

CONSUMER

RIGHTS

PACKET

COLORADO LEGAL SERVICES

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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 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 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)

Steps you can take:

If you believe a Collection Agency is acting improperly, you can file a complaint online at the Colorado Attorney General at www.coloradoattorneygeneral.gov/complaint or call (720) 508-6022.

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, they cannot contact you or make attempts to collect the money. (Sample letter on page 21).

Write a letter requesting that the collection agency stop contacting you. If a collection agency is notified in writing that you do not want to have contact from them, they cannot continue to call or write to you except for one more communication informing you what it intends to do regarding the debt. However, they can still sue you on the debt. Some collection agencies will sue if they receive a cease contact request. (Sample letter on page 21).

PRIORITIZING DEBTS AND NEGOTIATING WITH CREDITORS

- **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.** In Larimer County credit counseling services are available through GreenPath Debt Solutions: 1247 Riverside Avenue, Fort Collins 80524 (970) 229-0695. There is also an office in Loveland: 315 East 7th, Loveland, CO 80538 (866) 648-8118 or visit the website www.greenpath.org Creditors often will work with GreenPath when they won't work with you. Beware of "non-profits" that are actually working for profit. Make sure all terms, conditions and fees are in writing and that you receive a benefit.
- **Negotiating Repossession.** 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.

LAWSUITS

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 when your Answer is due. 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.
- **If you have a legal defense to the lawsuit, you should file an answer.** You may apply for assistance from Colorado Legal Services. You can also include a counterclaim for violations of the Fair Debt Collection Practices Act if you are being sued by collection agency that violates the Act.

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.

There is Self Help Center located on the first floor of the Larimer County Justice Center that can assist you in completing court forms.

After entry of Court Judgment:

- **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 and wages. You may object to the garnishment if it is done incorrectly. You have a limited amount of time to object and you should seek legal advice immediately. 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.
 - **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 if the account is a checking account all outstanding checks will bounce and you will have to pay bank charges as well as charges to the merchants. You have a very short period of time in which 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 or not. If they are not exempt, the creditor will get 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.
 - **Social Security Benefits.** Social Security and other federal benefits are safe in a bank account if they are electronically deposited into that account (and not moved to another account). Your bank account is safe from garnishment as long as the balance amount does not exceed twice the amount of your federal benefit amount.
 - *For example, if you receive Social Security Disability of \$800 per month and it is electronically deposited into your bank account, your bank account cannot be frozen if it contains less than \$1600.*
 - **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. Child Support is safe if it is on a debit card.
- **Legal assistance/advice through Colorado Legal Services.** 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.

HOW MUCH CAN BE GARNISHED FROM A PAY CHECK? **
 (Based on Colorado minimum wage of \$9.30 per hour, effective 1/1/2017)

I AM PAID:	AFTER TAXES, SSA AND MEDICARE I BRING HOME:	HOW MUCH WILL BE GARNISHED:
EVERY WEEK	\$279 or less	NOTHING
EVERY 2 WEEKS	\$558 or less	NOTHING
TWICE A MONTH	\$604.50 or less	NOTHING
ONCE A MONTH	\$1209 or less	NOTHING

I AM PAID:	AFTER TAXES, SSA AND MEDICARE I BRING HOME:	HOW MUCH WILL BE GARNISHED:
EVERY WEEK	\$279 - \$372	The amount I earn over \$279
EVERY 2 WEEKS	\$558 - \$744	The amount I earn over \$558
TWICE A MONTH	\$604.50 - \$806	The amount I earn over \$604.50
ONCE A MONTH	\$1209- \$1612	The amount I earn over \$1209

I AM PAID:	AFTER TAXES, SSA AND MEDICARE I BRING HOME:	HOW MUCH WILL BE GARNISHED:
EVERY WEEK	\$ 372 or more	25% of what I take home
EVERY 2 WEEKS	\$ 744 or more	25% of what I take home
TWICE A MONTH	\$ 806 or more	25% of what I take home
ONCE A MONTH	\$ 1612 or more	25% of what I take home

**If you owe child support, student loans or money to the IRS, the above exemptions may not apply

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 fourteen (14) 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.

PROTECTION FOR FEDERAL BENEFITS IN BANK ACCOUNTS

A federal law effective May 1, 2011, protects federal benefits electronically deposited into bank accounts. Federal money that is protected includes Social Security, SSI and Veterans Administration benefits. When banks or credit unions receive an order to freeze an account, they must review the accounts owned by the individual to determine whether any federal benefits were electronically deposited during the preceding two months. If there have been federal benefits deposited, banks must calculate the "protected amount." The protected amount is the lesser of the sum of all exempt benefits electronically deposited into the debtor's account during the previous two months or the current balance.

For example:

Jane Smith receives \$674.00 per month in SSI and it is deposited electronically in her checking account on the first of each month. On October 10 her bank receives an order to freeze \$850.00 because of a court judgment. The bank must look at her account records and determine if she has received federal benefits in the last two months. Their review will show \$674 received on October 1 and \$674 received on September 1 for a total of \$1348. On October 10, she has \$650.00 in her account. The "protected amount" is the \$650.00 (the lesser of the \$1348 and the \$650). This means that the bank will not freeze her funds.

If Jane had transferred her SSI money from the checking account it was electronically deposited into to a savings account, it would not be protected from being frozen. However, if she acts quickly, she can still file a Claim of Exemption and show that it is SSI. The money will be released but she will have to pay the bank's fee to freeze the account.

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

- Contact your bank and other credit card issuers and put a stop-payment order on outstanding checks, close existing credit card and debit card accounts. Open new accounts; protect them with an obscure PIN and complicated passwords (but not the same used on the original accounts, and not birth dates, your Social Security number, or family names and birth dates).
- File a report with the local police department it will help when you deal with banks, creditors, and major credit-reporting bureaus. Keep a copy.
- File a report with the Federal Trade Commission on-line at www.consumer.gov/idtheft or call 1-877-ID-THEFT (1-877-428-4338)
- Contact the three major credit reporting bureaus

Equifax-www.equifax.com
PO Box 740241
Atlanta, GA 30374-0241
1-888-766-0008

Experian- www.experian.com
PO Box 9532
Allen, TX 75013
1-888-397-3742

Transunion-www.transunion.com
Fraud Victim Assistance Division
PO Box 6790
Fullerton, CA 92834-6790
1-800-680-7289

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 “collection-proof”.** If you are collection 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 \$335 to file for a Chapter 7 bankruptcy, whether for one person or a married couple. It currently costs \$310 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:

- \$75,000 in equity in your home/ \$105,000 in equity in your home if there is an elderly or disabled owner spouse or dependent.
- \$7,500 in equity in your car, bicycle (or combination of vehicles). Does not include, snowmobiles, ATV's, golf carts, boats, watercraft, travel trailers, tent trailers or mobile homes.
- \$12,500 equity in your car if you are elderly or disabled.
- \$3,000 household goods (per adult).
- \$30,000 tools of trade (things needed for job).
- \$2,000 wearing apparel.
- \$2,500 jewelry.
- \$2,000 library, books, pictures
- 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 will lose 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. The 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

TYPE OF PROPERTY	AMOUNT OF EXEMPTION		STATUTE CREATING EXEMPTION
	INDIVIDUAL	JOINT	
Homestead or mobile home occupied as home by owner or owner's family	\$75,000	\$75,000	CRS §38-41-201, 201.5
Homestead or mobile home occupied as home by an elderly or disabled owner, spouse or dependent	\$105,000	\$105,000	CRS §38-41-201, 201.5
Necessary Wearing Apparel	\$2,000	\$4,000	CRS §13-54-102(1)(a)
Watches, jewelry and articles of adornment	\$2,500	\$5,000	CRS §13-54-102(1)(b)
Personal library, family pictures and schoolbooks	\$2,000	\$4,000	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)
Tools of trade, equipment & tools used in occupation (plus \$10,000 for tools used for any other gainful occupation)	\$30,000	\$60,000	CRS §13-54-102(1)(i)
Armed Forces Pension	100%	100%	CRS §13-54-102(1)(h)
Up to two motor vehicles or bicycles	\$7,500	\$15,000	CRS §13-54-102(1)(j)(I)
Motor vehicle exemption if debtor is elderly (60+) or disabled, (or if debtor has a spouse who is elderly or disabled, or the debtor has a disabled child)	\$12,500	\$25,000	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)	\$ 75,000 \$105,000	or or	\$75,000 \$105,000 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)(o)
Child Tax Credit	100%	100%	CRS §13-54-102(1)(o)

COLORADO BANKRUPTCY EXEMPTIONS
COLORADO JUDGMENT EXEMPTIONS
Continued

<u>Type of Property</u>	<u>Amount</u>		<u>Statute</u>
	INDIVIDUAL	JOINT	
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	www.ago.state.co.us/CADC/CADC_main.cfm.html
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	www.fraud.org/...telemarketing-fraud
Franchises/Business Opportunities/Credit Reporting	Federal Trade Commission www.ftc.gov	(202) 326-2000
Consumer Resource Guide	Colorado Attorney General	www.ago.state.co.us/CRGInde.cfm.html
Consumer Protection Information	Colorado Attorney General Colorado Bureau of Investigation	www.ago.state.co.us/consumerprotection/cfmmenupage (855) 443-3489 (hotline for identity theft/fraud)
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
Licensing/Regulation of Professional Occupations	Colorado Department of Regulatory Agencies	http://www.dora.state.co.us/registrations/index.htm

AGENCY REFERRAL

These Colorado and national referral agencies and organizations may be of assistance.

ATTORNEY COLLECTION PRACTICES – Colorado Supreme Court, Office of Attorney Regulation, 1300 Broadway, Suite 500, Denver, CO 80202, (303) 866-6400 or (877) 888-1370.
www.coloradosupremecourt.com/Regulation/Regulation.asp.

BUSINESS DISPUTES AND RELIABILITY REPORTS – Contact the Better Business Bureau in your area. Denver BBB, 1020 Cherokee St., Denver, CO 80204-4039, (303) 758-2100, www.denver.bbb.org.

CREDIT CARDS – For national banks, contact the Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney St., Suite 3450, Houston, TX 77010-9050, (800) 613-6743, www.helpwithmybank.gov. For state banks, contact the state bank commissioner or the Attorney General in the state that issued the credit card.

CREDIT REPORTING – Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Ave. NW, Washington, DC 20580, (877) FTC-HELP (382-4357), www.ftc.gov.

FEDERAL CREDIT UNIONS – National Credit Union Administration (NCUA) Region V-Tempe, 1230 W. Washington St., Suite 301, Tempe, AZ 85281, (602) 302-6000 www.ncua.gov.

FORECLOSURES – Colorado Foreclosure Hotline, (877) 601-HOPE (4673), www.coloradoforeclosurehotline.org. Staffed with HUD-approved nonprofit housing counselors.

RENTAL LAW – Landlord/Tenant Rights, 3570 East 12th Street, Denver, CO 80206, (303) 831-1935, www.renterlaw.org.

IDENTITY THEFT – Information may be found at www.coloradoattorneygeneral.gov. Also contact your local police department and the Federal Trade Commission (FTC), (877) 438-4338, www.ftc.gov/idtheft. Equifax Fraud Unit, (800) 525-6285; Experian Information Solutions, (888) 397-3742; TransUnion Fraud Unit, (800) 680-7289; U.S. Postal Inspector (see federal government phone listing); Social Security Administration Fraud Hotline, (800) 269-0271.

LEGAL SERVICES TO PERSONS ON LIMITED INCOMES – Check the telephone directory under “Legal Aid”. Metro Volunteer Lawyers - a Denver Bar Association organization – 1905 Sherman St., Suite 400, Denver, CO 80203, (303) 837-1313 www.metrovolunteerlawyers.org. Call for initial consultation fee and fees for additional services that are based on your income.

METROPOLITAN LAWYER REFERRAL SERVICE – Can refer you to an attorney experienced in dealing with your type of problem. Inquire about the fee and any fees for additional services- 899 Logan St., Suite 408, Denver, CO 80203, (303) 831-8000 or toll free @ (877) 283-8145, www.mlronline.org.

MORTGAGE BROKER COMPLAINTS – Colorado Division of Real Estate, Attn: Mortgage Broker Complaint Department, 1560 Broadway, Suite 925, Denver, CO 80202, (303) 894-2166 or (303) 894-2185, www.dora.state.co.us/real-estate/index.htm.

MORTGAGE LENDER COMPLAINTS – Colorado Mortgage Lenders Association, 4380 South Syracuse Street, #315, Denver, CO 80237, (303) 773-9565, or (800) 611-4832 , www.cmla.com.

NATIONAL BANKS – Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney St., Suite 3450, Houston, TX 77010, (800) 613-6743, www.occ.treas.gov.

SENIORS – For help with medical insurance and other benefits, contact the Colorado Division of Aging and Adult Services at (303) 866-2800 for referral to the appropriate agency in you area. To report financial fraud against seniors, contact AARP ElderWatch, (303) or (800) 222-4444, www.aarpelderwatch.org.

SMALL CLAIMS COURT – DISPUTES UNDER \$7, 500 – Contact your County Court. There is a small fling fee but a lawyer is not required. www.courts.state.co.us.

STATE CHARTERED BANKS – Colorado Division of Banking, 1560 Broadway, Suite 975, Denver, CO 80202, (303) 894-7575, www.dora.state.co.us/banking/index.htm and Federal Deposit Insurance Corporation, 2345 Grand Blvd., Suite 100, Kansas City, MO 64108, (877) ASK-FDIC (275-3342), www.fdic.gov.

STATE CREDIT UNIONS AND SAVINGS & LOANS – Colorado Division of Financial Services, 1560 Broadway, Suite 950, Denver, CO 80202 (303) 894-2336, www.dora.state.co.us/financial-services/index.htm.