
Introduction: How to Use This Book

GETTING STARTED

If you are having debt problems, you may feel overwhelmed and powerless. During periods of financial hardship, you may not have the resources to pay pressing debts, to meet family needs, and to get legal help. You may feel helpless to fight debt collectors pressing you for payment or threatening to seize your home, car, or other possessions.

In writing this book, we hope to help you make the best choices possible despite difficult financial circumstances. We will help you decide whether there are debts you can ignore for a period of time while you get back on your feet. When you cannot ignore a particular debt without serious consequences, this book sets out helpful options to deal with these problems, both in the short term and the long run.

This book also explains your *rights as a consumer*. Many federal and state laws are designed to help people facing financial problems. These include protections against abusive debt collectors, relief from unfair business practices, limits on wage garnishments and seizures of property, and the right to eliminate many obligations in bankruptcy. This book attempts both to explain these rights and to tell you when and how to use them.

HOW THIS BOOK IS ORGANIZED

The process of dealing with financial problems is mostly about making the best available choices. This book is organized into seven parts, each part dealing with different types of choices you may face. Each part of the book is further divided into chapters which cover more specific issues.

Part I (Understanding Your Options, Chapters 1–3) covers the different choices you will face when you cannot keep current on your debts. Chapters One and Two help you evaluate your budget and choose which

debts to pay first. The goal is to put you in a position to deal with your most pressing problems first and to have as much money as possible available to meet those needs. Chapter Three will help you understand your credit report. Reviewing your credit report is a very useful strategy to find out more about your overall financial situation. You will also learn about the main factors that affect your credit report and credit score and what, if anything, you can do about it.

Part II (Making Sensible Choices, Chapters 4–7) focuses on strategies, both good and bad, to repay debts. Chapter Four provides information about whether you are likely to benefit from credit counseling services and if so, how to find a good credit counseling agency. This chapter also discusses certain “debt relief” companies that are likely to cause you greater problems. Examples of the services they might offer include debt settlement and debt termination. Chapter Five offers advice about credit cards and understanding your credit card rights. Chapters Six and Seven first warn you about a number of choices you may be tempted to make that are likely to make your financial problems even worse. These chapters also review strategies that are more likely to be helpful, such as selling off assets in some circumstances or borrowing money at reasonable rates. Chapter Six focuses on home equity and home refinancing loans while Chapter Seven covers a number of different strategies to raise money that do not involve borrowing against your home.

Part III (Debt Collection and Collection Lawsuits, Chapters 8–9) are very important chapters to help you understand the possible consequences when you cannot pay back your unsecured debts. Chapter Eight focuses on strategies for responding to debt collectors who are pressuring you to pay your unsecured debts. Chapter Nine includes specific information about collection lawsuits, including how likely you are to face lawsuits when you are delinquent on your unsecured debts, how to respond to lawsuits, and how to analyze whether a lawsuit is likely to hurt you. This chapter also reviews defenses to debt collection that may arise in special circumstances, such as when you are a member of the military or when you owe medical debts.

Part IV (Home Foreclosures, Chapters 10–13) deals in depth with one of the most severe consequences of financial distress—the potential loss of your home. If you have put up your home as collateral on a loan, that lender can seize your home if you fall behind on your payments. Part IV provides key information about your mortgage and mortgage payments, the fore-

closure process, what steps you can take to avoid foreclosure, and what you should do if foreclosure cannot be avoided. If you are a homeowner, this part of the book will be extremely useful for you as you decide how to get out of financial trouble.

Part V (Student Loan and Federal Income Tax Collection, Evictions, Utility Shut-Offs, Repossessions, and Other Threats to Property, Chapters 14–19) covers strategies, both in the short term and the long term, to deal with other debts that can threaten your property. Each chapter covers a different type of debt problem that may lead to the immediate loss of property or essential services, such as evictions, utility terminations, student loans, or car repossessions. The basic lesson of each chapter is that there are many things you can do for almost every common consumer debt.

Part VI (Your Bankruptcy Rights, Chapter 20) provides a brief overview of your bankruptcy options, which may be particularly useful in dealing with your long-term financial difficulties. Bankruptcy is your most basic protection against unmanageable debt. The information in Part VI is intended to help you understand when bankruptcy relief makes sense. This chapter is important for any consumer in financial trouble and should at least be skimmed by all readers.

Part VII (Getting Back on Your Feet, Chapter 21) offers advice to help you rebuild your credit once your financial problems are under control. After you have addressed your current problems, you can begin to take steps to reestablish yourself for the future.

Budget Forms. Budget forms are provided at the back of the book with notes designed to help you fill them out. These forms are designed to help you get a clearer picture of what resources you have available to meet your family's financial needs. Consider using these forms as you read through Chapters One and Two.

Glossary and Bibliography. A helpful glossary of terms appears at the back of the book. The terms used by lenders and debt collectors can vary. We have attempted to give you basic definitions of relevant terms.

Finally, you may decide you need more information about a particular topic than we have included in this book. A bibliography at the back of the

book suggests some sources—including books, periodicals and websites—for more information.

Business and Tax Debts. This book does *not* address business-related debts. Although some of the issues related to enforcement of business debts are the same as those discussed here, major business debts often involve complicated issues. These can include the extent of your liability for debts of corporations and partnerships with which you have been affiliated, complicated tax issues, enforcement of personal guarantees, and special liabilities associated with employment relationships. We recommend that you consult a lawyer if you have significant business-related debts.

Income tax issues can also be very complicated. In this book, we do little more than alert you to the need to deal with those debts and to some issues in dealing with IRS income tax collection activity. We recommend that you consult a tax lawyer or an accountant if you have significant potential debts to the IRS or state taxing authorities.

OBTAINING PROFESSIONAL ASSISTANCE

This book outlines your rights and gives you basic information about enforcing them. In many cases, exercising your legal rights is difficult because the applicable law and court procedures are complicated. You may need a lawyer to help you.

An additional factor is that many consumer rights come from state law instead of federal law. These laws can vary substantially from state to state. You may need to get more information about the laws in your state. We have tried to point this out whenever possible.

Hiring a Lawyer. It can be difficult to get legal help when you do not have much money. A good place to start to find free or affordable legal help is your local legal services office. In most communities (or close by if you live in a rural area), there are organizations which provide free legal help to people whose incomes fall below certain amounts.

These organizations vary widely with regard to the type of cases they handle. They also have strict income limits, so they are forced to turn away many cases. However, it can't hurt to ask. If they can't help you, they generally will make a referral to the appropriate legal organization (often called

“bar association”), sometimes for free help from a private lawyer. They also may have special pamphlets or other helpful information on your state’s laws.

Many legal services programs are funded by the Legal Services Corporation (LSC). You can find out more about programs near you by looking up LSC’s website, www.lsc.gov, or by calling 202-295-1500. To find out if there are legal services programs in your area that are not funded by LSC, you should check your local phone book or ask a local social services or consumer protection agency. Court clerks often have information about legal services programs as well. If you are an older consumer, you should also check with your local department on aging or senior center to find out whether there are special legal services programs for older persons in your area. In addition, LawHelp.org helps low- and moderate-income people find free legal aid referrals.

If you need to pay for a lawyer, it is important to get competent help. All lawyers, like all doctors and all accountants, are not the same. You should try to find someone who has expertise in consumer rights. A first step is to ask friends and relatives for referrals. If you cannot get a referral, try calling your state or county bar association. Most such organizations maintain a referral service that will give you names of lawyers who specialize in consumer problems. However, these referral services rarely screen for quality.

Another option is to do some research at your local law library and find out if anyone in your city or state has written on your particular legal problem. For consumer law problems, you should also look up the National Association of Consumer Advocates (NACA) list of members. NACA’s list is divided by region and by area of practice. The members also rate their level of experience in different consumer areas. Contact NACA by calling 202-452-1989 or check out the NACA website at www.naca.net. Another helpful resource is The National Association of Consumer Bankruptcy Attorneys, which provides referral lists for local bankruptcy lawyers. You can find out more from their website, www.nacba.org or by calling 202-331-8005.

You should always have an opportunity to talk to a lawyer before you agree to pay for that lawyer’s services. Make sure you have a clear idea of what the lawyer will do for you and what you will be charged. You should also feel comfortable with the lawyer. Has she told you what you can expect from your case? Has she agreed to communicate regularly with you?

You should know whether you are paying an hourly rate or if you are paying a flat fee for a particular service. If you pay a flat fee, you should be sure to get a written statement of what the fee covers. Some lawyers will agree

to a contingency fee arrangement where the lawyer gets paid only if you win your case. The lawyer's payment is usually a percentage of the money you win in the case. If you decide to set up a contingency fee arrangement, make sure you get in writing exactly how the fee will be calculated. Contingency fees are not always a good idea, particularly if you have a very strong case.

After you have signed a "retainer" (a contract with the lawyer laying out the services to be provided and how much you will pay), you can later cancel if you are dissatisfied with the service you are getting. You will only have to pay for services you have already received. If you are entitled to a refund that you do not receive, consider making a complaint to the local disciplinary agency for attorneys.

Unfortunately, the cheapest lawyer will not necessarily be the best. Price should not be the only consideration when hiring a lawyer—although it is always a factor. Be sure to get someone whom you feel can help you with your specific problem. Lawyers should be willing to provide a free initial consultation. They should also be willing to explain the potential consequences of doing nothing about your delinquent debt.

Finally, you should be wary about lawyers that make advertising claims that are too good to be true. Some lawyers read published foreclosure notices or review court lists to find out who is being sued and then solicit these individuals. Some lawyers make outrageous claims in their advertisements. Although not all lawyers who advertise are untrustworthy, you should not take an advertisement at face value. Make sure you know what the lawyer will do for you and whether the advertised services meet your needs.

Getting Help from a Counselor. If you cannot afford a lawyer or feel you don't want one, another place to get help is from a nonprofit counselor. Many communities have both nonprofit "debt" or "credit" counselors and nonprofit "housing" counselors. If you have a housing related problem, a housing counselor is usually preferable. Many agencies offer both housing and credit counseling.

There have been many changes in the credit counseling world in recent years. On the positive side, many agencies are more efficient and better able to help their customers. Unfortunately, there have also been very serious abuses in the industry. There are credit counseling agencies that are rip-offs, in business first and foremost to make money, not to help consumers.

Despite the problems with the credit counseling industry, there are still good credit counselors out there. You will need to shop very carefully to find one of these legitimate agencies. Chapter Four provides tips to help you understand whether credit counseling is right for you and, if so, how to find a good agency.

NOTE TO COUNSELORS USING THIS BOOK

This book is a revision of a prior publication which was addressed directly to debt counselors. Although the book is now written directly to consumers, it is still very valuable to counselors. Most of your clients will need your help to exercise the basic rights and options and to understand the information discussed in this book.

Because you regularly see clients with financial problems, you will almost always have more expertise in addressing these problems than the particular individual who seeks your help. Although we encourage you to recommend this book to your clients, you can also use it to advise clients on specific issues. Your background as a counselor and your explanations will help to reinforce the information provided in this book.

We recognize that many of the strategies discussed in this book go beyond what you are accustomed to doing in the counseling process. Each counselor must make his or her own decision about how far to go in actively intervening in a clients' debt problems. You must make these decisions within the limits of what you are legally allowed to do. Most important, if you are not a lawyer or are not supervised by lawyer, you cannot engage in the unauthorized practice of law. But you can help a consumer with many financial problems and help figure out when it is most appropriate to refer them to a lawyer.

Within these boundaries, it is critical that you make every effort to discuss the full range of options with financially stressed consumers. This means, for example, if you work for an organization which helps consumers make payment agreements with their creditors, you should nevertheless explain that bankruptcy is an alternative to some payment agreements. Similarly, if you are accustomed to dealing with credit card issues, you should not recommend a strategy for dealing with credit cards which undermines a consumer's ability to deal with a mortgage, car, or utility payment.

NOTE TO LAWYERS USING THIS BOOK

For lawyers who do not specialize in consumer rights, this book is intended to be a useful introduction to strategies for dealing with debts. We have included a bibliography with references to treatises containing more detailed legal information.

The best source of information for lawyers on consumer claims related to credit and utility issues is the National Consumer Law Center's series of consumer law manuals. For more details, see the bibliography, visit our website at www.consumerlaw.org, call NCLC Publications at 617-542-9595, FAX 617-542-8028, or write: National Consumer Law Center, Publications Department, 7 Winthrop Square, 4th Floor, Boston, MA 02110-1245.

Lawyers who specialize in consumer credit problems may already own other NCLC publications. You should consider using the *NCLC Guide to Surviving Debt* to educate your clients, paralegals, law students, or others in your office. Bulk publication orders can be arranged at substantial discounts by contacting NCLC Publications at the phone number or address above.

SOME FINAL THOUGHTS

This book is not a consumer credit law treatise. Readers who want more information should refer to the bibliography and the sources mentioned in each chapter. As stated in an earlier disclaimer, the book is also not intended to substitute for the independent judgment and skills of a competent attorney or other professional. Please read the disclaimer on the reverse of the title page for related information.

The law often changes. In addition, state laws vary a great deal. You should always make sure that you have the most recent edition of this book, and that you get necessary information about issues described here as "state" law. If the law does change, consider getting additional help.

Finally, we are eager to have feedback on your use of this book. If you have other suggestions about how to deal with debts, experiences which are contrary to the advice given here, or other comments, please feel free to write to the authors at the National Consumer Law Center or to e-mail them at consumerlaw@nclc.org.