

In Debt?

Your Income May Be Protected

Since 1958
LEGAL AID CENTER
■ ■ ■ ■ *of Southern Nevada*

PURPOSE OF CLASS

- To give you a better understanding of what it means to be collection proof
- To help you understand the legal process
- To help you understand your rights

What does it mean to be Collection Proof?

- Being Collection Proof means that a creditor has no legal way to collect a debt or judgment that you may owe.
- A creditor can still sue you and obtain a judgment against you, but it cannot take any of your income or assets if you are collection proof.

Commonly Used Terms

- Original Creditor – The entity that issued you credit or to which you originally owed money.
- Debt Collector – An entity that collects debt on behalf of another.
- Debt Buyer - An entity that buys “bad” (defaulted) debt.
- Exempt Income – Income that is protected, but you must take affirmative action to get it back after wage garnishment or bank attachment.
- Automatically Protected Income - Federal benefits (e.g., Social Security) up to two months of which will not be taken if certain requirements are met (e.g., direct deposited, no comingling of funds, no transfer between bank accounts).

GENERAL TIPS

Statute of Limitations

- The “statute of limitations” is the last day someone can file a lawsuit against you.
- In Nevada –
 - written contracts, such as credit cards, have a 6 year statute of limitations; and
 - oral contracts have a 4 year statute of limitations.
- The date used to calculate the statute of limitation is either the date of the last transaction or the date of the last payment, whichever is later.

GENERAL TIPS

Know Your Credit Report

- There are three credit reporting agencies: Equifax, Experian, and Transunion
- Services, such as Credit Karma, might be informative but they are not considered accurate for official purposes.
- For your free credit report – from all three Credit Reporting Agencies – you can:
 - Go to www.annualcreditreport.com (be aware of the arbitration clause);
 - call 1-877-322-8228; or
 - fill out and mail in the form on page 5.
- If an entity is asking you to put in credit card information prior to obtaining your credit report it is not free.

GENERAL TIPS

Credit Reports

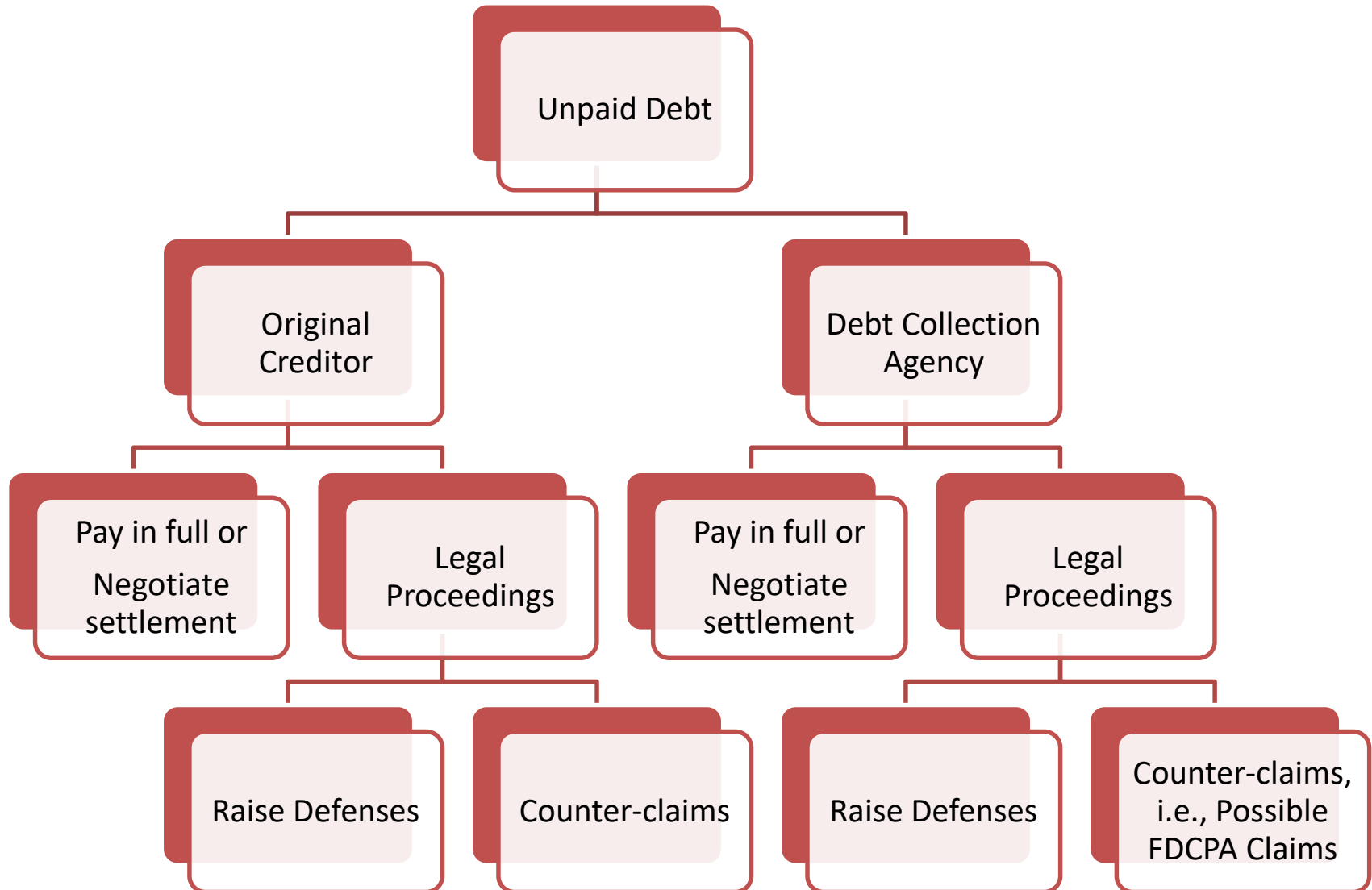
- Even if you are collection proof, your creditors can still make “negative” posts on your credit report, thereby lowering your credit score.
- “Negative” posts on your credit report generally remain on your credit for 7 years from the first delinquent report.
- Bankruptcy
 - Chapter 7 – 10 years from the date of filing
 - Chapter 13 – 7 years from the date of filing

GENERAL TIPS

FOR DEALING WITH DEBT

- Get it in writing
 - The only way to prove something happened is to have it documented (letters, voicemails, e-mails, etc.,)
- If you are sending a letter, make a copy of the signed letter and the envelope
- When mailing a letter try and send it certified, return receipt requested
 - If that is too expensive, try to at least send it certified, but always keep the copy of the signed letter and the envelope
- Save all documents including letters and receipts
- The first communication from a debt collector is the most important under the FDCPA
- If you can't afford to pay, don't re-start your statute of limitations by making a nominal payment

The Collection Process



What are your options?

- Do nothing (NOT RECOMMENDED)
 - Risks
 - The amount of the debt will increase
 - Your credit report will be adversely affected
- Ask creditor to leave you alone
 - Possibly same results as doing nothing
- Negotiate a Settlement – *Get it in writing! Make sure the balance is being forgiven and not being sold to a third party.*
- Dispute or Defend Against the Debt – including bringing possible counterclaims
- File for Bankruptcy and rebuild your credit over a number of years

YOU SHOULD ALWAYS. . .

- Be aware of your financial situation
 - The source of your income
 - How much you make
 - Any bank account(s) you may have
 - Review your credit report - having a judgment against you will affect your credit score
- Read your mail
 - Know what debts you have
 - Know what action (if any) your creditors are taking against you
 - Know who your creditors are: super vs. ordinary creditors

Super Creditors

- IRS
- Department of Education
- Social Security Administration
- Unpaid Child Support or Alimony

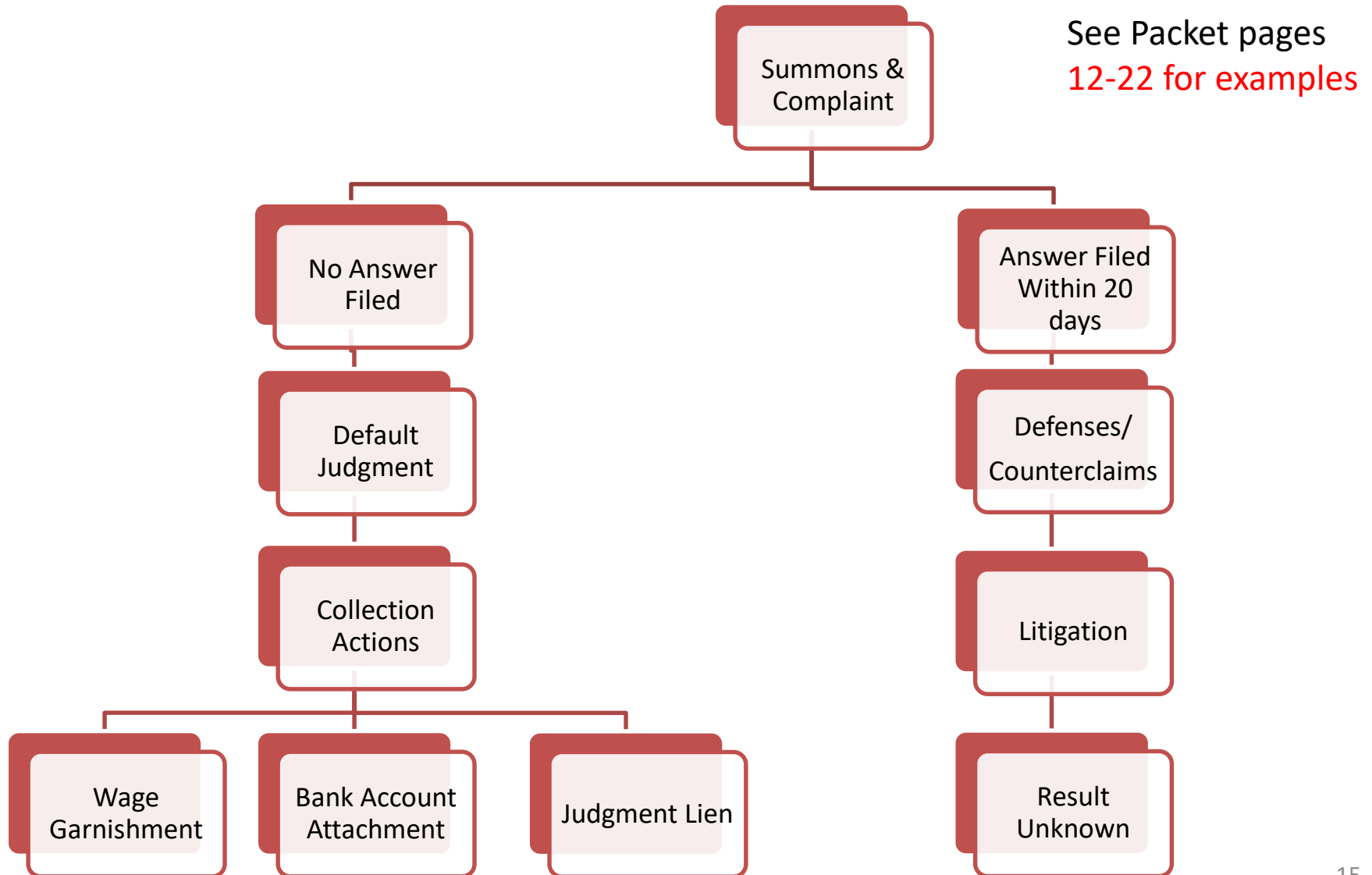
Super Creditors

- Government entities and child support/alimony are allowed to take a percentage of your exempt income or assets even if you are otherwise considered collection proof.
- If your only income is social security, government entities can garnish up to 15% of your social security. If the payment is for anything other than back taxes, you must be left with at least \$750.00 per month in social security benefits.
- However, for unpaid child support or alimony, anywhere from 50 - 65% of your social security can be garnished, depending on your circumstances.
- Exceptions for SSI, which should not be garnished.

Ordinary Creditors

- Credit cards
- Medical bills
- Post Repossession Auto Deficiency
- Foreclosure debt
- Debts to landlords
- Payday lenders
- Any other consumer debt

Collection Lawsuit



Sources of Confusion

- The first you learn that you have been sued is that your bank account has been attached.
- You are served with a lawsuit that has the name of a company that you have never heard of before.
- The amount that you are being sued for is not the same as the amount of your debt.

Judgments

- A creditor only receives a judgment AFTER they win in court
- Judgments in Nevada are good for six years
- However creditors can renew the judgment at the end of the six year period, and can do so every six years thereafter
- Keep in mind that the judgment may have continued to accumulate interest during the time in which you are collection proof

Am I Collection Proof?

- You are Collection Proof if:
 - You earn less than \$362.50 per week (wages);
 - Your income and assets are exempt; and
 - You do not own anything of great value that you wish to sell or leave to your heirs.

Remember . . .

- Being Collection Proof is not necessarily permanent. You are Collection Proof as long as your financial condition stays the same or gets worse.
- If your financial condition improves creditors that have judgments against you may be able to collect money and/or assets from you.
- If you are being harassed by a creditor, you may consider sending a letter advising the creditor that you are collection proof and requesting not to be contacted.
(See packet page 24)

What Type of Income Is Exempt?

- Wages
 - Gross income
 - If your gross weekly income is \$770 or less then at least 82% of your disposable income is exempt.
 - If your disposable income is between \$362.50 and \$442.08 you can only be garnished the difference between your wages and \$362.50.
 - If your gross weekly income is more than \$770/week you will likely be garnished at the full 25%.
- \$400 (total) in bank account(s)
- Federal Benefits
 - Social Security Benefits
 - Veteran's Benefits
- Retirement Pensions – until they are being drawn upon (except for FERS and PERS)
- Welfare Benefits or Worker's Compensation
- Unemployment Benefits or Vocational Rehabilitation
- Child or Spousal Support

Garnishment Calculation (Wages)

- Disposable (Garnishable) Income Calculation
- Gross Income
 - Federal tax
 - Medicare
 - Social Security

= Disposable income
- If your gross weekly wage is more than \$770/week – multiply the disposable income by 25%.
- If your gross weekly wage is less than \$770/week – multiply the disposable income by 18%.
- Remember, you have to be left with no less than \$362.50 per week in wages (after required deductions and garnishment, not including things such as insurance and union due reductions).

Federal Benefits

- Up to two months of direct deposited federal benefits are automatically protected.
 - Funds must be direct deposited by US Treasury
 - Funds should not be co-mingled – unless the balance is less than \$2,000 total (for all accounts)
 - Funds should not be moved between bank accounts
 - Once funds are moved, the automatic protection is lost
 - The funds are still exempt, and tracing of funds is possible, but you will have to file a Claim of Exemption from Execution to get your money back

Federal Benefits

- The bank must allow you to withdraw any money in your account that is automatically protected from attachment.
- If you have more money in your account than is automatically protected, the extra money is not automatically protected, but is still exempt.
 - You will need to file an Affidavit Claiming Exemption
- The Direct Express Debit Master Card cannot be garnished and may be a viable option for you. See Packet pages 61 - 64.

Federal Benefits

However . . .

- You should not put exempt income in a bank account with money from other sources.
- When possible have federal benefits direct deposited into your account
- Do not move exempt money between bank accounts
 - Tracing of funds is possible, but makes things much more complicated and because the funds have moved, they may no longer be considered “automatically protected”
- Any funds more than two months old or exceeding \$2,000.00 can be garnished, but you can file a Claim of Exemption from Execution for the total amount, which is easier if funds were not co-mingled. See Page 31.
- Some debts such as debts to the IRS, child support, federal student loans, and other debts owed to the federal government may be collected against most exempt income. (Super Creditors).

What Assets Are Protected?

- A homesteaded house or mobile home
 - Up to \$605,000 of the home's value (equity)
 - The value of a mobile home is protected even if you do not own the land.
 - A judgment lien can still be recorded, but a sale cannot be forced
 - Note: This exemption does not apply if the judgment was for the mortgage or is a mechanic's lien upon the property
- One vehicle worth up to \$15,000 (equity)
- Personal property not to exceed \$10,000 (aka Wild Card Exemption)

However . . .

- You are not protected from Super Creditors
- These exemptions will not keep creditors from recovering collateral for a loan, such a car or house.
 - If you don't pay your mortgage – you will be foreclosed upon
 - If you are more than 30 days late with your car payment, your car can be repossessed.
- An attempt to sell an asset may waive the exemption

What Can I Leave to My Heirs?

- Many of the exemptions discussed here only protect assets during your lifetime.
- Your spouse may also enjoy protection of a homesteaded home for his or her lifetime, if certain requirements are met.
- Most exemptions do not continue beyond death and the assets may be available for collection by your creditors after your death.

Judgment Collection

- As soon as you learn that you have been garnished or that your bank account is going to be attached, go to the Civil Law Self-Help Center in the Regional Justice Center at 200 Lewis Ave., Las Vegas, NV 89101 and file a “Claim of Exemption from Execution.” Attach any proof you may have as to why you are exempt. See Packet page 31.
- You only have 10 days to do this following notice of a writ of execution or garnishment. If your wages are being garnished, you must file the claim of exemption within 10 days of the date of each withholding.
- It is free to file the Claim of Exemption from Execution.
- If you have filed the Claim of Exemption from Execution and Plaintiff-creditor has not contested that Affidavit within 8 judicial days after the claim of exemption has been served, the Constable’s office should return your attached funds. If you have any difficulty with this process, please contact the Legal Aid Center of Southern Nevada, Inc.
- If the Plaintiff-creditor files an Objection a hearing will be set. At the hearing, you will have the opportunity to “prove up” that the funds seized from your bank account were, indeed, exempt from execution.
- The hearing date is usually within 7 days of the Plaintiff’s Opposition

Fair Debt Collection Practices Act

What is it?

- Applies to: Third Parties Collecting on Behalf of Another, not Original Creditors.
- Who is an Original Creditor? If you had a Capital One credit card, Capital One is your original creditor.
- Who is a Third Party Collecting on Behalf of Another? A collection agency, a person who buys bad debts (debt buyer), or an attorney for an original creditor or debt buyer. (e.g., the entity that bought your Capital One account)
- In Nevada, the federal Fair Debt Collection Practices Act applies to payday and title lenders who would otherwise be considered original creditors and *not* subject to the Fair Debt Collection Practices Act.

Fair Debt Collection Practices Act

What is Prohibited?

- No calls between 9:00 PM and 8:00 AM.
- No communication with third parties about the debt (family members, neighbors, friends, employers, etc.).
- No threats of legal action that cannot be taken, including, but not limited to, threats of incarceration for nonpayment.
- No use of unfair or unconscionable means to collect a debt, including, but not limited to, swearing at debtors and threatening harm to person or property.
- Continuing to contact debtor following receipt of “cease communication letter.”

Fair Debt Collection Practices Act

Validation of Debt Letter

- If you receive a letter that says this:
 - You have the right to dispute the validity of this debt. Upon a written request within 30 days of the date of receipt of this letter, if you notify us that the debt, or any portion thereof, is disputed, then we will obtain written verification of the debt or a copy of such verification or judgment and mail it to you. (see packet page 40)
- It is recommended that you dispute the validity of the debt, even if you recognize the account.
- Send the validation of debt letter - *always* make a photocopy of the completed letter and the envelope you send it in. Send by certified mail, return receipt requested or certified mail if possible.
- Disputing the validity of the debt halts the collection process (including telephone calls) until the debt collector verifies the debt.

Fair Debt Collection Practices Act

Cease Communication Letter

- Step One: Identify the debt collector.
- Step Two: Complete form “cease communication letter” or draft your own. See Packet page 42.
- Step Three: Send the cease communication letter - *always* make a photocopy of the completed letter and the envelope you send it in. Send by certified mail, return receipt requested or certified mail if possible.
- Step Four: Harassing phone calls should stop within 2 to 3 business days. If phone calls persist, make a log of the date, time, and identity of the caller and then call Legal Aid Center of Southern Nevada, Inc.

Federal Debt Collection Practices Act

Sample Call Log

<u>Date</u>	<u>Time</u>	<u>Phone #</u>	<u>Company</u>	<u>Name</u>	<u>What was said</u>

Fair Debt Collection Practices Act

Remedies for Violations

- Injured consumers may be entitled to an award of up to \$1,000.00 in statutory damages, as well as any provable actual or consequential damages.
- Oftentimes, as part of the settlement of a lawsuit brought under the Fair Debt Collection Practices Act, the debt giving rise to the consumer's action is forgiven or significantly reduced.

Payday or Title Lenders

- In Nevada, payday or title lenders are subject to the FDCPA
- If you send a “cease communication letter” to a payday or title lender, that lender must stop calling you. See Packet page 45.
 - Be careful with title lenders, they still have the ability to repossess your vehicle!
- Payday and title lenders are prohibited from engaging in abusive and unconscionable collection practices, including, but not limited to, threatening criminal prosecution, swearing, and threatening physical harm to person or property.

What happens if a Payday or Title Lender violates the FDCPA

- Injured consumers may be entitled to void their loan agreements and get a refund of all the money the consumer has paid to the payday or title lender.
- In some instances, injured consumers may be entitled to an award of \$1,000.00 in statutory damages.

Scams

- There is no such thing as “credit repair.”
 - There are only three ways to improve your credit rating:
 - dispute negative posts that do not belong to you or are more than 7 years old;
 - pay your accounts in negative standing; or
 - file bankruptcy and rebuild your credit over a number of years.
- Debt Management Services do not do anything for you that you cannot do for yourself
 - Contact the Monday Management International at 702-364-0344 for assistance
- If you have utilized a Credit Repair Organization or Debt Management Service and you are unhappy with the services provided, contact the Legal Aid Center of Southern Nevada, Inc.

BANKRUPTCY

- If you would like more information about bankruptcy, the Legal Aid Center of Southern Nevada, Inc. invites you to attend the Bankruptcy Community Service Class. At the class, you can obtain an application for a *pro bono* attorney through our office if you decide to file for bankruptcy. Go to our website for the most current class information.

<http://www.lacsn.org/what-we-do/free-classes>

- It is not recommended that you hire a non-attorney bankruptcy petition preparer – an unknowledgeable petition preparer can often make a bad situation worse and does not have the same accountability as a licensed attorney.
 - It is not recommended that you use a petition preparer for any legal service. Look for free services before you pay someone to help you.
- If you have utilized a bankruptcy petition preparer, or any type of petition preparer, and you are unhappy with the services provided, contact the Legal Aid Center of Southern Nevada, Inc.

Things to Remember

- If you share a bank account with a spouse, family member, or friend, remember that his or her non-exempt deposits may be subject to attachment for your debts.
- Beware that some financial institutions use cross-collateralization clauses. If you maintain a checking and/or savings account at the same financial institution at which you have a revolving line of credit (credit card), a mortgage, or an auto loan and you default on the payment, the financial institution may take money from your checking or savings account to pay off the loan without first taking you to court.
- If you default on an account for which you have given an authorization to make an automatic debit from a checking or savings account (this is common with payday loans), close the account *before* you default and open another account at a different financial institution.
- For exempt funds that are not automatically protected (e.g., life insurance proceeds, wages under \$362.50 per week, non-direct deposited benefits, etc.) you will have to go to court to protect your rights.
- A safety deposit box is not safe from a creditor.

Things to Remember Cont'd

- You should homestead your house or mobile home. Call Legal Aid Center of Southern Nevada, Inc. for more information.
- If you have been sued, it is important to file a written answer within 20 days. See Packet pages 19 and 65.
- If you do not answer, the creditor can obtain a default judgment against you. You should answer and/or go to court to ensure the creditor does not add fees that you do not owe.
- If a creditor has already obtained a judgment against you and garnishes or attaches exempt property you only have **10 days** from the date of the notice of attachment or execution, or wage garnishment, to claim your property is exempt. Go to the Civil Law Self-Help Center in the Regional Justice Center at 200 Lewis Ave., Las Vegas, NV 89101 for help.
- If you are being harassed by a creditor, you may consider sending a letter advising the creditor that you are collection proof and requesting not to be contacted.
- It is not recommended that you take out loans over the internet as the law is unclear and falls outside the protections of Nevada state law.

If you think you need further assistance please consult with an attorney or contact either:

Civil Law Self Help Center in the Regional Justice Center

200 Lewis Ave.,

Las Vegas, Nevada 89155

<http://www.civillawselfhelpcenter.org/>

or

Legal Aid Center of Southern Nevada

725 E. Charleston Blvd

Las Vegas, Nevada 89104

(702) 386 – 1070

<http://www.lacsn.org/>

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