three months' payments without consequence. If you do not pay the specified amount or make some type of arrangements by the given date, the lender may begin foreclosure proceedings. They are unlikely to accept less than the total due without arrangements being made if you receive this letter. **You still have time** to work something out with your lender. A housing counselor can still help.

- **Fourth month missed payment** – now you are nearing the end of time allowed in your Demand Letter. When the 30 days ends, if you have not paid the full amount or worked out arrangements you will be referred to your lender's attorneys. **You will incur all attorney fees** as part of your delinquency. A **housing counselor** can still help you.

- **Sheriff's or Public Trustee's Sale** – the attorney will schedule a sale. This is the actual day of foreclosure. You are notified of the date by certified mail and the sale is advertised in a local paper. The time between the Demand Letter and the actual sale varies by state. In Missouri, the Notice of Sale must precede the sale of the property by at least 20

days. This is not the move-out date, but the end is near. You have until the date of sale to make arrangements with your lender or pay the total amount owed, including attorney fees.

- **Redemption Period** – after the sale, you may have redemption rights if you properly exercised them before the sale. In Missouri, if the company that made the mortgage buys the property at the sale, you may have a one-year redemption period to buy back your property. Except for a very few situations, if someone else buys your property at sale, you have no right to redemption.

**Important:** Stay in contact with your lender and get assistance as early as possible. All dates are estimated and vary according to your state and your mortgage company.

### **Contacting Your Loan Lender or Servicer**

Before you have any conversation with your loan lender or the loan servicer, prepare. Record your income and expenses, and calculate the equity in your home. To calculate the equity, estimate the market value less the balance of your first and any second mortgage or home equity loan.

Then, write down the answers to the following questions:

- What happened to make you miss your mortgage payment(s)? Do you have any documents to back up your explanation for falling behind? How have you tried to resolve the problem?

- Is your problem temporary, long-term, or permanent? What changes in your situation do you see in the short term, and in the long term? What other financial issues may be stopping you from getting back on track with your mortgage?

- What would you like to see happen? Do you want to keep the home? What type of payment arrangement would be feasible for you? Throughout the foreclosure prevention process:

- Keep notes of all your communications with the lender and/or servicer, including date and time of contact, the nature of the contact (face-to-face, by phone, email, fax or postal mail), the name of the representative, and the outcome.

- Follow up any oral requests you make with a letter. Send your letter by certified mail, “return receipt requested,” so you can document what the lender received. Keep copies of your letter and any enclosures.

### **Meet All Deadlines the Lender Gives You.**

Stay in your home during the process, since you may not qualify for certain types of assistance if you move out. Renting your home will change it from a primary residence to an investment property. Most likely, it will disqualify you for any additional “workout” assistance from the lender. If you choose this route, be sure the rental income is enough to help you get and keep your loan current.

### **Avoiding Default and Foreclosure: The Options**

If you have fallen behind on your payments, consider discussing the following foreclosure prevention options with your loan lender:

**Reinstatement:** You pay the loan lender the entire past-due amount, plus any late fees or penalties and attorney fees, by a date you both agree to. This option may be appropriate if your problem paying your mortgage is temporary.

**Repayment plan:** Your lender gives you a fixed amount of time to repay the amount you are behind by adding a portion of what is past due to your regular payment. This option may be appropriate if you’ve missed a small number of payments.

**Forbearance:** Your mortgage payments are reduced or suspended for a period. At the end of that time, you resume making your regular payments as well as a lump sum pay-

ment or additional partial payments for a number of months to bring the loan current. Forbearance may be an option if your income is reduced temporarily (for example, you are on disability leave from a job, and you expect to go back to your full time position shortly). Forbearance isn’t going to help you if you’re in a home you can’t afford.

**Loan modification:** You and your loan lender agree to permanently change one or more of the terms of the mortgage contract to make your payments more manageable for you. Modifications may include reducing the interest rate, extending the term of the loan, or adding missed payments to the loan balance. A modification also may involve reducing the amount of money you owe on your primary residence by forgiving, or cancelling, a portion of the mortgage debt.

Before you ask for forbearance or a loan modification, be prepared to show that you are making a good-faith effort to pay your mortgage. For example, if you can show that you’ve reduced other expenses, your loan lender may be more likely to negotiate with you.

**Selling your home:** Depending on the real estate market in your area, selling your home may provide the funds you need to pay off your current mortgage debt in full.

**Bankruptcy:** Personal bankruptcy generally is considered the debt management option of last resort because the results are long-lasting and far-reaching. A bankruptcy stays on your credit report for 10 years, and can make it difficult to get credit, buy another home, get life insurance, or sometimes, get a job. Still, it is a legal procedure that can offer a fresh start for people who can’t satisfy their debts.

If you and your loan lender cannot agree on a repayment plan or other remedy, you may want to investigate filing bankruptcy. If you have a regular income, Chapter 13 may allow

you to keep property, like a mortgaged house or car, that you might otherwise lose. In Chapter 13, the court approves a repayment plan that allows you to use your future income toward payment of your debts during a three-to-five-year period, rather than surrender the property. After you have made all the payments under the plan, you receive a discharge of certain debts.

### **Consider Giving Up Your Home Without Foreclosure**

Not every situation can be resolved through your loan lender’s foreclosure prevention programs. If you’re not able to keep your home, or if you don’t want to keep it, consider:

**Selling Your House:** Your lenders might postpone foreclosure proceedings if you have a pending sales contract. This approach works if proceeds from the sale can pay off the entire loan balance plus the expenses connected to selling the home (for example, real estate agent fees). Such a sale would allow you to avoid late and legal fees and damage to your credit rating, and protect your equity in the property.

**Short Sale:** Your lender may allow you to sell the home yourself before it forecloses on the property, agreeing to forgive any shortfall between the sale price and the mortgage balance. This approach avoids a damaging foreclosure entry on your credit report.

**Deed in Lieu of Foreclosure:** You voluntarily transfer your property title to the lender (with the lender’s agreement) in exchange for cancellation of the remainder of your debt. Though you lose the home, a deed in lieu of foreclosure can be less damaging to your credit than a foreclosure. You will lose any equity in the property. A deed in lieu of foreclosure may not be an option for you if other loans or obligations are secured by the property on your home.

## **Be Alert to Scams**

Scam artists follow the headlines, and know there are homeowners falling behind in their mortgage payments or at risk for foreclosure. Their pitches may sound like a way for you to get out from under debt, but their intentions are far from honorable. They mean to take your money. Among the predatory scams that have been reported are:

**The foreclosure prevention specialist:** The “specialist” really is a phony counselor who charges high fees in exchange for making a few phone calls or completing some paperwork that a homeowner could easily do himself. None of the actions results in saving the home. This scam gives homeowners a false sense of hope, delays them from seeking qualified help, and exposes their personal financial information to a fraudster.

Some of these companies even use names with the word HOPE or HOPE NOW in them to confuse borrowers

who are looking for assistance from the free 888-995-HOPE hotline.

**The lease/buy back:** Homeowners are deceived into signing over the deed to their home to a scam artist who tells them they will be able to remain in the house as a renter and eventually buy it back. Usually, the terms of this scheme are so demanding that the buy-back becomes impossible, the homeowner gets evicted, and the “rescuer” walks off with most or all of the equity.

**The bait-and-switch:** Homeowners think they are signing documents to bring the mortgage current. Instead, they are signing over the deed to their home. Homeowners usually don’t know they’ve been scammed until they get an eviction notice.

## **Tax Considerations**

Under the Mortgage Forgiveness Debt Relief Act of 2007, forgiven debt may be excluded from income when calculating the federal taxes

you owe, but it still must be reported on your federal tax return. For more information, see [www.irs.gov](http://www.irs.gov), and consider consulting a financial advisor, accountant or attorney.

This brochure is intended as general information about the law and legal system. It is not to be considered as legal advice for your specific situation. For legal advice see your lawyer. If you need help finding a lawyer, The Missouri Bar offers a free Lawyer Search function, located at [Missouri-LawyersHelp.org](http://Missouri-LawyersHelp.org). Those seeking representation can use the tool to locate lawyers by practice area, geographic location, and spoken language.

The Missouri Bar or the Office of Chief Disciplinary Counsel cannot provide legal advice or refer you to an attorney, but for a referral to an attorney in the Springfield or Greene County area, call (417) 831-2783.

*Steps You Can Take to Avoid Foreclosure* is a publication of The Missouri Bar.

# For People on Debt Management Plans: A Must-Do-List

Reputable credit counseling organizations employ counselors who are certified and trained in consumer credit, money and debt management, and budgeting. Those organizations that are nonprofit have a legal obligation to provide education and counseling.

But not all credit counseling organizations provide these services. Some charge high fees, not all of which are disclosed, or urge you to make “voluntary” contributions that can cause you to fall deeper into debt. Many claim that a debt management plan is your only option before they spend time reviewing your financial situation, and offer little or no consumer education and counseling. Others misrepresent their nonprofit status or fraudulently obtained nonprofit status by misrepresenting their business practices to regulators.

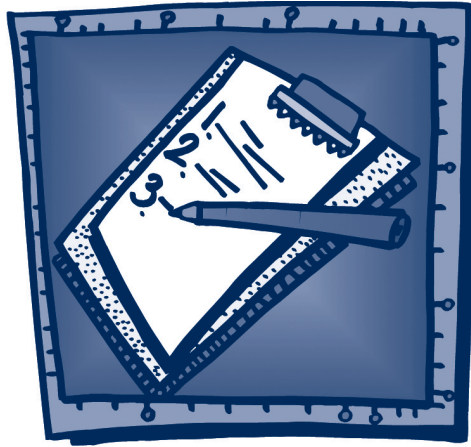
The Federal Trade Commission (FTC), the nation’s consumer protection agency, and some state Attorneys General have sued several companies that called themselves credit counseling organizations. The FTC and the states said these companies deceived consumers about the cost, nature, and benefits of the services they ordered; some companies even lied about their nonprofit status. Several of these companies are now going out of business. Similar companies also may be shutting their doors, even though they haven’t been sued by the FTC or the states. That could be of special concern if you have a debt management plan with one of these companies.

## MUST-DOS FOR ANYONE WITH A DMP

Organizations that advertise credit counseling often arrange for consumers to pay debts through a debt management plan (DMP). In a DMP, you deposit money each month with a credit counseling organization. The

organization uses these deposits to pay your credit card bills, student loans, medical bills, or other unsecured debts according to a payment schedule they’ve worked out with you and your creditors. Creditors may agree to lower interest rates or waive certain fees if you are repaying through a DMP.

The FTC has found that some



organizations that offer DMPs have deceived and defrauded consumers, and recommends that consumers check their bills to make sure that the organization fulfills its promises. If you are paying through a DMP, contact your creditors and confirm that they have accepted the proposed plan before you send any payments to the organization handling your DMP. Once the creditors have accepted the DMP, it is important to:

- make regular, timely payments.
- always read your monthly statements promptly to make sure your creditors are getting paid according to your plan.
- contact the organization responsible for your DMP if you will be unable to make a scheduled payment, or if you discover that creditors are not being paid.

You need to be aware that if payments to your DMP and creditors are not made on time, you could lose

the progress you’ve made on paying down your debt, or the benefits of being in a DMP including interest rates and fee waivers. Although creditors may have forgiven late payments that you made before you began the DMP the creditors may be unwilling or unable to do so if payments are late after you have enrolled in a DMP. If you fall behind on your payments, you may not be able to have your accounts “re-aged” again (reported as current), even if you start a new DMP with a new counselor. That means your credit report will have “late” marks and you will rack up late fees, which, in turn, will lead to more debt that could take longer to pay off.

## IF YOUR CREDIT COUNSELOR HAS GONE OUT OF BUSINESS

What happens to your DMP if the credit counseling company that managed your debts shuts down? A counseling agency that is going out of business may send you a notice telling you that your DMP is being transferred to another company. Or it may tell you that you need to take some action to keep your financial recovery on track. If a government agency has led an action against your credit counseling company, you may get a notice from a third party. If you discover that the organization handling your DMP is going out of business you need to:

- contact your bank to stop payment if you are making your DMP payments through automatic withdrawal.
- start paying your bills directly to your creditors.
- consider working out a payment plan with your creditor, yourself. Ask if they will give you a reduction on your interest rate without a DMP.
- order a copy of your credit report. Check for late payments – or missed DMP payments – that may result

from the company going out of business. If you see “late” notations you don’t expect, call the creditor immediately and ask that the notation be removed. Understand that they have no obligation to do it.

If payments are late because the organization handling your DMP has failed to make scheduled payments, the consequences can be just as devastating as if you failed to make payments to the DMP. If you do not act quickly to make arrangements with your creditors, you could incur late charges that increase your debt, lose the lower interest rates associated with the DMP, and have “late” marks on your credit report.

## **IMPORTANT QUESTIONS TO ASK WHEN CHOOSING A CREDIT COUNSELOR**

If the organization you were working with shuts down, you may be able to work a payment plan on your own directly with your creditors. But if you decide that you need additional credit advice and assistance, or if you are considering working with a credit counselor for the first time, asking questions like these can help you find the best counselor for you.

1. What services do you offer? Look for an organization that offers a range of services, including budget counseling, savings and debt management classes, and counselors who are trained and certified in consumer credit, money and debt management, and budgeting. Counselors should discuss your entire financial situation with you, and help you develop a personalized plan to solve it. If you were on a DMP with an organization that closed down, ask any credit counselor that you are considering what they can do to help you retain the benefits of your DMP.

2. Are you licensed to offer your services in my state? Many states require that an organization register or obtain a license before offering credit counseling, debt management plans, and similar services. Do not hire an organization that has not fulfilled the

requirements for your state.

3. Do you offer free information? Avoid organizations that charge for information about the nature of their services.

4. Will I have a formal written agreement or contract with you? Don’t commit to participate in a DMP over the telephone. Get all verbal promises in writing.

Read all documents carefully before you sign them. If you are told you need to act immediately, consider finding another organization.

5. What are the qualifications of your counselors? Are they accredited or certified by an outside organization? If so, which one? If not, how are they trained?

Try to use an organization whose counselors are trained by an outside organization that is not affiliated with creditors.

6. Have other consumers been satisfied with the service that they received? Once you’ve identified credit counseling organizations that suit your needs, check them out with your state Attorney General, local consumer protection agency, and Better Business Bureau. These organizations can tell you if consumers have filed complaints about them. The absence of complaints doesn’t guarantee legitimacy, but complaints from other consumers may alert you to problems.

7. What are your fees? Are there set-up and/ or monthly fees? Get a detailed price quote in writing, and specifically ask whether all the fees are covered in the quote. If you’re concerned that you cannot afford to pay your fees, ask if the organization waives or reduces fees when providing counseling to consumers in your circumstances. If an organization won’t help you because you can’t afford to pay, look elsewhere for help.

8. How are your employees paid? Are the employees or the organization paid more if I sign up for certain services, pay a fee, or make a contribution to your organization? Employees who are counseling you to purchase certain services may receive a commission if you choose to sign up for

those services. Many credit counseling organizations receive additional compensation from creditors if you enroll in a DMP. If the organization will not disclose what compensation it receives from creditors, or how employees are compensated, go elsewhere for help.

9. What do you do to keep personal information about your clients (for example, name, address, phone number, and financial information) confidential and secure?

Credit counseling organizations handle your most sensitive financial information. The organization should have safeguards in place to protect the privacy of this information and prevent misuse.

## **FOR MORE INFORMATION**

The FTC publishes a series of free publications on credit and financial issues, including *Fiscal Fitness: Choosing a Credit Counselor* and *Knee Deep in Debt*. They are available at [ftc.gov/credit](http://ftc.gov/credit), or by calling toll-free: 1-877-FTC-HELP. 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 [ftc.gov](http://ftc.gov) or call toll-free, 1877-FTC-HELP (1-877-382-4357); TTY: 1-866653-4261. 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.

**Source:** Federal Trade Commission  
<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre38.shtm>

# Bankruptcy

## What These Words Mean

**Credit:** Financial trustworthiness; a person with good credit will be more likely to get loans in the future; a person with bad credit will be less likely to get loans

**Credit Reporting Agency:** A company that collects credit information and tells people who are about to loan you money whether you have paid back loans in the past and whether you pay your bills on time

**Creditor:** The person to whom you owe a debt

**Debt:** The amount of money you owe a creditor

**Debtor:** A person who files bankruptcy

**Discharge:** At the end of a bankruptcy case, a court order relieving debtors of personal liability for their debts; a debt that is discharged in bankruptcy need not be paid unless it is secured by property that the debtor wants to keep

**Equity:** The amount that your property is worth over the amount you owe on it; for example, if your car is worth \$5,000 and you owe the bank \$3,000 on it, your equity in the car is \$2,000

**Exempt Property:** Property that a person may keep even though they have declared bankruptcy; exempt property is claimed by filing exemptions in the bankruptcy case

**File:** To give a paper to the court either by mail or electronically

**Lien:** Also called a *security interest*; if a creditor has a lien on a piece of your property and you do not pay the loan off, the creditor can take the property from you, even if you have filed bankruptcy, unless you are able to get rid of the lien or redeem the property.

**Plan:** The payment plan that a debtor files in bankruptcy (except Chapter 7)

**Schedules:** The debtor's lists of property, debts, and income and expenses that are filed in a bankruptcy case

**Trustee:** The person (usually an attorney) who handles your bankruptcy; the trustee sells your non-exempt property in a Chapter 7 or collects payments from you and pays your creditors in a Chapter 13



### WHAT IS BANKRUPTCY?

In bankruptcy, a person or business may restructure debt payments or discharge debts. There are four major forms of bankruptcy, two that are limited to individuals (or married couples) and two that are primarily for businesses.

For individuals, the two basic types of bankruptcy are Chapter 7 and Chapter 13. In Chapter 7, which is called "liquidation," a debtor's non-exempt property will be sold and his or her debts are discharged. In Chapter 13, which is called "debt adjustment," a person's debts can be paid off, in whole or in part, under a plan proposed by the debtor and approved by the court.

Chapter 11 bankruptcy is a payment plan or liquidation process for businesses and some individuals, and Chapter 12 bankruptcy is a payment plan for family farmers. A filing fee is

required for all bankruptcy cases; the amount of the fee varies depending on the type of case filed. Filing fees may be waived for persons below 150 percent of the official poverty line, or they may be paid in installments.

As soon as a debtor files bankruptcy, creditors (except those owed domestic support obligations and certain others) must stop trying to collect the money owed to them and must

look to the bankruptcy trustee for payment (if any). A person is allowed to keep some property (called "exempt property") even though he or she files bankruptcy. In Missouri, the major exemptions are: \$15,000 worth of equity in a house (or \$5,000 if a mobile home), \$3,000 worth of equity per person in a car, \$3,000 worth of equity per person in household goods and furnishings, the cash value in life insurance policies up to \$150,000 per person, certain pension and retirement benefits, and \$3,000 of value in tools of the trade.

Usually, both debtors and creditors want to avoid bankruptcy, so it sometimes is possible for them to work together to avoid bankruptcy through workout arrangements. Workout arrangements are often handled by groups or lawyers providing debt counseling. Bankruptcy will likely have a significant negative impact on your credit. This means you may not be able to get loans in the future. The Fair Credit Reporting Act allows bankruptcies to be reported for 10 years on your credit report. You have certain rights as to what information is included on your credit report.

### WHAT IS THE BANKRUPTCY COURT SYSTEM?

The bankruptcy court is a federal court that handles only bankruptcy cases. Bankruptcy cases filed by indi-

viduals (other than Chapter 11 cases) are assigned to a trustee, a person independent of the court who will supervise the case. Your lawyer will help you complete the paperwork and give you valuable advice.

## **WHAT IS CHAPTER 7 BANKRUPTCY?**

Chapter 7 bankruptcy is designed to discharge debt. The trustee will collect all of the property that is not exempt and sell it to pay creditors. After this is done, the debtor will no longer owe the creditors any money. Debtors usually are able to keep their houses and cars in Chapter 7, but they must continue to pay the loans on them as if they had not filed bankruptcy. Debtors may also return property and not have to pay any more on the debt. Debtors may also pay what the property is now worth and keep the property.

Sometimes creditors take liens on furniture or household goods to make sure the debtor pays the debt on some other property; the debtor may have these liens removed in bankruptcy. Some debts will not be discharged in bankruptcy. These include debts involving fraud, debts arising from accidents involving drunken driving, guaranteed student loans, certain taxes, and alimony and child support. Also, a person who has enough income to pay all or most of his debts may not be permitted to file Chapter 7 bankruptcy and may be required to file Chapter 13 instead.

## **WHAT IS CHAPTER 13 BANKRUPTCY?**

In Chapter 13 bankruptcy, the debtor proposes a payment plan to the court and his or her creditors. The plan cannot be longer than 60 months. In many cases, the debtor may not have to pay his or her debts in full, but the plan must pay creditors at least as much as the creditors would receive in a Chapter 7 bankruptcy. A Chapter 13 debtor must

have reliable, regular income to make a plan successful. Only individuals may file Chapter 13; corporations and partnerships are not eligible.

A person with unsecured debts of more than \$336,900 and secured debts of more than \$1,010,650 is not eligible to file Chapter 13 bankruptcy.

In a Chapter 13 case, a trustee reviews the debtor's bankruptcy schedules and payment plan. Then the bankruptcy court must approve the debtor's payment plan. Creditors as well as the trustee may object to the plan. If the court approves the plan, the trustee collects payments from the debtor and pays the creditors. In Chapter 13, the debtor keeps all of his or her property.

The debtor is not discharged from the debts until the payment plan is finished. More types of debt can be discharged in Chapter 13 than in Chapter 7, but debts for fraud, criminal restitution, debts arising from accidents involving drunken driving, and student loans may not be discharged in Chapter 13.

## **WHAT IS CHAPTER 12 BANKRUPTCY?**

Chapter 12 bankruptcy is a special chapter for "family farmers" that is intended to enable farmers to keep their farms and continue their farming operations. A "family farmer" is a person or business that receives at least 50% of his or her income from farming. A family farmer may not file Chapter 12 bankruptcy unless at least 80% of his or her debts are related to the farm and the total debts are less than \$3,544,525. In Chapter 12 bankruptcy, the debtor proposes a payment plan to the court and the creditors that shows how the debtor will pay the debts over time. The debtor must pay the creditors at least as much as they would receive in a Chapter 7 bankruptcy.

The payment plan must be approved by the bankruptcy court. A trustee reviews the debtor's sched-

ules and payment plan. Unlike in Chapter 13, the creditors may make only limited objections to the plan in Chapter 12. If the court approves the debtor's plan, the trustee collects payments from the debtor and pays the creditors; often, however, the debtor makes the payments to the creditors in Chapter 12. The debtor will be discharged from the debts when the plan is finished.

## **WHAT IS CHAPTER 11 BANKRUPTCY?**

Chapter 11 bankruptcy is available to any individual, husband and wife, partnership or corporation. Most Chapter 11 cases are filed by larger businesses. Individuals sometimes file Chapter 11 cases because their debts exceed the debt ceilings for Chapter 13 cases. The debtor is allowed to continue to operate its business while working on a plan to restructure debts or sell assets to pay creditors. A Chapter 11 debtor must pay its creditors more than they would receive under Chapter 7 bankruptcy.

A Chapter 11 plan must be approved by the bankruptcy court. The creditors can object to a proposed plan and will have a chance to vote on whether the court should approve the plan.

For legal advice see your lawyer. If you need help finding a lawyer, The Missouri Bar offers a free Lawyer Search function, located at [MissouriLawyer-sHelp.org](http://MissouriLawyer-sHelp.org). Those seeking representation can use the tool to locate lawyers by practice area, geographic location, and spoken language.

The Missouri Bar or the Office of Chief Disciplinary Counsel cannot provide legal advice or refer you to an attorney, but if you would like a referral to an attorney in the Springfield or Greene County area, call (417) 831-2783.

*Bankruptcy* is a publication of The Missouri Bar.



# Credit Reports & Scoring

## MICROSITES

- **Getting Credit** <http://www.ftc.gov/gettingcredit/>

Provides tips on shopping for credit cards, using cards carefully, and keeping your credit record clean. Also explains credit reports and credit scores, how to protect your identity, improve your credit record, and what to do if you are a victim of identity theft. A good source of information for people learning about credit.

## FACTS FOR CONSUMERS

- **Building a Better Credit Report** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre03.pdf>

Learn how to legally improve your credit report, how to deal with debt, how to spot credit-related scams, and more.

- **Choosing A Credit Card: The Deal is in the Disclosures** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre05.pdf>

Explains credit card terms, how your balance is computed, and how to shop for the best deal. Outlines cardholder protections.

- **Credit and Divorce** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre08.pdf>

Encourages recently divorced consumers, and those contemplating divorce, to look closely at issues involving credit. Understanding the different kinds of credit accounts opened during a marriage may help illuminate the potential benefits – and pitfalls – of each.

- **Credit Repair: How To Help Yourself** [PDF] [en español] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre10.pdf>

[www.ftc.gov/bcp/edu/pubs/consumer/credit/cre13.pdf](http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre13.pdf)

Cautions consumers about companies that charge hundreds, even thousands of dollars, but don't deliver on their claims. Truth is, no one can legally remove accurate negative information from a credit report. Explains how to legitimately improve your creditworthiness.



- **Employment Background Checks and Credit Reports** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre36.pdf>

Explains employer responsibilities and consumer rights when using information in credit reports to evaluate applications for employment, as well as employee retention, promotion or reassignment. Advises consumers to review their credit reports before applying for a job.

- **The Federal Trade Commission Presents Focus on Finances: Preparing For Your Future** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/general/gen18.pdf>

A newspaper supplement to help educate young people about credit, identity theft, and buying a car.

- **File Segregation: New ID Is a Bad Idea** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre23.pdf>

You're promised a chance to hide unfavorable credit information by establishing a new credit identity. The problem: "File segregation" is illegal. If you use it, you could face fines or even a prison sentence. 8.5"x11", 4 pages, color.

- **Getting Credit: What You Need to Know About Your Credit** [PDF] [en español] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre23.pdf>

Provides tips on shopping for credit cards, using cards carefully, and keeping your credit record clean. Also explains credit reports and credit scores, how to protect your identity, improve your credit record, and what to do if you are a victim of identity theft. A good source of information for people learning about credit. Includes a dedicated Web page for more information -- [www.ftc.gov/gettingcredit](http://www.ftc.gov/gettingcredit).

- **Getting Credit When You're Over 62** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre09.pdf>

Under the federal Equal Credit Opportunity Act, it's against the law for a creditor to deny you credit or terminate existing credit simply because of your age. Explains your rights and offers tips for applying for and maintaining credit.

- **How to Dispute Credit Report Errors** [PDF] [en español] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre21.pdf>

Explains how to dispute and correct inaccurate information in your credit report. Includes a sample dispute letter.

- **Need Credit or Insurance? Your Credit Score Helps Determine What You'll Pay** [PDF]

Explains the system creditors and insurance companies use to help determine whether to grant you credit or insurance, and on what terms.

- **Prescreened Offers of Credit and Insurance** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.pdf>

Many companies that solicit new credit card accounts and insurance policies use prescreening to identify potential customers for the products they offer. 8.5"x11", 4 pages, color.

- **Remedying the Effects of Identity Theft** [PDF] [en español] <http://www.ftc.gov/bcp/edu/pubs/consumer/idtheft/idth09.pdf>

- **Summary of Your Rights Under the Fair Credit Reporting Act** [PDF] [en español] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre35.pdf>

- **What's Behind Ads for a New Credit Identity? It Could Be ID Theft Involving Children's Social Security Numbers** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre45.pdf>

Companies that advertise "new credit identities" may really be selling Social Security numbers stolen from children. Applying for credit using those numbers can involve people in a federal crime. 8.5"x11", 4 pages, color.

- **Your Access to Free Credit Reports** [PDF] [en español] <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre34.pdf>

Learn how to order a free copy of your credit report from each of the nationwide consumer reporting companies — Equifax, Experian, and TransUnion — once every 12 months.

## CONSUMER ALERTS

- **Want a Free Annual Credit Report? The Only Official Website is annualcreditreport.com** [PDF] [en español] <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt156.pdf>

To alert consumers that there is only one website providing free annual credit reports under Federal law: annualcreditreport.com, and to warn consumers about "imposter" sites.

- **Bogus July 1 Email Exposed: The Real Deal on Your Credit File Privacy** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt096.pdf>

An anonymous email containing false and misleading information about the use of your personal information has shown up in email in-boxes across the country for the last several years, leaving many consumers concerned and confused. Here's the real deal from the Federal Trade Commission

- **Credit Repair: How to DIY and Avoid a Scam** [PDF] [en español] <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt097.pdf>

Cautions consumers about companies that charge hundreds, even thousands of dollars, but don't deliver on their claims. The truth is, no one can legally remove accurate negative information from a credit report.

- **Fake Credit Reports: Cashing in on Your Personal Information** [PDF] [en español] <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt130.pdf>

Learn how to protect yourself from a high-tech scam known as "phishing." Some Web sites or unsolicited emails offering credit reports may be using bogus sites as a way to capture your personal information and sell it to others who may use it to commit fraud, including identity theft.

- **Negative Credit Can Squeeze a Job Search** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt053.pdf>

- **Shopping for a Mortgage? Your Application May Trigger Competing Offers** [PDF] <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt171.pdf>

Explains how consumers applying for a mortgage may receive competing offers based on prescreening from information in their credit report. Explains how to opt out of prescreening, if you choose. 8.5"x 11", 2 pages.

**Articles** You can reprint these articles in your newsletter, magazine or website.

- **Consumers Are Eligible For Free Credit Reports** [PDF] <http://www.ftc.gov/bcp/edu/pubs/articles/naps01.pdf>

Learn how to get a free copy of your credit report from each of the three nationwide consumer reporting companies once every twelve months.

- **Protect Yourself From Credit Repair Scams** [PDF] <http://www.ftc.gov/bcp/edu/pubs/articles/naps01.pdf>

Warns consumers that no one can remove accurate negative information from your credit report. Offers tip-offs to rip-offs.

- **Your Credit Score Helps Determine What You'll Pay For Credit And Insurance** [PDF] <http://www.ftc.gov/bcp/edu/pubs/articles/naps30.pdf>

Explains the system creditors and insurance companies use to help determine whether to grant you credit or insurance, and on what terms.

# How to Dispute Credit Report Errors

Your credit report contains information about where you live, how you pay your bills, and whether you've been sued or arrested, or have filed for bankruptcy. Credit reporting companies sell the information in your report to creditors, insurers, employers, and other businesses that use it to evaluate your applications for credit, insurance, employment, or renting a home. The federal Fair Credit Reporting Act (FCRA) promotes the accuracy and privacy of information in the files of the nation's credit reporting companies.

Some financial advisors and consumer advocates suggest that you review your credit report periodically. Why?

- Because the information it contains affects whether you can get a loan — and how much you will have to pay to borrow money.

- To make sure the information is accurate, complete, and up-to-date before you apply for a loan for a major purchase like a house or car, buy insurance, or apply for a job.

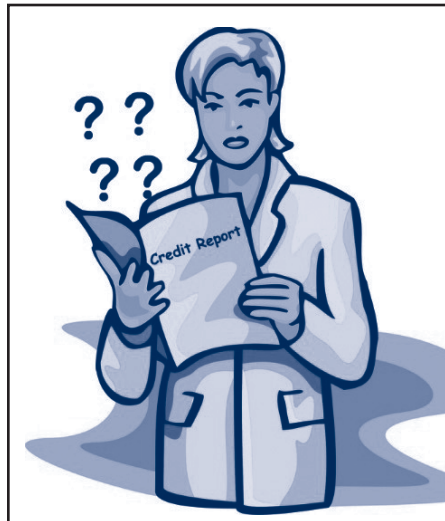
- To help guard against identity theft. That's when someone uses your personal information — like your name, your Social Security number, or your credit card number — to commit fraud. Identity thieves may use your information to open a new credit card account in your name. Then, when they don't pay the bills, the delinquent account is reported on your credit report. Inaccurate information like that could affect your ability to get credit, insurance, or even a job.

## GETTING YOUR CREDIT REPORT

An amendment to the FCRA requires each of the nationwide credit reporting companies — Experian, TransUnion, and Equifax — to provide you with a free copy of your credit report, at your request, once every 12 months.

## HOW TO ORDER YOUR FREE REPORT

The three nationwide credit reporting companies have set up one website, toll-free telephone number, and mailing address through which you can order your free annual report. To order, visit [annualcreditreport.com](http://annualcreditreport.com), call 1-877-322-8228, or complete the Annual Credit Report Request Form



and mail it to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281. You can use the form in this brochure, or you can print it from [ftc.gov/credit](http://ftc.gov/credit). Do not contact the three nationwide credit reporting companies individually. They are providing free annual credit reports only through [annualcreditreport.com](http://annualcreditreport.com), 1-877-322-8228, and Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281.

You may get your free reports from each of the three nationwide credit reporting companies at the same time, or from only one or two. The law allows you to get one free report from each of the nationwide credit reporting companies every 12 months.

You need to provide your name, address, Social Security number, and date of birth. If you have moved in

the last two years, you may have to provide your previous address. To maintain the security of your file, each nationwide credit reporting company may ask you for some information that only you would know, like the amount of your monthly mortgage payment. Each company may ask you for different information because the information each has in your file may come from different sources.

## Other situations where you might be eligible for a free report

Under federal law, you're also entitled to a free report if a company takes adverse action against you, such as denying your application for credit, insurance, or employment, based on information in your report. You must ask for your report within 60 days of receiving notice of the action. The notice will give you the name, address, and phone number of the credit reporting company.

You're also entitled to one free report a year if you're unemployed and plan to look for a job within 60 days; if you're on welfare; or if your report is inaccurate because of fraud, including identity theft.

Otherwise, a credit reporting company may charge you up to \$10.50 for another copy of your report within a 12-month period. To buy a copy of your report, contact:

Experian - 1-888-397-3742; [experian.com](http://experian.com)

TransUnion - 1-800-916-8800; [transunion.com](http://transunion.com)

Equifax - 1-800-685-1111; [equifax.com](http://equifax.com)

Under state law, consumers in Colorado, Georgia, Maine, Maryland, Massachusetts, New Jersey, and Vermont already have free access to their credit reports.

For details, see Your Access to Free Credit Reports at [ftc.gov/credit](http://ftc.gov/credit).

## CORRECTING ERRORS

Under the FCRA, both the credit reporting company and the informa-

tion provider (that is, the person, company, or organization that provides information about you to a credit reporting company) are responsible for correcting inaccurate or incomplete information in your report. To take advantage of all your rights under this law, contact the credit reporting company and the information provider.

### Step One

Tell the credit reporting company, in writing, what information you think is inaccurate. Include copies (NOT originals) of documents that support your position. In addition to providing your complete name and address, your letter should clearly identify each item in your report you dispute, state the facts and explain why you dispute the information, and request that it be removed or corrected. You may want to enclose a copy of your report with the items in question circled. Your letter may look something like the one on page 4. Send your letter by certified mail, “return receipt requested,” so you can document what the credit reporting company received. Keep copies of your dispute letter and enclosures. Credit reporting companies must investigate the items in question — usually within 30 days — unless they consider your dispute frivolous. They also must forward all the relevant data you provide about the inaccuracy to the organization that provided the information. After the information provider receives notice of a dispute from the credit reporting company, it must investigate, review the relevant information, and report the results back to the credit reporting company. If the information provider finds the disputed information is inaccurate, it must notify all three nationwide credit reporting companies so they can correct the information in your file. When the investigation is complete, the credit reporting company must give you the results in writing and a free copy of your report if the dispute results in a change. This free report does not count as your annual free report. If an item is changed or deleted, the credit reporting company cannot

put the disputed information back in your file unless the information provider verifies that it is accurate and complete. The credit reporting company also must send you written notice that includes the name, address, and phone number of the information provider.

If you ask, the credit reporting company must send notices of any corrections to anyone who received your report in the past six months. You can have a corrected copy of your report sent to anyone who received a copy during the past two years for employment purposes. If an investigation doesn’t resolve your dispute with the credit reporting company, you can ask that a statement of the dispute be included in your file and in future reports. You also can ask the credit reporting company to provide your statement to anyone who received a copy of your report in the recent past. You can expect to pay a fee for this service.

### Step Two

Tell the creditor or other information provider, in writing, that you dispute an item. Be sure to include copies (NOT originals) of documents that support your position. Many providers specify an address for disputes. If the provider reports the item to a credit reporting company, it must include a notice of your dispute. And if you are correct — that is, if the information is found to be inaccurate — the information provider may not report it again.

## ADDING ACCOUNTS TO YOUR FILE

Your credit file may not reflect all your credit accounts. Although most national department store and all-purpose bank credit card accounts will be included in your file, not all creditors supply information to credit reporting companies: some local retailers, credit unions, and travel, entertainment, and gasoline card companies are among the creditors that don’t. If you’ve been told that you were denied credit because of an “insufficient credit file” or “no credit file”

and you have accounts with creditors that don’t appear in your credit file, ask the credit reporting companies to add this information to future reports. Although they are not required to do so, many credit reporting companies will add verifiable accounts for a fee. However, understand that if these creditors do not report to the credit reporting company on a regular basis, the added items will not be updated in your file.

When negative information in your report is accurate, only the passage of time can assure its removal. A credit reporting company can report most accurate negative information for seven years and bankruptcy information for 10 years. Information about an unpaid judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer. There is no time limit on reporting: information about criminal convictions; information reported in response to your application for a job that pays more than \$75,000 a year; and information reported because you’ve applied for more than \$150,000 worth of credit or life insurance. There is a standard method for calculating the seven-year reporting period. Generally, the period runs from the date that the event took place.

For more information, see Building a Better Credit Report at [ftc.gov/credit](http://ftc.gov/credit).

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 [ftc.gov](http://ftc.gov) or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

**Source:** Federal Trade Commission <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre21.shtm>

# New Credit Card Rules

The Federal Reserve's new rules for credit card companies mean new credit card protections for you. Here are some key changes you should expect from your credit card company beginning on February 22, 2010.

## WHAT YOUR CREDIT CARD COMPANY HAS TO TELL YOU

When they plan to increase your rate or other fees. Your credit card company must send you a notice 45 days before they can increase your interest rate; change certain fees (such as annual fees, cash advance fees, and late fees) that apply to your account; or make other significant changes to the terms of your card.

If your credit card company is going to make changes to the terms of your card, it must give you the option to cancel the card before certain fee increases take effect. If you take that option, however, your credit card company may close your account and increase your monthly payment, subject to certain limitations.

For example, they can require you to pay the balance off in five years, or they can double the percentage of your balance used to calculate your minimum payment (which will result in faster repayment than under the terms of your account).

The company does not have to send you a 45-day advance notice if you have a variable interest rate tied to an index; if the index goes up, the company does not have to provide notice before your rate goes up; your introductory rate expires and reverts to the previously disclosed "go-to" rate; your rate increases because you are in a workout agreement and you haven't made your payments as agreed.

How long it will take to pay off your balance. Your monthly credit card bill will include information on how long it will take you to pay off your balance if you only make minimum payments. It will also tell you how much you would need to pay each month in order to pay off your balance in three years. For example, suppose you owe \$3,000 and your interest rate is 14.4%—your bill might look like this:

New balance	\$3,000.00	
Minimum payment due	\$90.00	
Payment due date	4/20/12	
<p><b>Late Payment Warning:</b> If we do not receive your minimum payment by the date listed above, you may have to pay a \$35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.</p> <p><b>Minimum Payment Warning:</b> If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:</p>		
If you make no additional charges using this card and each month you pay . . .	You will pay off the balance shown on this statement in about . . .	And you will end up paying an estimated total of . . .
Only the minimum payment	11 years	\$4,745
\$103	3 years	\$3,712 (Savings = \$1,033)

## NEW RULES REGARDING RATES, FEES, AND LIMITS

No interest rate increases for the first year. Your credit card company cannot increase your rate for the first 12 months after you open an account.

There are some exceptions:

- If your card has a variable interest rate tied to an index; your rate can go up whenever the index goes up.
- If there is an introductory rate, it must be in place for at least 6 months; after that your rate can revert to the "go-to" rate the company disclosed when you got the card.
- If you are more than 60 days late in paying your bill, your rate can go up.
- If you are in a workout agreement and you don't make your payments as agreed, your rate can go up.

Increased rates apply only to new charges. If your credit card company does raise your interest rate after the

first year, the new rate will apply only to new charges you make. If you have a balance, your old interest rate will apply to that balance.

Restrictions on over-the-limit transactions. You must tell your credit card company that you want it to allow transactions that will take you over your credit limit. Otherwise, if a transaction would take you over your limit, it may be turned down. If you do not opt-in to over-the-limit transactions and your credit card company allows one to go through, it cannot charge you an over-the-limit fee.

If you opt-in to allowing transactions that take you over your credit limit, your credit card company can impose only one fee per billing cycle. You can revoke your opt-in at any time.

Caps on high-fee cards.

If your credit card company requires you to pay fees (such as, an annual fee or application fee), those fees cannot total more than 25% of the initial credit limit. For example, if your initial credit limit is \$500, the fees for the first year cannot be more than \$125. This limit does not apply to penalty fees, such as penalties for late payments).

Protections for underage consumers. If you are under 21, you will need to show that you are able to make payments, or you will need a cosigner, in order to open a credit card account.

If you are under age 21 and have a card with a cosigner and want an increase in the credit limit, your cosigner must agree in writing to the increase.

## CHANGES TO BILLING AND PAYMENTS

Standard payment dates and times. Your credit card company must mail

or deliver your credit card bill at least 21 days before your payment is due.

**In addition**

- Your due date should be the same date each month (for example, your payment is always due on the 15th or always due on the last day of the month).
  - The payment cut-off time cannot be earlier than 5 p.m. on the due date.
  - If your payment due date is on a weekend or holiday (when the company does not process payments), you will have until the following business day to pay. (For example, if the due date is Sunday the 15th, your payment will be on time if it is received by Monday the 16th before 5 p.m.).
- Payments directed to highest interest balances first. If you make more than the minimum payment on your credit card bill, your credit card company must apply the excess amount to the balance with the highest interest rate. There is an exception:
- If you made a purchase under a deferred interest plan (for example, “no interest if paid in full by March, 2012”), the credit card company may

let you choose to apply extra amounts to the deferred interest balance before other balances. Otherwise, for two billing cycles prior to the end of the deferred interest period, the credit card company must apply your entire payment to the deferred interest-rate balance first.

- No two-cycle (double-cycle) billing. Credit card companies can only impose interest charges on balances in the current billing cycle.

**USEFUL TERMS...**

**“go-to” rate**

interest rate you are charged after the introductory rate

**index**

an economic indicator used to calculate interest-rate adjustments (e.g. the Cost of Funds Index)

**opt-in**

giving your credit card company permission to include you in a particular service

**workout agreement**

a type of debt management plan

**OTHER RESOURCES...**

Visit the Federal Reserve’s website at [www.federalreserve.gov/consumerinfo](http://www.federalreserve.gov/consumerinfo) to get more information about bank accounts and services consumer credit identity theft leasing mortgages personal finance federal agency contacts

**NEED MORE DIRECTION...**

To learn more about how these new rules directly apply to you, contact your credit card company by calling their toll-free number.

**Source:** Federal Reserve [http://www.federalreserve.gov/consumerinfo/wyntk\\_creditcardrules.htm](http://www.federalreserve.gov/consumerinfo/wyntk_creditcardrules.htm)



