

CONSUMER

RIGHTS

PACKET

CONSUMER RIGHTS CLASS
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TABLE OF CONTENTS

| | |
|--|-----------|
| TYPES OF DEBT..... | 4 |
| WHAT IS SECURED DEBT?..... | 4 |
| WHAT IS UNSECURED DEBT?..... | 5 |
| CREDIT REPORTS..... | 5 |
| COLLECTION AGENCIES..... | 6 |
| WHAT ARE YOUR RIGHTS?..... | 6 |
| A COLLECTION AGENCY MAY NOT..... | 7 |
| A COLLECTION AGENCY CAN..... | 7 |
| IF NO LAWSUIT HAS BEEN FILED AGAINST YOU..... | 8 |
| IF A LAWSUIT IS FILED AGAINST YOU..... | 9 |
| AFTER ENTRY OF JUDGMENT..... | 10 |
| WAGE GARNISHMENT IN A NUTSHELL..... | 12 |
| WHAT IS GARNISHMENT?..... | 12 |
| WAGES SUBJECT TO GARNISHMENT..... | 12 |
| GARNISHMENT RESTRICTIONS..... | 12 |
| PROTECTION AGAINST DISCHARGE..... | 13 |
| EFFECT OF STATE LAWS..... | 13 |
| ENFORCEMENT..... | 13 |
| EXAMPLES..... | 14 |
| BANK ACCOUNT GARNISHMENT..... | 15 |
| STUDENT LOANS..... | 15 |
| PAYDAY LOANS..... | 15 |
| IDENTITY THEFT..... | 15 |
| BANKRUPTCY..... | 16 |
| SHOULD I FILE FOR BANKRUPTCY?..... | 16 |
| STRAIGHT BANKRUPTCY-CHAPTER 7..... | 16 |
| CHAPTER 13 BANKRUPTCY..... | 16 |
| WHAT DOES IT COST TO FILE FOR BANKRUPTCY?..... | 17 |
| WHAT PROPERTY CAN YOU KEEP?..... | 17 |
| SECURED CREDITORS..... | 18 |
| DOES BANKRUPTCY WIPE OUT ALL DEBTS?..... | 18 |
| AUTOMATIC STAY..... | 18 |
| DISCHARGE..... | 18 |
| CAN YOU OWN ANYTHING AFTER BANKRUPTCY?..... | 19 |
| WILL BANKRUPTCY HARM YOUR CREDIT?..... | 19 |
| OTHER INFO..... | 19 |

SAMPLE LETTERS..... 21

COLORADO EXEMPTIONS..... 22

CONSUMER PROTECTION..... 25

CHECKLIST FOR CONSUMERS..... 26

TYPES OF DEBT

Every state has enacted different laws. The information in this packet is general information for debts incurred in Colorado for non-governmental creditors.

There are different kinds of debt in the state of Colorado. Depending on which type of debt you have, the laws are different regarding what steps creditors can take to collect on the debt. The two main types of debt for consumers in Colorado are secured debt and unsecured debt.

What is secured debt?

Secured debts are debts that give the creditor a “security interest” in the property that is being purchased. For example, the creditor usually retains an interest in the automobile for automobile loans, or in a house for home mortgages. A security interest can also be given to a creditor in goods that you already own to secure a new debt. For example, the creditor may obtain an interest in a house for a home improvement loan. Secured debts require a signed agreement that specifically identifies the property.

Security agreements give the creditors rights in the secured property. If you do not make payments on a secured debt, a creditor may repossess (take possession of) the property provided that the creditor complies with state law. The creditor is required to give you written notice before repossession for non-payment.

If the creditor regularly extends credit, as most do, then that creditor is subject to the Uniform Consumer Credit Code, and there are specific steps that must be followed before a secured creditor can repossess the property:

- **A debtor must be given written notice of default on a secured debt.** You are in default if you are more than one day late making a payment. Once you are in default more than 10 days, the creditor must mail a notice stating that you have 20 days from the date of the notice to “cure” the default (pay the amount you are behind).
- **If you cure the default within twenty days, you may continue making payments and the creditor cannot repossess for that default.** If you do not cure within the twenty days, then the creditor may repossess the property and/or “accelerate” the debt (make the entire principal and accrued interest due immediately).
- **For the majority of secured property, a creditor has to give only one notice of right to cure within a given year.** The second time you default in a year, the creditor may repossess without any additional notice to you. If you default on a mobile home, you are entitled to three notices to cure in one calendar year if you cure each time. Only after the fourth default can the creditor repossess a mobile home without further notice to you.

- **A creditor may repossess the property only if it can do so without breaching the peace.** Example: A creditor cannot break into an enclosed space or a locked fence enclosure. If the creditor cannot repossess without a breach of the peace the creditor can file an action with the court to obtain an order for the return of the property.
- **Once the creditor repossesses the property, it can either keep the property in satisfaction of the debt or sell the property and apply the proceeds to the balance due.** If the creditor sells the property, you will probably owe a “deficiency” (the difference between the amount due and the amount received from the sale). If you owe a deficiency, then the creditor becomes an unsecured creditor. If the secured property is sold for more than the amount owed, the surplus should be returned to you. If the cash price of the property was less than \$3000, and the creditor repossess the property, the creditor cannot seek to collect a deficiency judgment.

What is unsecured debt?

Unsecured debt gives no security interest to the creditor. Common examples of unsecured debt are credit cards and medical bills.

Until a creditor or collection agency goes to Court and obtains a judgment against you on an unsecured debt, there are no actions it can take to garnish bank accounts or paychecks or to attach property. All an unsecured creditor can do before obtaining a judgment against you is to call, write, or turn the debt over to a collection agency.

Beware of any institution that promises to fix your credit for a fee. Correct information can only be removed by the creditor. Incorrect information can be removed without charge.

Credit Reports

In Colorado a consumer is entitled to receive one full copy of each of the 3 major credit reports each year.

To obtain a copy go to www.annualcreditreport.com or call:

- Transunion at 1-800-916-8800
- Equifax at 1-800-685-1111
- Experian at 1-888-397-3742
- All three at 1-877-322-8228

A credit report should have information on how to dispute any inaccurate information. Correct information can only be removed by the reporting company. Incorrect information should be removed without cost IF you follow the correct procedures.

COLLECTION AGENCIES

Debts can be held by the original creditor, or sold or transferred to a collection agency or an assignee. Debts can change hands many times. The guidelines below apply to regular consumer debt. The guidelines may not apply to IRS, student loans, child support and other government agencies.

Collection agencies operate under federal and state laws that govern what actions they can and cannot take. If your account is turned over to a Collection Agency, consumer law varies by state, but collection agencies are governed by the Federal Fair Debt Collection Practices Act. Most states have adopted state acts. Collection agencies must comply with both state and federal laws.

In Colorado, the remedies that a creditor has available may vary depending on the type of debt.

What are your rights?

- **Collection agencies are required by law to provide certain notices to you when they first contact you.** They must inform you that they are attempting to collect a debt.
- **You may dispute the debt and request that the debt be verified within 30 days after receiving the first notice.** You must dispute the debt in writing (see enclosed sample letter on page 21). The collection agency must stop collection efforts until it mails you proof of the debt. Proof of the debt is usually a bill or a court judgment.
- **Under Colorado Statutes (CS §5-3-102)** provides that you can pay the original creditor until you receive notification of the assignment. You can and should request reasonable proof of the assignment.
- **You have the right to request that the collection agencies stop contacting you.** You must request that a collection agency stop contacting you in writing (see enclosed sample letter on page 21). Once you have notified a collection agency that you do not want it to contact you, it can contact you one more time to let you know what it intends to do with the debt, and then it must cease communication. The collection agency may still sue you if it believes the debt is valid.
- **You may request a copy of your payment history.** You must do this in writing. In Colorado you are entitled to one free copy of your payment history per year. The collection agency may charge for additional copies.
- **If a collection agency violates state or federal law, it may be subject to penalties.** If you are later sued by a collection agency, you may raise any violations of the debt collection law as a counter claim in the lawsuit. If you believe the collection agency has violated the law you should file a complaint with the Collection Agency Board (please see bottom box on page 8).

The verification and/or cease contact request must be made in writing, and should be sent certified mail, return receipt requested. You should document any of these actions as fully as you can. Keep copies of all letters.

Under the Fair Debt Collection Practices Act a collection agency may not:

- Use profane, obscene or abusive language, threaten you with violence, accuse you of committing a crime or threaten you with arrest, threaten to take any actions that are illegal, or threaten any action, such as garnishing wages, selling your property or attaching your bank account, that the agency cannot take by law, or does not intend to take.
- Call before 8 a.m. or after 9 p.m. Call your place of employment if the agency knows your employer prohibits such calls.
- Repeatedly contact you by telephone with the intent to annoy or harass you.
- Misrepresent the amount of the debt or its legal status.
- Contact you by postcard or use an envelope that shows that the sender is a collection agency and that the letter concerns a debt.
- Discuss the debt with a third party who does not owe on that debt, unless you consent or there is a court order.
- Contact you directly if the collection agency knows that an attorney represents you. If an attorney represents you, you should provide the attorney's name and telephone number to the collection agency.
- Attempt to collect money not legally due and owing to them.
- Telephone you without stating its name within 60 seconds. The debt collector may use an alias if it is listed with the Colorado Collection Agency Board.
- Make you accept collect calls or pay for telegrams.
- Publish or post the debt through any list other than through a credit bureau report.
- The debt collector cannot claim to be an attorney working for a governmental agency unless it is true.

A collection agency can:

- Contact neighbors and relatives to obtain your address and phone number. However, a collection agency may not discuss your debt with neighbors or relatives unless they owe on that debt.
- Contact you by telephone, letter, and telegram or in person (unless you have requested in writing that the collection agency not contact you or knows you are represented by an attorney).

- Refuse partial payment or sue you. However, if you have a written payment agreement with the collection agency and are complying with it, it cannot sue you and must accept the agreed upon payments as long as you are current.
- Add interest to the debt if permitted by law or contract. Add information about the debt to your credit report. However, if you dispute the debt, it must be reported as disputed.
- Add the following charges for a “bounced check” (check not paid by your bank due to insufficient funds or a closed account): (1) a return check charge up to \$20 if posted at the creditor’s business or in your contract; and (2) collection costs of \$20 or 20% of the check amount - whichever is greater; and (3) the amount of the check. If you receive a notice to pay an insufficient funds (bounced) check and do not pay all charges within 15 days from the date the notice was mailed or served, the collection agency can generally sue you for the greater of 3 times the amount of the check, or a minimum of \$100, plus court costs and reasonable attorney fees. For example, if you write a check for \$4.50 and it bounces, you may owe \$44.50 (\$4.50 for the check plus \$20 return check fee and \$20 collection cost). If you do not respond to the 15-day notice, the collection agency might sue you and get a court judgment for \$300 (\$100 for the check amount, \$150 for attorney fees, and \$50 for court costs)

If you believe a Collection Agency is acting improperly, you can file a complaint with the Colorado Collection Agency Board (303) 866-3611. The Board can write a letter of admonition to the agency or take other action if it feels the Collection Agency is violating state law.

There are various options available to you depending on whether or not a lawsuit has been filed against you. This section discusses these options.

If NO lawsuit has been filed against you:

- **Prioritize debts: priority should be given to those creditors who have the strongest remedies available to them.** For example: if you do not pay your credit cards, until a judgment is obtained all credit card companies can do is call, write, and turn the debt over to a collection agency. If you do not pay your car loan, the creditor can do all of that and repossess the car. If you do not pay rent, you can be evicted.
- **Negotiate with creditors.** Some debtors have success in requesting extensions for payments on secured debt (works best if you contact the creditor prior to default), requesting lower interest rates or requesting waiver of late fees. Any agreed to change in terms should be in writing.
- **Get credit counseling.** The Consumer Credit Counseling Services of Greater has a website: <http://www.cccsdenver.org/>, they have certified credit counselors available to assist you with finding the resources, tools, and information you need to be successful. Beware of “non-profits” that are actually working for profit. Make sure all terms, conditions and fees are in writing and the you received a benefit.

- **Write a letter to collection agency requesting verification of debt.** If you request that the collection agency verify the debt within the first thirty days after it notifies you it has the account, the collection agency must contact the original creditor, verify the debt is owed, then let you know who the original creditor is and how much is owed to that creditor. Until the collection agency verifies the debt, it cannot contact you or make attempts to collect the money. (Please see page 21 for example letters).
- **Write a letter requesting that the collection agency stop contacting you.** (Sample letter on page 21) If a collection agency is notified in writing that you do not want to have contact from them, it cannot continue to call or write to you except for one more communication informing you what it intends to do regarding the debt. However, it can still sue you on the debt. Some Collection Agencies will sue if they receive a cease contact request.
- **Repossession of secured property: you can have property voluntarily or involuntarily repossessed.** If you know you are going to be in default on a secured debt, you may be able to get an extension of the due date for that payment. If you cannot afford to keep the property, try to work out a settlement in which the creditor keeps the property in satisfaction for the entire debt. Unless otherwise agreed in writing, if you voluntarily let the secured property be repossessed you may owe a deficiency.

Keep copies of all paperwork regarding the debt and all correspondence from collection agencies and creditors. Do not keep paperwork in a car which is the subject of possible repossession.

If a lawsuit is filed against you:

- **Before the Court can issue a judgment against you, you should be served with a Summons and Complaint and a blank Answer Form.** The Summons tells you how long you have to file an Answer or what date you must appear in Court. The Complaint explains why you are being served. In small claims court, service can be by certified mail. **If you refused to accept certified mail, it still counts as service.** In County and District Court, service can consist of someone handing the paperwork to you or to anyone in your family who is over the age of eighteen at your home, or by leaving the paperwork at your place of business.
- **Check the debt and the amount claimed in the Complaint carefully.** Creditors and collection agencies make mistakes. Also check to make sure it is your debt. Legal defenses may exist even if you did incur the underlying debt.
- If you cannot afford the fee to file the Answer to the Summons, you may ask the Court to allow you to file without paying the fee.
- **If you do not file an Answer, the other party will get a judgment against you for the amount requested plus court costs.** If you owe the money claimed and would have to pay attorney fees if you fought the case, the best course of action may not be to file an Answer. However, the Court generally does not investigate the amounts claimed and awards the amount in the Complaint.

- **You may defend it.** You may also come to CLS to **apply** for services.
 - You can raise as defenses reasons why you do not owe the money to the original creditor (such as fraud). You can also include counterclaims for violations of the Fair Debt Collection Practices Act by the collection agency.
 - You can defend a lawsuit *pro se* (without an attorney) if you choose.

Court forms are available at www.courts.state.co.us. Also on the website is information on how to represent yourself in court and information in English and Spanish about garnishment. Free Internet access is often available at a public library; however, there may be a fee for printing.

After entry of Court Judgment:

- **Unless it is a secured debt**, in which the secured creditor has rights in the property securing the debt, only after obtaining a judgment can a creditor take specific steps to collect on the debt.
- **INTERROGATORIES** are a series of questions that the judgment creditor can send to you after the Court enters a judgment. If you receive interrogatories, **you must answer them completely and honestly**. If you do not answer them, you may be found in contempt of court and have a bench warrant issued for your arrest.
- **Attachment of Property.** The Court may enter an order that directs the Sheriff to attach (take) property and sell it to pay the judgment. You may object to the attachment. When you are served with notice, you should also receive an objection form. You have a limited amount of time to object and need to seek legal advice immediately or deal with the situation yourself. See pages 22-24 for a list of property a creditor cannot take.
- **Garnishment.** A judgment creditor can garnish bank accounts or your wages. You may object to the garnishment. You have a limited amount of time to object and need to seek legal advice immediately or deal with the situation yourself. If an objection is not filed the judgment creditor will get the monies **EVEN IF THE FUNDS SHOULD BE EXEMPT**.
 - If an employer receives multiple garnishments, they are taken in the order they were received. However, a garnishment for **child support** takes priority. Up to 65% of disposable earnings may be taken for child support and child support arrears. However, for other creditors, only up to 25% may be taken, even if there are multiple garnishments.
 - **Wages and child support:** If an employer receives multiple garnishments, they are taken in the order that they were received. However, if a garnishment for child support is received, it takes priority and the garnishment for child support is done first.

- **Bank accounts.** A judgment creditor serves notice of the garnishment on the bank and then on you. Once the bank is served, it freezes your account up to the outstanding amount of the judgment. This means that all outstanding checks will bounce and you will have to pay bank charges as well as charges to the merchants. You have ten days to file an objection to the garnishment. If you do not file an objection, the bank releases funds to the creditor. If you file an objection, a hearing is held and the judge determines if the funds are exempt and if not then the creditor gets the funds. Even if the funds are returned you still must pay all NSF bank fees including the bank's charges to you for freezing your account and other charges.
- **Social Security Benefits.** Social security is generally exempt from garnishment. However, if a creditor gets a judgment against you, we recommend that you close your bank accounts because a creditor may garnish your bank account. Certain creditors (e.g. IRS, CSEU, student loans) can garnish SSA benefits.
Note: Social Security benefits are NOT exempt from garnishment if they have been co-mingled with other funds.
- **Child Support.** Child support you receive is exempt from garnishment only if it is kept in a custodial account and not co-mingled with other monies.
- **Legal assistance/advice through CLS.** Some CLS offices do assist people with filing objections to attachment or garnishments if there is a legal defense. However, for CLS to consider representing someone or to provide advice, you must contact our office **immediately** after receipt of notice of garnishment or attachment **and** have a legal defense to the garnishment or attachment. CLS would also need to review all documents regarding the garnishment.
- **Interest.** Interest does accrue on judgments.

Included in this packet is a list of property that is exempt under Colorado law. Creditors should not be able to attach or garnish exempt property if you assert your exemption.

See pages 22 through 24 for a list of these exemptions

WAGE GARNISHMENT IN A NUTSHELL

(The following is largely excerpted from a pamphlet produced by the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division)

The wage garnishment laws limit the amount of an individual's disposable earnings (net income) which may be garnished in any one week (or pay period), and protects employees from discharge because of garnishment for any one debt. It does not change other matters related to garnishment, such as the right of a creditor to collect the full amount owed, and most garnishment procedures established by State laws or rules. This law (Title II of the Consumer Credit Protection Act, 15 U.S.C. Section 1671 to 1777) applies to all garnishment orders.

What is garnishment?

The term "garnishment" means any legal or equitable procedure through which earnings of any individuals are required to be withheld for the payment of debt. Most garnishments are made by court order. Voluntary wage assignments, which are private contract transactions, are not subject to this law. But the FTC's Credit Practices Rule 16 CFR 444 prohibits most voluntary wage assignments.

Wages subject to garnishment

The term "earnings" means compensation paid or payable for personal services, such as wages, salary, commission, bonus, or as otherwise denominated, and includes periodic payments under a pension or retirement program. An employee's "disposable earnings" means that part of the earnings remaining after the deduction of any amount required by law to be withheld. Examples of such deduction are federal income tax withholding, federal social security tax, and state and local tax withholding. Deductions such as those for union dues, health and life insurance, assignment of wages, and savings bonds, are not considered required by law to be withheld. Public Law 99-150 (enacted on November 13, 1985), amending the Fair Labor Standards Act, creates special rules for garnishing wages of state and local government workers.

Garnishment restrictions

Colorado's wage garnishment law limits the amount of an employee's disposable earnings that may be subject to garnishment in any one week. The largest amount of total disposable earnings subject to garnishment in any work week may not exceed the lesser of:

- 25% of the disposable earnings for the workweek; or
- the amount by which disposable earnings for that week exceeds 30 times the federal minimum hourly wage; or
- the amount by which disposable earnings for that week exceed 30 times the state minimum hourly wage

There are special restrictions applicable to court orders for child support and alimony (maintenance). These restrictions are as follows: A limit of 50% of disposable earnings is subject to garnishment for child support or alimony for a person supporting another spouse or child and 60% for a person who is not supporting another spouse or child -- plus an additional 5% in each situation if there are outstanding arrearages over twelve (12) weeks old.

No Court of the United States or any State, and no State (office or agency) may make, execute, or enforce any order, or process in violation of restrictions on garnishment. The restrictions on the amount that may

be garnished in a week do not apply to: Bankruptcy court orders or debts due for state or federal taxes. This law does not restrict a levy against wages for a Federal tax debt by the Internal Revenue Service.

Protection Against Discharge

The Federal Wage Garnishment law prohibits an employer from discharging an employee because his or her earnings have been subjected to garnishment for any one indebtedness. The term "one indebtedness" means a single debt regardless of the number of levies made or number of proceedings brought to collect it. The law does not prohibit discharge if there are garnishment proceedings under another debt. The garnishment may be from the same creditor, but they must involve separate debts.

Effect of State Laws

The Federal Wage law does not annul, alter, affect, or exempt any person from complying with state laws:

- which prohibit garnishment or provide for more limited garnishments that are allowed under the federal law, or
- which prohibit the discharge of any employee because his or her earnings have been subject to garnishment for more than one indebtedness.

Colorado prohibits employers from "discharging an employee for the reason that a creditor has subjected or attempted to subject unpaid earnings of the employee to any garnishment or like proceeding directed to the employer for the purpose of paying any judgment."

Enforcement

The Secretary of Labor, acting through the Wage and Hour Division, U.S. Department of Labor, enforces the Federal Wage Garnishment law. Courts are divided as to whether to imply a private right of action. In any event, aggrieved consumers should consider a tort or unfair practice action.

Examples [Effective January 1, 2010]

FEDERAL MINIMUM WAGE of \$7.25 per hour
[as of 1/1/2010 minimum wage is \$7.24 per hour in Colorado]

| <u>Pay Period</u> | <u>Amount exempt is greater of</u> |
|-------------------|--|
| Weekly | \$217.50 (30 x \$7.25) or 75% of Disposable Earnings |
| Bi-weekly | \$435.00 (60 x \$7.25) or 75% of Disposable Earnings |
| Semi-monthly | \$471.25 (65 x \$7.25) or 75% of Disposable Earnings |
| Monthly | \$942.50 (130 x \$7.25) or 75% of Disposable Earnings |

EXAMPLE #1 with minimum wage of \$7.25

| | |
|---------------------------------------|----------------|
| Weekly gross wages before taxes: | \$400.00 |
| Less tax: | <u>-50.00</u> |
| | \$350.00 |
| Greater of 75% (\$262.50) or \$217.50 | <u>-262.50</u> |
| Garnishment amount: | \$ 87.50 |

EXAMPLE #2 with minimum wage of \$7.24

| | |
|-------------------------------------|----------------|
| Weekly gross wages before taxes: | \$200.00 |
| Less tax : | <u>-20.00</u> |
| | \$180.00 |
| Greater of 75% (135.00) or \$217.50 | <u>-217.50</u> |
| Garnishment amount: | 0.00 |

If the minimum wage is increased, the minimum amount of your wages that is exempt from garnishment will also increase.

The exempt amount should be based on either the State or Federal minimum wage- whichever is higher.

Bank Account Garnishments

The assets judgment creditors routinely go after are bank accounts. A judgment creditor can attempt to garnish the money in a bank account even if the money originally was exempt. In other words, as soon as you put money into a bank account, a judgment creditor can attempt to garnish the account if the judgment debtors name is on the account. Therefore we recommend to clients that if there is a judgment, they close any accounts in their name.

When a bank account is garnished the judgment debtor gets a Writ from the Court and serves the bank and then serves the debtor. The funds in the account are frozen up to the amount of the judgment. You have ten days to object to the garnishment of the bank account after service of the Writ. While the account is frozen any outstanding checks will be returned, resulting in NSF charges, and the bank will charge a fee for the garnishment.

If you do not object to the garnishment within ten days, then the Court will release the funds to the judgment creditor. If you do file an objection with the Court within ten days, the Court will set a hearing on the objection. If the Court finds that the funds are exempt from garnishment, the Court will order the money released to you. If the Court finds that the funds are not exempt, the Court will order the money released to the judgment creditor.

Keep in mind that even if the Court finds that the funds are exempt from garnishment and releases the money to you, you will be liable for any NSF fees, garnishment fees and other costs associated with the garnishment. The costs of a garnishment can be very large.

Know that if you have a joint account, your creditors **DO NOT** have to notify the other account holder of the garnishment and all funds in the account are frozen up to the amount of the judgment.

STUDENT LOANS

Student loans are generally not dischargeable in bankruptcy. There are medical hardship discharges that may be available if you cannot medically do the work you went to school for. There are also many repayment options. For information go to www.studentloanborrowerassistance.org

PAYDAY LOANS

Payday loans have high interest rates and high fees, if a debtor has a payday loan, the lender can demand payment in full until the 4th consecutive deferred deposit loan. At that time the consumer should be given the option to participate in a voluntary payment plan. To convert a deferred deposit loan into a payment plan the consumer must request a payment plan prior to close of business before the maturity of the loan. This must be done at the point of sale (or the place where you took out the loan). Payment can be up to 6 equal payments that coincide with your pay date or benefit payment date. There should not be any additional fees.

IDENTITY THEFT

Report it to your local police department and the creditor. You may also contact the Federal Trade Commission at www.ftc.gov or the Colorado Attorney General at www.ago.state.co.us

BANKRUPTCY

Should I file for Bankruptcy?

Bankruptcy is a legal action in which a person who cannot pay his or her bills can get a fresh financial start. The right to file for bankruptcy is provided for by federal law, and all bankruptcy cases are handled in federal court. Bankruptcy is not necessarily the answer for all people facing financial difficulties. Whether you should declare bankruptcy depends on the particular circumstances of your financial situation. You may be able to resolve your problems through payment arrangements, consolidated loans or other means less drastic than bankruptcy. However, bankruptcy may be a necessary step for an overwhelmed debtor.

There are two kinds of bankruptcy for individuals (who are not farmers): straight bankruptcy (Chapter 7) and wage earner plans (Chapter 13). While the laws changed in October 2005, bankruptcy is still possible. Credit cards, medical debt, and most judgments still can be discharged in a bankruptcy.

You can only file for and receive a Chapter 7 Bankruptcy once every 8 years so timing of filing is very important.

Straight Bankruptcy – Chapter 7

In a straight bankruptcy under Chapter 7, you, the debtor, file a petition asking the Court to discharge, wipe out your debts in exchange for giving up your property, except for **EXEMPT** property that the law allows you to keep. (In many cases, most or all of your property may be exempt.) Property, which is not exempt, is sold by the *bankruptcy trustee* and the money is distributed to creditors. A Chapter 7 bankruptcy remains on your credit record for 10 years.

To keep a home or vehicle in a Chapter 7 you must be current in payments or be able to become current.

Chapter 13 Bankruptcy

In a Chapter 13 case, you, the debtor, file a *PLAN* showing how you will pay off some of your past-due and current debts over an extended period, normally three (3) years. This is different from Chapter 7 bankruptcy where you ask the Court to wipe out (discharge) your debts. The most important thing about a Chapter 13 case is that it will allow you to keep valuable property -- especially your home -- that might otherwise be lost or a Chapter 13 might allow you to discharge debts you could not discharge in a Chapter 7.

You should consider filing a Chapter 13 if you:

1. Own your home and are in danger of losing it because of money problems; or
2. Are behind on debt payments, but can catch up if given some time and have a regular income (including government benefits such as social security or public assistance).
3. If you are not eligible for a Chapter 7 due to the means test.

To determine whether or not you should file for bankruptcy, you need to consider your personal financial situation. In some cases, you might be better off not filing for bankruptcy. Consider the following points carefully:

- **You may be “judgment-proof”.** If you are judgment proof, then you do not have any income, assets, or property that a creditor could take either by garnishment or by attachment. If this describes your financial situation, then you may not want to file for bankruptcy. Filing for bankruptcy will stop creditors from calling, but will not change your income or assets.
- **Secured property.** If you have secured property, and the equity in that property is less than the exemption amount, and you are current on payments for that secured property, you can continue making payments and keep the property even if you file for bankruptcy. You must re-affirm the debt or redeem the property.
- **Medical bills.** Medical bills are usually a primary reason why people file for bankruptcy. If you do not have medical insurance, you may want to consider whether bankruptcy is a good option for you.
- **Automobile Insurance.** If you do not have insurance and you drive, you should obtain insurance before you file for bankruptcy. Lenders require that you have insurance on the vehicle if you are making payments and the bankruptcy court does ask whether or not you have automobile insurance.
- **Garnishment.** If you have income that a creditor is currently garnishing, a bankruptcy under Chapter 7 should stop the garnishment, but will not stop child support or maintenance garnishments and these debts are not discharged.
- **Assets.** If you have property in which the equity is higher than the exemption amount, you will have to pay the bankruptcy court the excess equity or turn over the property.
- **Keep in mind that bankruptcy may not wipe out all your debts.**
- **You can only file for and obtain a Chapter 7 discharge once every 8 years. Timing of filing is very important.**

What does it Cost to File for Bankruptcy?

It currently costs \$299 to file for a Chapter 7 bankruptcy, whether for one person or a married couple. It currently costs \$274 to file for a Chapter 13 reorganization plan. The Court can waive the fees.

You can only file a joint bankruptcy if you are married- either through a ceremony or a common law marriage. If you are unsure if you are common law married see an attorney. If you are married you can file an individual or joint bankruptcy. Due to the new bankruptcy code even if you file an individual bankruptcy you may have to provide financial information for your spouse.

What Property Can You Keep?

You can keep all property (except secured property), which the law says is *EXEMPT* from the claims of creditors. Equity is the value of the property minus the amount you still owe. There is a more detailed list in the packet, but some Colorado exemptions include:

- \$60,000 in equity in your home/ \$90,000 in equity in your home if there is an elderly or disabled owner, spouse or dependent.
- \$5,000 in equity in your car, bicycle (or combination of vehicles).
- \$10,000 equity in your car if you are elderly or disabled.
- \$3,000 household goods (per adult).
- \$20,000 in things you need for your job (tools, books, etc.).
- \$1500 wearing apparel.
- \$2000 jewelry.

- Your right to receive certain benefits such as Social Security, veterans' benefits, public assistance, and pensions (regardless of the amount).

If you transfer exempt property for less than the fair market value, the bankruptcy court can set aside the transfer and the property loses its exemption and can be taken by the Court to pay creditors.

Secured Creditors

A few of your creditors may have a *SECURITY INTEREST* in some of your property. A creditor has a security interest in your property only if you have a written agreement (but not all written agreements give a security interest). The security interest gives the creditor the right to take (under some circumstances) and sell your property if you fail to make your loan payments. If the secured property is not exempt property, you may be able to pay the actual value of the property to the creditor and keep the property, even if you owe more than the actual value. To keep secured property in a Chapter 7, you must make payments and re-affirm the debt or redeem the property. If you re-affirm a debt the debt survives the bankruptcy, is still owed, and the creditor can sue you and/or enforce the debt after the discharge.

Does Bankruptcy Wipe Out All Debts?

NO. You cannot discharge:

- Debts resulting from any fraud you committed
- Money owed for child support or alimony, criminal restitution, fines, most taxes, and limited other kinds of debts.
- Domestic support obligations.
- Debts not listed on your bankruptcy petition
- Loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan.
- Debts resulting from willful and malicious harm.
- Student loans owed to a school or government body, unless payments would be an undue hardship and an adversarial proceeding was filed.
- Debts you re-affirm.
- **Debts incurred after you filed are not discharged.**

Automatic Stay

Once a bankruptcy is filed, an automatic stay goes into effect. Creditors are prohibited from attempting to collect on a debt unless they receive a 'relief from stay'. The automatic stay **does not** affect **criminal cases**. If you have multiple bankruptcy filings the stay may not go into effect or stay in effect.

Discharge

If everything goes well in a bankruptcy case, the final thing the Court does is to grant a discharge, which excuses you from paying all of your debts (except possibly for the debts mentioned above). Note that your discharged debts still exist, and co-signors and co-debtors will remain liable (unless they also filed a bankruptcy and received a discharge). The debts will still be on your credit report but they will be marked as "discharged in bankruptcy".

Can You Own Anything After Bankruptcy?

YES! Many people believe they cannot own anything for a period of time after filing for bankruptcy. This is not true. However, if you receive an inheritance, a property settlement, or life insurance benefits, that money or property may have to be paid to your creditors if:

- The property or money is not exempt, and,
- You receive it within 180 days after filing for bankruptcy.

The discharge order also forbids creditors from doing anything to try to collect a debt that has been discharged from the party who filed the bankruptcy. The Court can refuse to grant a discharge if you have done something improper, such as trying to cheat a creditor by hiding your property; giving false information to the Court; refusing to obey a court order, etc.

Will Bankruptcy Harm Your Credit?

There is no clear answer to this question. The fact that you have filed a bankruptcy can appear on your credit record for ten (10) years. (Other debts cannot appear for more than seven (7) years). But since bankruptcy wipes out your old debts, you should be in a better position to pay your current bills, so you may be able to get credit.

More information on bankruptcy and court forms can be obtained by visiting the US Bankruptcy Court for the District of Colorado at www.cob.uscourts.gov/bindex.htm.

OTHER INFORMATION

Eviction – Eviction proceedings are stopped when a bankruptcy is filed; however, if you do not pay post-petition rent you can be evicted.

Utility Service - A public utility, such as an electric company, cannot cut off service because you have filed for bankruptcy. However, the utility company can require a deposit for future service.

Discrimination - A government agency cannot discriminate against you because you have filed for bankruptcy.

Driver's License - If you lost your license solely because you could not pay court-ordered damages caused in an accident, bankruptcy may allow you to get your license back.

Co-signer - If someone signed a loan with you (a co-signer) and you file for bankruptcy, the co-signer may have to pay your debt and remains liable for the debt.

AUTOMATIC STAY

On the date your bankruptcy papers are filed with the bankruptcy court, an *AUTOMATIC STAY* goes into effect. The *AUTOMATIC STAY* is an order issued by the bankruptcy court, which stops the creditors from doing anything to collect the debt. The *AUTOMATIC STAY* stops garnishment of wages, repossessions and other collection attempts. They stay may not be in effect if you file more than one bankruptcy in a year.

JUDGMENT PROOF

You are “judgment proof” if you do not have any assets of property that a creditor can take (with or without a judgment) from you. If your income is exempt and all of your property is exempt, then creditors cannot take property from you.

INCOME TAXES

Federal income tax refunds are not exempt. EIC and child tax credit are exempt (but if you are filing for bankruptcy you should not pay insiders or any past due debt). For information on how to file your income taxes for free go to www.irs.gov.

REMEMBER: The Law often changes. Each case is different. This pamphlet is meant to give you general information and not to give your specific legal advice.

SAMPLE LETTERS

NOTE: To have proof that the letters were mailed, send them CERTIFIED MAIL with RETURN RECEIPT REQUESTED (for your records). The Post Office can help you with this. ALSO - **Make a copy** for your records of anything that you either mail to a creditor or file with the Courthouse.

To request that a debt be verified:

DATE: _____

To: _____ (Creditor)

RE: _____ (Account Number if any)

In accordance with the Fair Debt Collection Practices Act, I dispute the amount of the debt and request that you verify the debt you are seeking to collect from me. I am also requesting reasonable proof of the assignment of this debt pursuant to CRS 5-3-102.

Signed: _____

Address: _____

To request that a collection agency stop contacting you:

DATE: _____

To: _____ (Creditor)

RE: _____ (Account Number if any)

I am writing to request that you stop communications to me about my account. The Fair Debt Collection Practices Act, U.S.C.A. Section 1692c(c), requires that you honor my request.

(THE FOLLOWING PARAGRAPH IS OPTIONAL OR YOU CAN JUST WRITE A STATEMENT OF YOUR SITUATION)

I was laid off from work two months ago and cannot pay this bill at this time. I am enrolled in a training program, which I will complete in March and hope to find work that will allow me to resume payments soon after that. Please note that you letters mistakenly list the balance on the account at \$245.00. My records indicate that the balance is less than that.

Your cooperation will be appreciated.

Very Truly Yours,

Name: _____

Address: _____ (ADDRESS IS OPTIONAL)

COLORADO EXEMPTIONS

| <u>TYPE OF PROPERTY</u> | <u>AMOUNT OF EXEMPTION</u> | | <u>STATUTE CREATING EXEMPTION</u> |
|---|----------------------------|----------|-----------------------------------|
| | INDIVIDUAL | JOINT | |
| Homestead or mobile home occupied as home by owner or owner's family | \$60,000 | \$60,000 | CRS §38-41-201, 201.5 |
| Homestead or mobile home occupied as home by an elderly or disabled owner, spouse or dependent | \$90,000 | \$90,000 | CRS §38-41-201, 201.5 |
| Necessary Wearing Apparel | \$1,500 | \$3,000 | CRS §13-54-102(1)(a) |
| Watches, jewelry and articles of adornment | \$2,000 | \$4,000 | CRS §13-54-102(1)(b) |
| Personal library, family pictures and schoolbooks | \$1,500 | \$3,000 | CRS §13-54-102(1)(c) |
| Burial sites for debtor and dependents | 100% | 100% | CRS §13-54-102(1)(d) |
| Household goods (includes furniture, dishes, appliances, televisions, stereos, computers exercise equipment, musical instruments, toys and more. | \$ 3,000 | \$6,000 | CRS §13-54-102(1)(e) |
| Provisions & Fuel | \$600.00 | \$1,200 | CRS §13-54-102(1)(f) |
| Livestock & Poultry of farmer* | | | |
| Machinery & tools of farmer | \$50,000 | \$50,000 | CRS §13-54-102(1)(g) |
| Stock in trade, equipment & tools used in occupation | \$20,000 | \$40,000 | CRS §13-54-102(1)(i) |
| Armed Forces Pension | 100% | 100% | CRS §13-54-102(1)(h) |
| One or more motor vehicles or bicycles | \$5,000 | \$10,000 | CRS §13-54-102(1)(j)(I) |
| Motor vehicle exemption if debtor Is elderly (60+) or disabled, or debtor has a spouse who is elderly or disabled, or the debtor has a disabled child | \$10,000 | \$20,000 | CRS §13-54-102(j)(II)(A) |
| Library of professional** | \$3,000 | \$6,000 | CRS §13-54-102(1)(k) |
| Avails of life insurance policies | \$5,000 | \$10,000 | CRS §13-54-102(1)(l) |

***NOTE: YOU MAY USE EITHER THE EXEMPTION IN CRS §13-54-102(1)(g) or CRS §13-54-102(1)(i), BUT NOT BOTH.**

****NOTE: YOU MAY USE EITHER THE EXEMPTION IN CRS §13-54-102(1)(i) or CRS §13-54-102(1)(k), BUT NOT BOTH.**

COLORADO BANKRUPTCY EXEMPTIONS
COLORADO JUDGMENT EXEMPTIONS
continued

| <u>Type of Property</u> | <u>Amount</u> | | <u>Statute</u> |
|---|--|---|--|
| | INDIVIDUAL | JOINT | |
| Proceeds of claim & avails of insurance policies covering loss or destruction of exemption given for the property lost or destroyed | Extent of exemption | Extent of exemption | CRS §13-54-102(1)(m) |
| Proceeds of claim for personal Injuries except for obligations incurred for treatment or collection of claim. | 100% | 100% | CRS §13-54-102(1)(n) |
| Claim for public or private disability benefits due, or any proceeds thereof. | \$3000/mo | | CRS §13-54-102(1)(v) |
| Professionally prescribed health aids | 100% | 100% | CRS §13-54-102(1)(p) |
| Crime victims reparation law awards | 100% | 100% | CRS §13-54-102(1)(q) |
| Homestead sale proceeds (can not be commingled/2yr. time period) | \$ 60,000 \$ 90,000 | or or | \$60,000 \$90,000 CRS §38-41-207 |
| Disposable earnings (net) | 75% of disposable earnings after deductions required by law OR 30 x federal minimum hourly wage per week or 30x state minimum hourly wage per week WHICHEVER IS GREATER | | CRS §§5-5-106/13-54-104 |
| Insurance proceeds from loss of homestead | Same as homestead exemption | Same as homestead exemption | CRS §38-41-209 |
| Unemployment Compensation Benefits | 100% (with some limitations and if not co-mingled) | 100% (with some limitations and if not co-mingled) | CRS §8-80-103 |
| Proceeds of group life insurance policies | 100% | 100% | CRS §10-7-205 |
| Earned Income Credit | 100% | 100% | CRS §13-54-102(1)(0) |
| Child Tax Credit | 100% | 100% | CRS §13-54-102(1)(0) |

COLORADO BANKRUPTCY EXEMPTIONS
COLORADO JUDGMENT EXEMPTIONS
Continued

| <u>Type of Property</u> | <u>Amount</u> INDIVIDUAL | JOINT | <u>Statute</u> |
|---|--|-------|----------------------|
| Teacher Retirement benefits | 100% | 100% | CRS §22-64-120 |
| Public employee's retirement benefits | 100% | 100% | CRS §13-54-102(1)(s) |
| Public assistance payments example: TANF, food stamps, AND, OAP | 100% | 100% | CRS §26-2-131 |
| Police Pension benefits | 100% | 100% | CRS §13-54-102(1)(s) |
| Firemen's Pension benefits | 100% | 100% | CRS §13-54-102(1)(s) |
| Public employee's deferred compensation | 75% OR 30 x federal minimum hourly wage per week OR state minimum hourly wage per week WHICHEVER IS GREATER | | CRS §24-52-102(4) |
| Specific partnership property | 100% of partner's interest | | CRS §7-60-125 |
| Security deposit for Rent | 100% | 100% | CRS §13-54-102(1)(r) |
| Deposit for utilities | 100% | 100% | CRS §13-54-102(1)(r) |
| Social Security/SSI | 100% | 100% | 42 USC § 407 |
| *Child Support Payments Received | 100% | 100% | CRS §13-54-102(1)(u) |
| Maintenance Payments Received | 100% | 100% | CRS §13-54-402(1)(u) |

*CHILD SUPPORT PAYMENTS ARE NOT EXEMPT UNLESS THE PAYMENT IS KEPT IN A SEPARATE CUSTODIAL ACCOUNT FOR BENEFIT OF THE CHILD(REN)'S AND NO OTHER MONEY IS DEPOSITED IN THE ACCOUNT. THE ABOVE EXEMPTIONS MAY NOT APPLY IF DEBT IS FOR CHILD SUPPORT, IRS TAXES, OR STUDENT LOANS.
CRS §13-54-102.5

CONSUMER PROTECTION

There are a number of other public and private agencies that can assist you if you feel that a business has treated you unfairly, or even fraudulently. The following is a listing of telephone numbers for some of those agencies.

| ISSUE | AGENCY | PHONE NUMBER |
|--|--|--|
| Automobile Dealers | Motor Vehicle Dealer Board www.revenue.state.co.us/dlr/home/asp | (303) 205-5604 |
| Debt Collection | Collection Agency Board http://tinyurl.com/24jmksh | (303) 866-5304 |
| Insurance | Colorado Division of Insurance www.dora.state.co.us | (303) 894-7490 |
| Real Estate | Colorado Division of Real Estate www.dora.state.co.us | (303) 894-2166 |
| Investment | Colorado Division of Securities www.dora.state.co.us | (303) 894-2320 |
| Telemarketing Fraud | National Fraud Information Center | 1-800-876-7060 |
| Franchises/Business Opportunities/Credit Reporting | Federal Trade Commission www.Ftc.gov | 1-877-FTC-HELP or 1-877-382-4357 |
| Consumer Resource Guide | Colorado Attorney General | www.ago.state.co.us/CRGInde.cfm.html |
| Consumer Protection Information | Colorado Attorney General | www.ago.state.co.us/consumerprotection/cfmmenupage |
| Employment/ Wage and Hour | US Department of Labor Wage & Hour Division 1999 Broadway, Suite 2445 Denver, CO 80202-5712 | www.dol.gov Phone: (720) 264-3250 1-866-4-USWAGE (1-866-487-9243) |
| Licensing/Regulation of Professional Occupations | Colorado Department of Regulatory Agencies | http://www.dora.state.co.us/registrations/index.htm |

CHECKLIST FOR CONSUMERS

...this may help resolve your complaint. Check the telephone directory for similar services outside the Denver-Metropolitan area.

METROPOLITAN LAWYER REFERRAL SERVICE, INC., Logan Building, 899 Logan Street, Suite 408, Denver, CO 80203, (303) 831-8000, can refer you to an attorney experienced in dealing with your type of problem. Inquire about the fees for additional services.

DISPUTES BETWEEN CONSUMERS AND BUSINESSES and RELIABILITY REPORTS. Better Business Bureau, 1020 Cherokee Street, Denver, CO 80204, (303) 758-2100.

LEGAL RIGHTS and LEGAL ASSISTANCE. Justice Information Center, 1600 Downing Street, Suite 500, Denver, CO 80218, (303) 832-1220. Services: Immigration, Victim Services, and Consumer Issues. Fees are based on ability to pay and donations. Bilingual services are available.

CREDIT REPORTING PROBLEMS. Call the Federal Trade Commission, 1-877-FTC-HELP (1-877-382-4357).

LEMON LAW MEDIATION, AUTOMOBILE FACTORY DEFECTS and WARRANTY DISPUTES. Call Autoline. Most automakers participate in the program. 1-800-955-5100 or your local BBB.

SERVICE CONTRACTS ON NEW CARS OR TRUCKS. Call Colorado Automobile Dealers Association, Motor Vehicle Investigations, 1881 Pierce Street, Lakewood, CO 80214, (303) 205-5604. They can arbitrate or mediate service complaints involving participating new car or truck dealers who have agreed to be bound by panel discussions.

NATIONAL BANKS. Comptroller of currency, 1301 McKinney Street, Suite 3710, Houston TX 77010, 1-800-613-6743.

STATE CHARTERED COMMERCIAL BANKS. Banking Commissioner, 1560 Broadway, Suite 1175, Denver, CO 80202, (303) 894-7575.

INDUSTRIAL BANKS. Banking Commissioner, (303) 894-7575 and F.D.I.C., Dallas Regional Office, 1910 Pacific Avenue, 20th Floor, Dallas, TX 75201 (214) 754-0098.

FEDERAL CREDIT UNIONS. National Credit Union Administration, Region V, 480 Spicewood Springs Road, #5200, Austin, TX 78759, (512) 342-5600

STATE CREDIT UNIONS and STATE SAVINGS & LOANS. Office of Thrift Supervision, Consumer Affairs Department, National Number, (800) 842-6962 or (202) 906-6237.

MORTGAGE COMPLAINTS—FIRST MORTGAGE COMPANIES ONLY. Colorado Mortgage Lenders Association, 1000 East Belleview Avenue, Suite 203, Greenwood Village, CO 80111, (303) 830-3834.