

Recovering Financially from the COVID-19 Pandemic

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OVERVIEW

- Credit Reporting/Credit Repair
- Debt Collection/FDCPA
- Exemptions
- Bankruptcy
- Foreclosure/Loan Modification



CREDIT REPORTING & CREDIT REPAIR

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Credit Reporting

- Cost of bad credit includes higher interest rates, higher rent, and higher insurance rates
- Bad credit can make it harder to get a job
- Around 20% of consumers have errors in their credit reports

Credit Reporting

- COVID-related protections include:
 - Mortgage forbearance should not be reported as late payments if borrower was current prior to pandemic
 - Federal student loans should not report missed payments during pandemic
 - CFPB guidance says all furnishers which make COVID accommodations should not change the reporting status of borrowers who meet the requirements of the accommodation unless the account is brought current

Consumer Reporting Agencies

- 3 major CRAs, almost 50 others
 - Equifax, Experian, and Transunion
 - Employment, Tenant, Check and bank (eg. ChexSystems), Insurance, Medical, Subprime, Utilities, Gaming

Fair Credit Reporting Act

- Right to review report
- Right to know what data was used in case of adverse action
- Right to dispute inaccurate data
- No right to remove accurate derogatory data unless it's stale

Fair Credit Reporting Act

- Right one free report from each CRA every year
- Through April 2022 consumers can get 1 free report every week from 3 major CRAs
- Free reports are available through annualcreditreport.com

Stale Information

- Derogatory data must be removed seven years after first reporting
- Chapter 7 bankruptcy can be reported for ten years after filing

Disputes

- Disputes can be sent electronically or by mail
- Must identify sufficient information for furnisher to investigate
- Duty to reinvestigate

Credit Repair

- No right to remove accurate derogatory data unless it's stale
- Disputing accurate information will not improve credit report or credit score once dispute is resolved

Credit Repair

- Credit Repair Organizations Act:
 - Ensures that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services
 - Protects the public from unfair or deceptive advertising and business practices by credit repair organizations
 - Prohibits CROs from using misleading or false statements with regards to credit or creditworthiness and also prohibits CROs from counseling or advising consumers to make such statements

Credit Repair

- Credit Repair Organizations Act:
 - Prevents CROs from charging in advance for services

Debt Collection

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Definitions

- Debtor: one who owes a debt
- Creditor: one to whom a debt is owed
- Exemptions: legal protections which prevent creditors from taking a specific type of asset from a debtor to satisfy a debt
- Arrears: past-due payments owed on a lease or secured debt (e.g. rent, car, or mortgage payments)

Debt Collection

- Debt collectors must follow certain rules when collecting debts
- Federal Fair Debt Collection Practices Act (“FDCPA”) regulates third-party debt collectors (i.e. those hired for purpose of collecting debt)
- Under Nevada law payday lenders and hospitals are subject to the FDCPA even when they collect their own debts

Fair Debt Collection Practices Act

- 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

- Must give specific disclaimer before communication
- Must verify debt upon request within 30 days of first communication
- Debt collection activity must cease until debt is verified

Fair Debt Collection Practices Act

- While communication must stop upon debtor's request debt may be transferred to another collector
- Debtor can still be sued to collect debt even if communication has been stopped

Debt Collection Lawsuit

- Lawsuit starts with a summons and complaint
- Complaint sets out relevant facts and legal theories explaining why court should award damages
- Defendant (debtor) has 20 days to respond
- Defendant usually responds by filing answer which explains whether complaint's allegations are true or false and sets out defenses
- If defendant doesn't answer plaintiff wins default judgment

Debt Collection Lawsuit

- Common defenses to collection lawsuit
 - Wrong party was sued
 - Debt was partially or fully repaid
 - Calculation of amount owed is incorrect
 - Statute of limitations has run
 - Most written contracts have six year SOL in Nevada

Post-Judgment Debt Collection

- Judgment creditors can collect through:
 - Wage garnishment
 - Bank levy
 - Asset seizure
- Nevada judgments are valid for six years
 - Can be renewed indefinitely

Exemptions

- Primary Residence: \$605,000 (Homestead Exemption)
- Cars: One car up to \$15,000
- Household furnishings, wearing apparel etc: \$12,000
- Art/jewelry/instruments/keepsakes: \$5,000
- Pensions / IRA / 401(k): \$1 million
- Life Insurance
- Tools of Trade: \$10,000
- Public Benefits (food stamps, welfare, unemployment)
- Unspent Social Security Income
- 75% of paid wages (82% if weekly wage is \$770 or less)
- Restitution received as a victim of a crime
- “Wild Card” exemption of \$10,000

Exemptions

- 75%/82% wage exemption is calculated by employer, employee usually does not need to take any action
- NRS 21.105(2) automatically protects \$400 or the entire amount in a bank account, whichever is less, from a bank levy
- One month of federal benefits (e.g. Social Security) is automatically exempt if not commingled
- All other exemptions must be affirmatively enforced by the judgment debtor
- If exempt funds are levied the judgment debtor must file a Claim of Exemption from Execution with the court that issued the judgment
- More information about claims of exemption is available at the Civil Law Self Help Center <https://civillawselfhelpcenter.org>

Collection/Judgment Proof

- If a debtor's income and assets are all exempt and will remain so the debtor is collection or judgment proof
- Collection proof debtors do not need to worry about judgments against them because the judgment creditors cannot take anything from the debtor

Bankruptcy

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Bankruptcy

- Bankruptcy is a federal proceeding whereby a debtor can discharge or adjust their debts
- Most debts are discharged so long as debtor is acting in good faith
- Certain debts are not dischargeable:
 - Debts incurred by fraud
 - Alimony and child support
 - Most taxes
 - Student loans (in most cases)

Bankruptcy

- Two chapters of bankruptcy for most consumers: chapter 7 and chapter 13

	Chapter 7	Chapter 13
Length	4-6 months	3-5 years
Maximum Income	Typically median	None
Arrears	Likely to lose asset	May cure arrears or address in MMMP
Non-exempt Assets	Will likely lose	Can keep

- Legal Aid Center can find pro bono (free) attorney for eligible debtors filing chapter 7 bankruptcy

Chapter 7 or Chapter 13?

- Debtors choice of filing chapter 7 or 13 if:
 - Income below median income for his/her state. For Nevada:

Family of 1	Family of 2	Family of 3	Family of 4
\$53,731	\$68,953	\$76,591	\$83,731

- Debtors may also be able to file chapter 7 if they can pass means test

Pro Bono Attorney Income Guidelines

Client Income Eligibility Standards

People in Household; Max. Yearly Income; Max. Month Income:

- 1 \$27,390; \$2,284
- 2 \$31,350; \$2,613
- 3 \$35,255; \$2,938
- 4 \$39,160; \$3,263
- 5 \$42,295; \$3,525
- 6 \$45,430; \$3,788
- 7 \$48,565; \$4,046
- 8 (& above) \$51,700; \$4,309
- Prospective clients should also not have more than \$5,000 in net assets, excluding house or one vehicle.



Foreclosure

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Overview of Foreclosure

- Borrower misses payments
- Servicer declares loan in default
- Servicer records formal Notice of Default
- Home Means Nevada, Inc. issues Mediation Certificate
- Servicer issues Notice of Trustee Sale
- Trustee Sale Occurs
- Trustee's Deed Upon Sale Recorded

Non-Judicial Foreclosure Timelines

- Borrower must be 90 days in default before Notice of Default can be recorded
- Notice of Trustee Sale cannot be issued until 90 days after Notice of Default was recorded
- Trustee Sale cannot occur less than 21 days after Notice of Trustee Sale is issued



Loan Modification Resources

- Nevada Homeowner Connect
 - Web-based portal for homeowners to communicate with their lender to resolve concerns
 - Can be used for COVID forbearance, loss mitigation requests, and other servicing disputes

<https://thehomeownerconnect.org/nevada>
- Legal Aid Center of Southern Nevada
 - Information and legal advice for homeowners

Loss Mitigation Outcomes

- Loan Modification – Agreement to permanently change terms of mortgage
- Short Sale – Sale of home for less than balance owed on mortgage
- Deed-In-Lieu of Foreclosure – Transfer of home to lender without going through foreclosure

Loan Modification Application Tips

- Start early
- Follow up with servicer often
- Ensure application is complete
- Ask follow-up questions
- Manage homeowner expectations
- Calendar and clearly communicate deadlines
- Ensure homeowner has backup plans
- Document everything

State Foreclosure Mediation Program

- File Timely Petition
 - Within 30 days of Recording of Notice of Default
 - Pay \$275 Fee
- Mediator Appointed

State Foreclosure Mediation Program

- Mediator
 - Neutral Third Party
 - Referee/Facilitator Only
 - Not Arbitrator
 - Reviews Lender Documents
 - Issues Mediator's Report After Mediation
 - Agreement Reached
 - No Agreement Reached

QUESTIONS

