

## **Debt Negotiation Industry Standards**

- Our company works with consumers in the United States and helps them handle their credit difficulties with Creditors.

### **Credit Card Companies**

- Credit Card Companies start raising the interest on the Client's account when an account starts going delinquent. It could go up once, or several times during the pre charge off stage of the account. There will be over limit fees, late fees and any other applicable fees that the credit card companies include in their contract. The interest doesn't always stop because a law firm or collection agency is handling the account. The balance of the credit card account could go up substantially during this time.
- Most credit card companies have several different collection departments depending on how delinquent the debt is. For example: if a Client is 30-60 days past due it could go to department A, then at 60-90 days to department B and so on. Chase bank for example, refers to these as buckets. If we contact the Creditor and let them know to call us on a particular account, and the account goes to the next department, there is a possibility that the information on the account is wiped clean including the fact that the Client is a Client of ours, and the new collector starts calling and harassing the Client directly all over again.
- The further behind the Client gets the harder the collection tactics. A Creditor can call 20 times a day or more and several times at work if they are unable to reach the Client. The Creditor is paid on bonuses and sometimes commissions at this level, so the Creditor becomes very anxious to get paid. The Creditor would rather get the Client account current then get it settled or paid in full. This is usually what their bonuses are based on. This way the Client is back on track, paying exorbitant amounts of interest, and paying very little to the principle. This is what the Creditor would rather do in all cases because this is the way they make the most money.
- Prior to charge off, the Creditor will be the most forceful, by this time however; they know we are working with the Client and should be contacting our company directly. This is not always the case especially when dealing with Citibank. Citibank is never to know that a third party is handling their account, if they do they will send the account to a law office or if the company calls to make arrangements with them, they will not communicate with the company. There have been instances where the Creditor will have our data, then when it comes to charge off and sending the Client to a collection agency, the original Creditor will give the Clients information to the collection agency and the collection agency will call the Client. This could happen many times as an account gets more and more delinquent. Also, several collection agencies can receive the account over the time that the Client is on the program. The Client must be told the above so they are not surprised when a new collector on one of their accounts starts to take action to collect.

- We do not tell a Client that Creditors stop communicating with them, but it is okay to tell the Client that we communicate with their Creditors and will TRY to stop the Creditors from calling them throughout the program.
- The Fair Debt Collection Practices Act or FDCPA does not apply to credit card companies. The original Creditor can do anything they see fit to try to collect the debt from the consumer, including calling the debtor on weekends, odd hours, and at work. The FDCPA stipulates that if you tell the debt collector to stop calling, they must do so, but again, this does not apply to the original Creditor. It only applies to collection agencies and law firms. Filing a complaint against a Credit Card Company with the FTC will not stop the Creditor. Even a cease and desist letter sent to the Creditor will not make the Creditor stop calling the Client. They can and will do what is necessary to collect the debt.

### Collection Agencies

- Collection agencies can only call between 8 am and 9 pm Monday through Friday, Saturday from 8-6 and they cannot call on Sunday because it is a holy day. When an account is placed with a collection agency the agency must send a letter to the Client and the Client has 30 days in which to dispute the debt. The first letter from a collection agency indicates this. The Client or the company can send a letter requesting the collection agency supply proof of the debt. The collection agency can not attempt to collect the debt unless they supply this proof. The company normally does not do this because the debt is naturally owed and by disputing it, it is only showing the Collection Agency that the Client is disputing the debt, this is not the case.
- Collection agencies have to abide by the laws of the Fair Debt Collection Practices Act. This Act was actually written because collection agencies were abusing and harassing consumers. Before the Law was passed, collection agencies did or said *anything* to collect a debt, such as tell the Client that they were going to garnish their wages or send the Client to jail. Some would go as far as telling the debtor that they would do them personal harm, or harm to their children, if they didn't pay. Thus, the Act was established. It is very beneficial to know the data in the FDCPA, as it will give you additional training on your position with the company and will make you a more stable person for your Clients. Also, if you deal with Creditors, you will know what they can and cannot do, which will allow us to keep the upper hand with them.
- Collection agencies often have attorneys in their employ whose job it is to sue Clients. However the agency must be located in the same state the Client resides in and the attorney must be a member of that state's bar association to do so. Some law firms have offices in multiple states; in this case if the Law office is in New York and the Client in Tennessee but they have an office in Tennessee, then the Client could be sued by that law office.
- Collection agents can be extremely persuasive, sometimes rude or hostile and be very hard to deal with. The reason for this is that once an account is charged off, it has already been delinquent for 4-6 months and the agency has a much lower chance of actually collecting the debt.

- Collectors work mostly on commission, either base plus commission or straight commission. Good bill collectors don't work on salary because there is no real incentive to try. The best bill collectors are usually the most abusive. Bill collectors have a tendency to abide by the FDCPA laws, when they have to, but will stray from them when they know they have someone on the phone that is ignorant of the Law. When a Consumer is talking to a bill collector and he is being abusive, the best thing to do is to NOT REACT. Instead, LISTEN, if he says one thing that breaks the Law, then you have the upper hand and a Consumer can file a complaint against him. When a collector breaks the law with one of your Clients you should immediately notate all the information and call the Collection agency back and speak to the collection manager and indicate what was said and that if this is not handled, the company will be reported to the FTC for harassment. It is up to the FTC whether they decide to take action when a complaint is filed. However, this is good information to give to our Clients because it will give them the upper hand. Too many times, collectors have upset our Clients because they were not aware of the FDCPA laws and their rights described in it.

### **Credit Unions**

- We cannot take Credit Union accounts. Credit Unions do not settle for better than 80-100% and by taking them we are not helping the Client.
- Any accounts the consumer has with Credit Unions are connected to each other. For instance, some consumers work for a company that uses the Credit Union; they have a checking account with it, a car loan and an unsecured credit card. If the consumer goes delinquent on the unsecured credit card, the consumers wages can be garnished, their bank accounts attached or their car repossessed according to the agreement from the Credit Union. In this case the Credit Union does not have to have a judgment against the consumer because it is in the contract that the Client signed.
- Credit Unions have little or no monthly fees on their accounts, offer low interest rates on loans and more perks than a bank. However, the Credit Unions rules, when a consumer goes delinquent, are a lot more stringent then that of the banks.

### **Hospital Bills**

- Hospital bills from one hospital usually come from various entities in the hospital, for example the doctor, lab work, drugs, etc. Since we do not take the accounts under \$250.00 we wouldn't take them unless the Client got them to consolidate all the bills into one large bill. By doing this, we can take the entire debt. If this were not possible, then we would not take the debt, as it would not be profitable for us.

### **Student Loans**

- Most Student Loans are federally funded. The federal government will not settle at all. There are few Student Loans that are privately funded but if they go delinquent

for too long a period of time, the federal government will buy the debt and they will not settle.

- Clients can get consolidation loans on their Student Loan so that they only have to make one payment instead of several.
- There are also programs that they can get into to make lower payments until they are able to pay their loans consistently.
- The government gives very low interest loans for students, so it is worth while to get them from the government and work with them to try to keep as current as possible with them.

### **Secured debt that we can take**

- As a general rule we do not accept secured debt on the program. This is because when the consumer goes delinquent on the debt, the Creditor would just repossess the asset and would not be willing to settle. We will, however, take debt that is secured by jewelry or household furnishings. The Client needs to know that there is a possibility that the product may be picked up, but it is not likely. Most Creditors feel that it would be more expensive to pick up the merchandise and try to sell it than it is worth.

### **Cash Advances/Balance Transfers**

- We cannot take accounts that have had recent cash advances or balance transfers of 25% or more of the Credit Card balance in the last 6 months. The Client can pay on the account for 6 months after the balance transfer and then put the credit card on the program, or they can put the account on the program and continue paying toward it for a period of time. The reason for this is that on normal credit card purchases, the balance goes up slowly and the Client pays substantial interest monthly. When a consumer does a large lump sum increase, the company is paying cash immediately and if the Client doesn't pay any interest on this money, the credit card company is out a lot of money.
- Also, the credit card company does not want to settle at a reduced amount if there are large cash advances or balance transfers because of the amount of money they are out in interest. There is also a situation where, if the Creditor takes the Client to court, the Creditor can try to prove that the Client was trying to commit fraud by "knowing" that he was taking the money then intentionally not paying it. In this case, if proven, the Client can actually be jailed for fraud and possibly theft.

### **Payday Loans**

- We accept Payday loans on the program only if they are already at a collection agency.
- There are 2 types of payday loans, the first is where a Client would go on the Internet and apply at one of the many Payday loan companies. This way the loan company would automatically deposit funds into their checking account on a certain day, and then they would authorize them to take the funds out of their checking account on

their payday, or the day they stipulate. This way would be better for the loan company to obtain their funds; however, if the funds were not available they would immediately send the account to their collection department. If they are unable to collect the account there, the account is sent to a collection agency.

- The other type of payday loan is where a consumer goes to their neighborhood payday loan company and gives the company a check dated on the day they are paid. If the check bounces even after being re-deposited the account is sent to a collection agency.
- There is a possibility that NSF checks will be sent to the Attorney General's office for collection. Anyone can do this when someone writes him or her a bad check, however, the Attorney General is usually not too successful in collecting the check. There are occasions when a lot of checks are sent to The Attorney General on one person, and if the office can prove that the Client is intentionally committing fraud he could be jailed.

### **Rentals or Leases**

- If a consumer has leased equipment such as a copy machine or security system it is considered a secured loan and must not be included on the program. Same for a rented TV or some other household furnishing because these are handled exactly the same way as secured debt.
- If the consumer returns the item to the original company and still owes on the incomplete contract he can put the unpaid balance on the program.
- If the equipment is mounted to the building we cannot take this debt from the consumer and he must continue to make payments.

### **More than one credit card with the same company**

- When a Client comes on the program with more than one debt with the same company, all accounts must come on the program.
- If the Client has a checking or savings account with a bank and a credit card with the same bank, it is a good idea for the Client to change banks.
- If a Client has an account with a bank that they also have their home loan with, the bank could actually start foreclosure proceedings against the house if the credit card is not paid, this is rare, but could cause severe problems with the Client.

### **Foreign Clients**

- We do not accept debt that is not owed to an American company. A person can be anywhere in the world and be on our program if the debt they have is American debt and they will pay the debt with American funds.
- Debt should have no effect on a citizenship application, except insofar as the debt impinges the applicant's good moral character.

## **Legal**

- Anyone can sue anyone for any reason at any time. There is a possibility that a Client will be sued, however, we do everything in our power to help them with the legal process.
- As with any legal dispute, these lawsuits may result in judgments, wage garnishment, liens, levies, or other forms of collection.
- We DO NOT GIVE LEGAL ADVICE.
- If the Client is concerned about the legal process he is to consult an attorney right away in his area. There are ways to slow the process by filing an answer with the courts and other things. These things must be done by the Client or the Client's attorney. When a situation like this comes up, we do work with the Client as much as we can to handle the account completely.
- Only a small percentage of our Clients get sued and we feel confident that if it does happen, we will be able to work through it.
- Sometimes, we have our Clients go to court because by presenting their hardship in person, they have a better chance of getting a workable solution and be able to continue the program.
- If a Creditor gets a judgment against them, and they own property, the Creditor can put a lien on the property. A lien is nothing more than a guarantee that when the property is sold, the Creditor will get their money, nothing more. However, by continuing on the program, all of the Client's debts should be settled, including the lien, and the judgment will be satisfied and the lien will be removed.
- If a person works a full time job and a Creditor gets a judgment, there is a possibility that they can get garnished, depending on the state they live in. If this is the case, we will try to make payment arrangements with the Creditor before they get their judgment so that this will not happen.
- Or, we have them appear in court and try to get a payment arrangement that is doable so that they can continue on the program and eventually settle this account.
- We cannot appear for them, but by confronting this, the Client will be more responsible and will be able to face their Creditor head on, it is also a good learning experience for the Client.
- If a payment arrangement is made, usually the amount that the Creditor is paid is sent by the Client. Our company is not set up for payment arrangements. Besides, if the company forgets to make the payment and the Client gets garnished, the company would probably lose the Client and there could be a complaint filed against the company, but if the Client doesn't make the payment then the company is not at fault.
- Also, the payment arrangement amount is usually subtracted from the monthly amount, so you must make sure that the payment is low enough for the Client to be able to continue with the program. For the Clients that can afford more, always tell them to send more, it will only get them through the program faster.

## **Arbitrations**

- When a Creditor files arbitration, it is usually in a state other than the Client's state of residence.
- An arbitrator is appointed to make a decision on the case and neither party is present for the hearing.
- The Client can file an answer, that is very expensive to the Client, but it usually doesn't make any difference in the case because he is not disputing the account.
- We usually have the Client do nothing on arbitrations and if the Client has funds, we would usually settle other accounts for them.
- The arbitration process usually takes about 4 months to complete, and during this time we concentrate on settling other accounts. Once they get an arbitration award, there is nothing the Creditor can do to the Client because the arbitration was awarded in another state and there is no public record of the arbitration.
- At this time the Creditor can send the account to the Client's state for a judgment to be filed. This could take several more months if the Creditor decides to do it at all.
- The account will have to go to an attorney's office, and depending on the state, the process will have to be started all over again. This means that the case will have to be filed in the local court, the Client will be served with papers again and then have the opportunity to appear in court.
- When the account is finally transferred to the local attorney, this is when we concentrate on getting something done on this Creditor account by obtaining a settlement or a feasible payment arrangement but only if the Client is garnishable.
- Arbitration is not reported on a person's credit report since it is not a public record.
- The advantage for a Creditor to file arbitration is to push a Client into paying because they believe that the arbitration is like a judgment.
- Another advantage is that when the Creditor sending the arbitration to the Client's state goes to file an actual judgment, the arbitration will stand up as proof that the Client owes the debt and there is little room for dispute by the Client.

## **Garnishments**

- The IRS, the State the Client lives in, child support and Credit Unions are the only entities that can garnish someone without obtaining a judgment. The only other way this can happen is if the Client has a clause in the original contract that they have that they can take the funds from a bank account if they go delinquent on a car payment; this mostly would be a Credit Union that would have this clause.
- Only after a Creditor gets a judgment can a Client be garnished on unsecured debt.
- When a Creditor garnishes a bank account, any account that has their name on it can be garnished. It can be garnished even if it is in a child's or relative's name and the Client is the co-signer.
- The bank garnishment entitles the plaintiff 100% of the money in the account.
- The bank account will be frozen for a period of time prior to the plaintiff obtaining the funds. The Client will have no access to the funds and any deposits that are made will also be frozen.
- A safety deposit box can also be attached although the plaintiff may have to hire a company, or the sheriff, to drill the box open and this can be very expensive. The

plaintiff will most likely not bother with the box unless they know that there are assets in it to cover the cost of drilling.

- The only time the funds are exempt from garnishment is when the majority of the funds are Social Security or some other sort of retirement income. The Client must then prove to the plaintiff that these funds are solely retirement funds, at this time the funds can be released back to the Client.
- A Client's wages can be garnished. If there are two parties named on the judgment and both parties are employed, then both parties can be garnished at the same time.
- In most states only a percentage can be taken from each paycheck. The percentage varies from state to state. In most states a garnishment will only be good for a period of time. When expired, the plaintiff must submit a new garnishment request until the account is paid in full.
- In most states there is a minimum amount of wages that cannot be garnished. Usually this amount is close to minimum wage and anything over that is garnishable.
- Once a Creditor obtains a garnishment order against a debtor it is very difficult to get it removed. At this point the Creditor is guaranteed funds and likes to keep it that way.

### **Tax Consequences**

- Once an account is settled with a Creditor, there is an amount of money that is relieved and the account is marked settled. Anything over \$600.00 counts as income for the Client and is taxable according to the IRS.
- It is the Client's responsibility to pay taxes on this amount. The Creditor will send the Client a 1099C form at the end of the tax year.
- The Client can go to [www.irs.gov](http://www.irs.gov) web site and file form 982, which determines financial solvency or in the case of our Clients, financial insolvency.
- The Client would normally claim 33% of the saved amount as income, but if the Client can prove financial insolvency, the Client owes nothing. If the Creditor does not send the Client a 1099C form, the Client can call the company and ask for one.
- There are no guarantees that the IRS will approve the Client's request for financial insolvency, and although many of our Clients are insolvent and do not have to pay taxes on the forgiven debt, some of our Clients are solvent and are responsible for those taxes.

### **Credit Reports and Fico Scores**

- There are three different credit-reporting agencies, TransUnion, Experian, and Equifax.
- Credit Reports are an essential part of having a credit history. A person's credit report will tell the Creditor where they have lived for a period of time, where they have worked, their address information, and how many addresses they have had for the last several years.
- It also includes any Public Records, collections, trades or inquiries that they have had.
- Public Records consist of IRS and State Liens and judgments that have been filed.

- Collections are any accounts that have been transferred to an outside collection agency from the original Creditor.
- Trades are the Creditors themselves that have reported that the Client is holding a credit balance with them.
- Inquiries are a list of all the companies that have pulled their credit report to look at it, this could be when they want to get additional credit and they want to see what their report looks like, or when they get a job and they do a credit check, or just occasionally when current Creditors pull a credit report just to see how the rest of their credit is doing.
- The ONLY thing that shows on a credit report is what a Creditor reported. None of the 3 credit reporting agencies put anything on the credit report unless someone else reports it.
- If a company doesn't know where a consumer works and it has not been reported by anyone, then it will not be reported on the credit report. This holds true for anything; if it is not known then it doesn't automatically appear on the credit report.
- The consumer can add things to their report if they wish. They can also have things removed but only if it is for a legitimate reason, such as there being an account listed that is not their account at all, or an account where there has been no activity in over 7 years. These issues must be proved, and the consumer must send in a complaint form. The credit reporting agency will then investigate, and if it is legitimate, they will remove it from the report.
- A FICO score is a credit scoring system developed by Fair Isaac and Co. It is a method of determining the likelihood that credit users will pay their bills. A credit score attempts to condense a borrowers credit history into a single number. The credit score is based on the following:
  - 35% of the score is determined by payment histories on the credit accounts, with recent history weighted a bit more heavily than the distant past.
  - 30% is based upon the amount of debt that is outstanding with all Creditors.
  - 15% is produced on the basis of how long they have been a credit user (a longer history is better if they've always made timely payments)
  - 10% is comprised of very recent history, based on the efforts to obtain loans or credit lines in the past few months.
  - 10% is calculated from the mix of credit held, including installment loans (like car loans), leases, mortgages, credit cards, etc.
- The FICO score typically ranges from 350 to 850, with the low end indicating a poor credit risk. The higher the score, the better the interest rate on any future loan. If a Client has a high debt to income ratio, he will have a lower FICO score, even if he has great credit, the score will suffer because he owes too much money and is overextended with credit.

### **Credit Report codes**

- 00 Not rated, too new to rate, or approved by not used
- 01 Pays as agreed

02	30-59 days past the due date
03	60-89 days past the due date
04	90-119 days past the due date
05	120 days or more past the due date
07	Paying or paid under Wage Earner Plan or similar arrangement
08	Repossession
8A	Voluntary repossession
8D	Legal repossession
8P	Paying or paid account with MOP (Method of Payment) 08
8R	Repossession; redeemed
09	Charged off to bad debt
9B	Collection account
9P	Paying or paid account with MOP 09 or 9B
UC	Unclassified
UR	Unrated

### **In Case of Divorce**

- If a Client comes onto the program with debt joint with a spouse, the spouse must also sign the contract.
- In certain cases divorce decrees rule that all the bills are the responsibility of only one spouse. This ruling is for the benefit of the couple to help determine who gets what, but it legally does not relieve the other party of financial responsibility for any of the joint debt.
- The other party is still liable and can be sued.
- It is not the fault of the credit card company if the Clients decide to divorce, if the contract is signed by both, then both are liable unless one of the parties files a chapter 7 bankruptcy or dies.
- If the person is a signer on the card and not a co-signer (the difference here is someone that actually signed the contract versus someone that just had approval to sign for purchases) then that person cannot be sued on the card even in a community property state.

### **Marital Partners when only one wants to be on the program**

- When a husband, for instance, has a large volume of debt and the wife doesn't want to be on the program a few rules apply.
  - If the husband's debts are only in his name the process is easy and it is ok for the husband to come on the program by himself and leave her out of it. In the event the husband's name is on some of the wife's accounts, either co-signer or authorized signer, then her credit can be effected if her Creditors pull a joint credit report and see that his accounts are going delinquent. The Creditor could then raise interest rates on her card and possibly close some of her accounts. If she is the authorized signer or co-signer on his accounts, then she must come on the program with all of her cards and she must sign a Power of Attorney.

## **Community Property**

- Community Property: includes all property acquired by the joint efforts of a husband or wife during their marriage. All property owned at the time of the marriage whether acquired by gift, devise, bequest, or descent, and the rents and profits therefrom is considered separate property.
- Anything acquired during the marriage is considered community property and has to be equally distributed including debts.
- Any debt acquired during the marriage is considered community property and both parties are responsible.
- We have compiled a list of community property states. They are Alaska, Arizona, California, Idaho, New Mexico, Texas, Washington, Wisconsin and Louisiana. There could be others, but these are the ones at this time we know about for sure. In community property states both parties are liable for all the debts of both parties. If the Client is to be sued only the party listed on the original credit application can be sued or garnished but in a community property state the Plaintiff can file a motion to have the other party garnished.

## **Self-Employed**

- A self-employed Client is a good candidate for our company. The Client must not take wages if a lawsuit occurs, that way the Client cannot be garnished. The Client follows the program the same way, but we have a little more leverage with the Creditors because they cannot get anything in the event they do sue. The threat of legal action is the Creditors' number one tactic to get the debtor to pay the debt. Being self-employed eliminates that possibility because the Creditor can no longer have the upper hand by the use of garnishment. They can get sued however, but the threat is not as powerful.

## **Deceased Clients, Probates**

- Probate is the act of proving that an instrument purporting to be a will was signed and otherwise executed in accordance with legal requirements, and is thereby valid. In some jurisdictions a probate court has special jurisdiction or proceedings of the decedent's estate.
- In the event the Client dies and they have outstanding assets, there will be an estate that is opened through the county where the Client resides. Once this happens, the Creditors can file a claim against the estate to try to recover some of their monies. This could take several months as the assets must be liquidated, then the monies are split between all of the Creditors and relatives etc.
- If there are not enough funds for all of the Creditors, a settlement can be worked out, or the Creditors will not be paid at all. The family members will receive nothing if the Creditors take all of the money.
- The Federal Government will tax the estate between 41-48%. This leaves the family such a small amount of money that they will have a hard time living. If there are no

assets then the Creditors get nothing and they close their files. If there is a spouse named on any property that the Client might have, the property will go to the spouse and if the accounts are joint with the spouse's name, the spouse will be responsible. If they are not in the spouse's name, then depending on the State, the spouse might not be responsible for the amount of money owed.

## **Homestead Exemptions**

- The law entitles every person who has legal or equitable title to real estate (and maintains it as his/her permanent residence) to apply for a homestead property tax exemption. A partial exemption may apply if the ownership of the applicant is less than 100%.
- A homestead can be a separate structure, condominium, or mobile home located on owned or leased land, as long as the individual living in the home owns it. A homestead can include up to 20 acres, if the land is used as a yard or for another purpose related to the residential use of the homestead.
- The homestead exemption is the only meaningful, significant tax break that the average citizen has available to him/her.
- A homestead, as provided by law, shall be exempt from forced sale under any process of law and shall not be alienated without the joint consent of the husband and wife when that relationship exists. But, no property shall be exempt from sale for taxes or for payment of obligations contracted for the purpose of said premises or for the erection of improvements thereon.
- The term "exemption" stems from the concept that the homestead is exempt from forced sale by a homestead claimant's general Creditor.

A) Do all homes qualify for homestead exemption?

- No, only a homeowner's principal residence qualifies. Homeowner must be an individual, not a corporation or other business. Owner must use home as a principal residence on January 1<sup>st</sup> of the tax year.

B) Do judgment liens attach to a homestead?

- Not if at the time of acquisition, the property is homesteaded. If, however, the homestead is abandoned, the judgment attaches at that time. A judgment lien cannot attach to a homestead. Additionally, if the homestead is sold, the proceeds from the sale are exempt for six months in order to allow for the purchase of a new homestead. However, it is always a question of fact as to the existence of a homestead and sometimes only a court is able to determine the rights between the lien Creditor and the homestead owner.
- Although homestead is intended to protect the family home, the homestead laws in each state may offer too little protection to be of practical value. Investigate and you may find:

1. Your homestead exemption is too small to provide adequate protection.
  2. Your homestead exemption does not protect you from specific debts such as IRS or pre-existing debts.
  3. Your homestead declaration creates more problems and a complication than it is worth. For example, you may have to go through a complex legal process to temporarily lift the homestead declaration so you can re-mortgage the property.
  4. You can lose your homestead protection if a Creditor can prove it is not your primary residence.
- The real danger of homestead is that it may give you a false sense of security. It may protect you today, but not tomorrow. A Creditor may be able to put a lien on your home even if it is covered by homestead laws. There is no money to satisfy the claim, but this clouds the title and prevents you from selling or re-financing property until you convince the Creditor to discharge the attachment.

## **Mortgages**

- Clients who have a large amount of equity in their home can sometimes get a 2<sup>nd</sup> mortgage or do a refinance on their home to pay off all of their debt. Clients must also be experiencing hardship to be accepted on our program. In such cases where the hardship is legitimate and the Client can only come up with a portion of the amount of debt owed, our program is a good way to consolidate all their Creditors and only have the one payment to the mortgage company to pay.
- It may take months to handle the negotiation process with the Creditor, especially if the accounts are current. However, even if the accounts are delinquent we might still have a hard time settling every account immediately.
- The best way to manage the disbursement of the funds is to convince the title company to cut a check in the name of the Client and send it to the Clients savings account so that we can settle the Clients accounts at the best time and rate possible. This is not always the way the banks work and there could be some serious problems with this. The mortgage companies have been known to pay the account in full if they cannot get a settlement balance, just so the loan will go through. This is a great way to get the Client on and off the program quickly.

## **Third Parties**

- A third party is a person that is not the husband or the wife. A girlfriend, a mother, a child, or any other person falls under the category of third party. A Creditor cannot talk to a third party about a debt. Only the person named on the account or their spouse can be informed about a debt or talked to about the debt. If the Creditor does talk to a third party about the debt, the Client can file a complaint with the FTC for third party disclosure.

## **IRS/State Taxes**

- A Client can owe several types of taxes.
- There are income taxes owed to the IRS that the self-employed Client withheld from his employees' pay. The IRS looks very badly on parties that do not pay their withholding taxes because they feel they are stealing from their employees and from the IRS.
- Next are Clients that do not file income tax returns at all. These types of people are called "tax protesters". There are still circumstances where people can be jailed for not filing their tax return when the Client doesn't cooperate with the IRS. Since the Client doesn't file a tax return, the IRS estimates an amount owed from any wages that are reported by the state the Client lives in. Keep in mind that the IRS gives no deductions when they do an estimation, they just tax you on the amount that is reported to them.
- Most tax protesters do not make money that can be traced through the computers, for instance, self-employed, a 1099 employee, or working "under the table". Most of them feel that they do not have to file or pay taxes and that they are exempt from doing so. Some people spend their lives avoiding taxes and never have to pay them. Some of our Clients owe state and federal taxes; this can be a problem in signing them on the program because if they get their wages or bank account garnished for back taxes they will not be able to make their payments to our company.
- Other taxes owed would be those you filed the tax return on and didn't pay. If you filed this on time, you can discharge it through bankruptcy, or the statute of limitations will eventually take the debt and you will no longer owe it.
- The last two cases are the same for federal or state taxes. If you owe money to the IRS and had a state refund coming, the IRS will take the state refund and visa versa. The IRS and the state can garnish your wages or bank accounts at any time without obtaining a judgment.

## **Bankruptcy**

- There are 2 different types of personal bankruptcies that can be filed: Chapter 7 and Chapter 13.
- A Chapter 7 bankruptcy is a complete and total bankruptcy where all the debts that are included in the filing will be discharged and the Client will not owe anything. The Client can keep his secured debt off of the filing and only file what he wants to discharge. This type of bankruptcy stays on your credit report for 10 years. The new bankruptcy laws state that a Client must do a consumer credit program prior to being considered for bankruptcy. There are very few consumers that are eligible for this type of bankruptcy since the new law passed in November 2005. Most consumers that are approved for bankruptcy must do a Chapter 13.
- The Chapter 13 is where you pay off a portion of the amount owed to the Creditors. All of your accounts would be added then you would pay a monthly payment to the court. The court will then pay your Creditors for you at a very small monthly payment.

- A consumer must appear in court to file bankruptcy. A Creditor can appear to protest the filing but few ever show up. There are occasions where the Creditor can stop a consumer from filing if there is reason to do so.
- A Client who is associated with a business can file a Chapter 11 bankruptcy. This is the same as a Chapter 13 personal filing where the Client pays back a portion of the debt.

### **Consumer Credit Counseling Service (CCCS)**

- Most CCCS organizations are non-profit. CCCS will take all of a persons bills and consolidate them into one monthly payment. They will pay the Creditor a monthly amount that is usually much lower than the minimum amount. Usually the Creditor will stop charging interest on these accounts once the Consumer is signed up. The Creditor must approve the agreement with the company before it can be set up. Since the company is non-profit, they depend on their fees from the Creditor. The Creditor approves a monthly payment of \$25.00, owes a fee of \$1.48 to the CCCS company who really only sends \$23.52 to the Creditor who credit the full \$25.00 to the Client's account. Any CCCS Creditor account will automatically be reported on your credit report as an R5 rating. This is not favorable to the consumer at all. Most CCCS programs do not work because the bills never seem to get any lower.

### **The Fair Credit Reporting Act**

- The following is the Fair Credit Report Act, this is the information for the Consumer to be able to either repair their credit or to know what they can do if there is an issue on their credit report.
- A Summary of a Consumers rights under THE FAIR CREDIT REPORTING ACT: THE FEDERAL FAIR CREDIT REPORTING ACT (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "CONSUMER REPORTING AGENCY" (CRA). Most CRA's are credit bureaus that gather and sell information about the Consumer—such as if someone has paid their bills on time or have filed bankruptcy – to Creditors, employers, landlords, and other businesses. You can find the complete text of the FCRA, 15 U.S.C §§1681-1681U, at the FEDERAL TRADE COMMISSION'S WEB SITE ([HTTP://WWW.FTC.GOV](http://www.ftc.gov)). The FCRA gives specific rights, as outlined below. You may have additional rights under state law. You may contact a state or local CONSUMER PROTECTION AGENCY or a STATE ATTORNEY GENERAL to learn those. – You must be told if information in your file has been used against you. Anyone who uses information from the CRA to take action against you – such as denying an application for credit, insurance, or employment – must tell you, and give you the name, address, and phone number of the CRS that provided the consumer report.
- You can find out what is in your file. At your request, a CRA must give you the information in your file, and a list of everyone who has requested it recently. There is no charge for the report if a person has taken action against you because of

information supplied by the CRA, if you request the report within 60 days of receiving notice of the action.

- You also are entitled to one free report every twelve months upon request if you certify (1) You are unemployed and plan to seek employment within 60 days, (2) You are on welfare or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you up to nine dollars.
- You can dispute inaccurate information with the CRA. If you tell the CRA that your file contains inaccurate information, the CRA must investigate the items (usually within 30 days) by presenting to its information source all relevant evidence you submit, unless your dispute is frivolous. The source must review your evidence and report its findings to the CRA. (The source also must advise national CRA'S – to which it has provided the data – of any error.) The CRA must give you a written report of the investigation and a copy of your report if the investigation results in any change. If the CRA'S investigation does not resolve the dispute, you may add a brief statement in future reports. If an item is deleted or a dispute statement is filed, you may ask that anyone who has recently received your report be notified of the change.
- Inaccurate information must be corrected or deleted. A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after you dispute it. However, the CRA is not required to remove accurate data from your file unless it is outdated (as described below) or cannot be verified. If your dispute results in any change to your report, the CRA cannot reinsert into your file a disputed item unless the information source verifies its accuracy and completeness. In addition, the CRA must give you a written notice telling you it has reinserted the item. The notice must include the name, address and phone number of the information source.
- You can dispute inaccurate items with the source of the information. If you tell anyone – such as a Creditor who reports to a CRA – that you dispute an item they may not then report the information to a CRA without including a notice of your dispute. In addition, once you've notified the source of the error in writing, it may not continue to report the information if it is, in fact, an error. – Outdated information may not be reported. In most cases, a CRA may not report negative information that is more than seven years old; ten years for – bankruptcies. – Access to your file is limited.
- A CRA may provide information about you only to people with a need recognized by the FCRA – Usually to consider an application with a Creditor, insurer, employer, landlord, or other business. – Your consent is required for reports that are provided to employers, or reports that contain medical information.
- A CRA may not give out information about you to your employer, or prospective employer, without your written consent.
- A CRA may not report medical information about you to Creditors, insurers, or employers without your permission. – You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers. Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free phone number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be taken off the lists indefinitely. – You may seek damages

from violators. If a CRA, a user or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court.

## **Fair Debt Collection Practices Act (FDCPA)**

- The Fair Debt Collection Practices Act is the federal law that protects the consumer from abusive practices by debt collectors. Debt Collectors, in this reference, are collection agencies, law firms and any other agency that is NOT the original Creditor. The original Creditor does not have to abide by the laws of the FDCPA. It is very important when dealing with the consumer and the Creditors to know the FDCPA and what a Creditor can and cannot do. This gives you more control over dealing with consumers by giving them the exact law that the Creditor is violating and puts you and the consumer more in control over the Creditors.
- When dealing with Creditors, you will have the data to know what they can and cannot do or say. This way you are more in control over the situation and the threats of the Creditor will be easier to handle. You should have a copy of the Fair Debt Collection Practices Act and read it, you should also advise your Client to read it so that they also know the laws.
- A version of the FTCPA is as follows:

## **Fair Debt Collection Practices Act**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

give false credit information about you to anyone, including a credit bureau;  
send you anything that looks like an official document from a court or government

use a false name.

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

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

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

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

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

You have the right to sue a collector in a state or federal court within one year from the date the law was violated. If you win, you may recover money for the damages you suffered plus an additional amount up to \$1,000. Court costs and attorney' s fees also can be recovered. A group of people also may sue a debt collector and recover money for damages up to \$500,000, or one percent of the collector' s net worth, whichever is less.

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

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

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

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