Tips for Weathering a Financial Emergency

Sometimes, despite the best-laid plans, a financial crisis can happen. Here are some steps to help you get through and recover from a financial emergency.

Creditors

A first step to take is getting in touch with your creditors to see if alternate payment arrangements are possible. It may be possible to skip a month's payment and add the payment to the back of the loan (such as with a car or mortgage payment).

It may also be possible that the creditor will accept partial payments until you can get caught up on the debt.

Depending on the economic climate, creditors may be more willing to field such requests and it cannot hurt to try.

Maintain a Budget

Budgeting is an important habit to maintain regardless of your current financial status. By budgeting available funds, you can make the best use of your resources.

Prioritize your most important financial obligations such as food, shelter and transportation first, and items such as credit card payments last.

You may also want to suspend any automatic bill payments so you can control the timing of payments until you are on better financial footing.

401(k) Options

An often overlooked resource is your 401(k) account. While borrowing or withdrawing from this type of account is not optimal, it may provide an important lifeline in case of an emergency.

A 401(k) loan is paid back through deductions from your paycheck. A withdrawal, however, will incur taxes and a 10 percent early withdrawal penalty. Even if you have an existing 401(k) loan, your plan may still allow for you to take a withdrawal in cases of extreme hardship.

Additional Help

Local charities may be of assistance and listings can easily be found online or in the telephone book.

If you belong to a church, you may be able to receive assistance directly from them. If your church is unable to help directly, they may also be a helpful resource in referring you to other active charities in your area.

Veterans should check with their branch of service. Ask about applying for emergency financial relief.

Finally, your county's human services department may also be an emergency financial resource to explore and can help you with understanding which types of federal and state aid you may be eligible to receive.

Resources

- Financial Literacy Education Commission: http://mymoney.gov
- Free annual credit report: www.annualcreditreport.com
- Benefits.gov: www.benefits.gov
- U.S. Department of Health and Human Services: www.hhs.gov
- The American Red Cross: www.redcross.org
- U.S. Department of Housing and Urban Development: www.hud.gov
- Administration for Children & Families: www.acf.hhs.go

Contact us anytime for confidential assistance.

What should I do if I cannot afford food?

While applying for the federal Supplemental Nutrition Assistance Program (SNAP) is an option for millions of Americans who need help paying for food, many people who need help do not qualify for this program.

Being "food insecure" means that you may not always know where your next meal is coming from. Use these tips to make sure you are getting the nutrition you need while navigating through life's challenges.

- Local government: Talk with a representative from your local government agency. If you do not qualify for SNAP, you can ask to work with a social worker who may know of other programs that can help you.
- Pet food: If you are spending money on pet food, contact your local ASPCA chapter or animal shelter. You may be able to get pet food free of charge, which can free up some funds to spend on food for yourself.
- Food banks: Most food banks have designated distribution days when individuals can pick up a bag of groceries. Food banks usually do not ask any questions of those in need of food, including any income-related questions.
- Churches and other organizations: Churches and other non-profit organizations sometimes offer meals on certain days of the week.
- Fresh produce: If you are able to do so in warm months, grow a small garden. Vegetable, herb and fruit seeds are lost in cost and grow into very cost-effective produce options.
- Other assistance programs: If you have exhausted all food resource programs, consider the other expenses in your life. There are assistance programs available to help supplement the cost of heating, electric and phone bills. Start by calling your utility provider to see if they offer any such programs.
- Employee assistance program: Calling your employee assistance program can help you cope with depression or anxiety you may be experiencing.

Resources

- Supplemental Nutrition Assistance Program (SNAP): www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap
- Low Income Home Energy Assistance Program (LIHEAP): www.acf.hhs.gov/programs/ocs/programs/liheap
- ASPCA: www.aspca.org/

Contact us anytime for confidential assistance.

Low-income Home Energy Assistance

If a person cannot afford to pay their home energy bill, their home may not be safe, and they may be at risk of serious illness or injury.

The low-income home energy assistance program (LIHEAP) may be able to help keep individuals and their families safe and healthy.

Health and Safety

Energy assistance is important to all who receive it, but more so if someone in the house is elderly, disabled or a young child. These people are especially at risk for life-threatening illness or death if their home is too cold in the winter or too hot in the summer.

People can face safety risks if they resort to unsafe methods to keep their homes warm or cool. These include the use of fireplaces, stoves, improperly vented portable heaters, barbecue grills or overloading electrical circuits. These methods are not only fire hazards, but also create the risk of carbon monoxide poisoning.

What is LIHEAP?

LIHEAP is a federally-funded program that helps low-income households with their home energy bills so they can stay warm in the winter and cool in the summer.

The federal government does not provide energy assistance directly to the public. Instead, LIHEAP operates in the 50 states, the District of Columbia, Native American tribes or tribal organizations and the U.S. territories.

The LIHEAP program in an individual's community determines if that household's income qualifies for the program. The LIHEAP program may also require households to meet additional eligibility criteria to receive LIHEAP assistance. Note that the availability of LIHEAP assistance is not guaranteed. Most of the federal LIHEAP funds are often spent during the winter.

The program may be able to offer one or more of the following types of assistance:

- Bill payment assistance.
- Energy crisis assistance.
- Weatherization and energy-related home repairs.

Applying for Assistance

The following information is typically required when applying for LIHEAP:

- Recent copies of utility bills
- A recent payroll stub or other proof that shows current gross income
- Documentation showing income from social security, unemployment insurance, pension funds, disability, etc.
- Final utility termination notice (if a shut-off notice from your energy company has been issued)
- Proof of present address (e.g., rent receipt, lease or deed, property tax bill)
- Proof of total members living in the household (e.g., birth certificates, school records, etc.)
- Social security cards (or numbers) for all persons living in the household
- Proof of U.S. citizenship or permanent residence
- Apply via the National Energy Assistance Referral (NEAR) project. NEAR is a free service providing information on where to apply locally for LIHEAP.
- Call the toll-free phone number at: 1-866-674-6327
- Send an e-mail to: energy@ncat.org
- Contact a state LIHEAP office: www.acf.hhs.gov/programs/ocs/liheap-state-and-territory-contact-listing

Resources

Content on this page was gathered from documents found on the website for The U.S. Department of Health and Human Services Administration for Children and Families, Office of Community Services, Division of Energy Assistance. The website is located at www.acf.hhs.gov.

Contact us anytime for confidential assistance.

Fending Off Foreclosure

There are ways to avoid foreclosure and keep your home if you are having a hard time keeping up with your mortgage payments. But to take advantage of them, your first step will require you to let your mortgage lender know that you are having a problem. Many lenders do not want to foreclose on your home. They are in the business of lending money, not owning real estate. So as soon as you know you are going to miss a payment, you should call your lender's customer service line and let the lender know what is going on.

Short-term Solutions

If you are experiencing a short-term financial problem, such as temporary unemployment or a health setback that has dried up your cash flow, there may be several solutions available for you. You can ask your lender for what is known as forbearance. With forbearance, the lender agrees to delay making payments for a brief period of time, based on your ability to bring the payments up to date in the near future.

If you can make up your back payments with a lump sum (such as through an inheritance or a loan from a family member), you may be able to get your lender to offer reinstatement of your loan. That means that once the back payments are made, you continue paying your mortgage as before, with no change in terms.

Your lender may also be willing to consider restructuring your mortgage with a payment plan that lets you add a specified amount to each payment until the overdue amount is paid off. At that point, your mortgage payment would go back to the original payment amount.

Long-term Solutions

If you are experiencing longer-term problems, such as a long period of unemployment, there are still some options available to keep you out of foreclosure. You can ask the lender to modify your mortgage in order to lower your payments. For example, the lender may be willing to turn your 30-year mortgage into a 40-year loan. You will pay more in interest over the long run, but the monthly payment will be smaller.

If you cannot make even the smaller payment the lender may offer, you may be able to take advantage of a deed in lieu of foreclosure. With a "deed in lieu," as it is often known, the lender agrees to take title to your property in exchange for forgiving the debt. You will end up losing your home, but one advantage of a deed-in-lieu is that it will do less damage to your credit history than an outright foreclosure will.

Depending on whether the Federal Housing Authority (FHA) or the Department of Veteran Affairs (VA) insures your mortgage, you may be able to take advantage of some government programs designed to help you avoid foreclosure. The FHA offers a program that allows homeowners with FHA-backed loans to take advantage of a one-time payment from the government to help you get current.

But doing so gives the Housing and Urban Development Agency (HUD) the right to place a lien against the property until the loan is repaid. On the plus side, there is no interest charged on one of these loans. The VA offers financial counseling programs to help avoid foreclosure on loans it has insured. And Congress and the President are currently working on additional programs to help borrowers avoid foreclosure by moving them to fixed-rate loans from adjustable ones.

There is still hope for those who are having a hard time making their house payments, but lenders will not take the first step to get a delinquent homeowner into any of these programs. If you are facing the possibility of foreclosure, taking the right steps to get help is your responsibility.

The information contained in this article is for informational purposes only and is not intended as legal advice. Always consult with an attorney before taking any legal action.

Contributed by: Joseph W. Mierzwa ProSe Associates, Inc

Contact us anytime for confidential assistance.

Understanding Vehicle Repossession

Chances are you rely on your vehicle to get you where you need to go, whether it is to work, school, the grocery store or the soccer field. But if you are late with your car payments, or in some states, if you do not have adequate auto insurance, your vehicle could be taken away from you.

What is Repossession?

When you finance or lease a vehicle, your creditor or lessor has important rights that end once you have paid off your loan or lease obligation. These rights are established by the contract you signed and the law of your state.

For example, if you do not make timely payments on the vehicle, your creditor may have the right to repossess, or take back, your car without going to court or warning you in advance. Your creditor also may be able to sell your contract to a third party, called an assignee, who may have the same right to seize the car as the original creditor.

Seizing the Vehicle

In many states, your creditor can seize your vehicle as soon as you default on your loan or lease. Your contract should state what constitutes a default, but failure to make a payment on time is a typical example.

However, if your creditor agrees to change your payment date, the terms of your original contract may not apply any longer. If your creditor agrees to such a change, make sure you have it in writing. Oral agreements are difficult to prove.

Once you are in default, the laws of most states permit the creditor to repossess your car at any time, without notice, and to come onto your property to do so. But when seizing the vehicle, your creditor may not commit a breach of the peace, which in some states means using physical force, threats of force or even removing your car from a closed garage without your permission.

Should there be a breach of the peace in seizing your car, your creditor may be required to pay a penalty or to compensate you if any harm is done to you or your property.

A breach of peace also may give you a legal defense if your creditor sues you to collect a “deficiency judgment” — that is, the difference between what you owe on the contract (plus repossession and sale expenses) and what your creditor gets from the resale of your vehicle.

Selling the Vehicle

Once your vehicle has been repossessed, your creditor may decide to either keep it as compensation for your debt or re-sell it in a public or private sale. In some states, your creditor must let you know what will happen to the car.

For example, if the car will be sold at public auction, state law may require the creditor to tell you the time and place of the sale so you can attend and participate in the bidding. If the vehicle will be sold privately, you may have a right to know the date of the sale.

In any of these circumstances, you may be entitled to redeem, or buy back, the vehicle by paying the full amount you owe (usually, that includes your past due payments and the entire remaining debt), in addition to the expenses connected with the repossession, like storage, preparation for sale and attorney fees. Or you could try to buy back the vehicle by bidding on it at the repossession sale.

Some states have consumer protection laws that allow you to reinstate your loan. This means you can reclaim your car by paying the amount you are behind on your loan, together with your creditor’s repossession expenses. Of course, if you reclaim your car, your future payments must be made on time, and you must meet the terms of your reinstated contract to avoid another repossession.

Any resale of a repossessed vehicle must be conducted in a commercially reasonable manner. Your creditor does not have to get the highest possible price for the vehicle — or even a good price. But a resale price that is below fair market value may indicate the sale was not commercially reasonable.

“Commercially reasonable” may depend on the standard sales practices in your area. A creditor’s failure to resell your car in a commercially reasonable manner may give you a claim against that creditor for damages or a defense against a deficiency judgment.

Personal Property in the Vehicle

Regardless of the method used to dispose of a repossessed car, a creditor may not keep or sell any personal property found inside. In some states, your creditor must tell you what personal items were found in your car and how you can retrieve them.

Your creditor also may be required to use reasonable care to prevent anyone else from removing your property from the car. If your creditor cannot account for articles left in your vehicle, you may want to speak to an attorney about your right to compensation.

Paying the Deficiency

Any difference between what you owe on your contract (plus certain expenses) and what your creditor gets for reselling the vehicle is called a deficiency. For example, if you owe $10,000 on the car and your creditor sells it for $7,500, the deficiency is $2,500 plus any other fees you owe under the contract. Those might include fees related to the repossession and early termination of your lease or early payoff of your financing.

In most states, your creditor is allowed to sue you for a deficiency judgment to collect the remaining amount owed as long as it followed the proper procedures for repossession and sale. Similarly, your creditor must pay you if there are surplus funds after the sale proceeds are applied to the outstanding contract obligation and related expenses, but this situation is less common.

You may have a legal defense against a deficiency judgment if, for example, your creditor breached the peace when seizing the vehicle, failed to sell the car in a commercially reasonable manner, or waited too long before suing you. An attorney will be able to tell you whether you have grounds to contest a deficiency judgment.

Electronic Disabling Devices

Some creditors might not provide you with financing unless you agree to the installation of an electronic device that prevents your car from starting if you do not make your payments on time. Depending on your contract with the lender and your state's laws, using that sort of device may be considered the same as a repossession or a breach of the peace. How your state treats the use of these devices could affect your rights.

Talking with Your Creditor or Lessor

It is easier to try to prevent a vehicle repossession from taking place than to dispute it after the fact.

Contact your creditor as soon as you realize you will be late with a payment. Many creditors work with consumers they believe will be able to pay soon, even if slightly late.

You may be able to negotiate a delay in your payment or a revised schedule of payments. If you can reach an agreement to change your original contract, get it in writing to avoid questions later.

However, your creditor or lessor may refuse to accept late payments or make other changes in your contract and may demand you return the car. If you agree to a voluntary repossession, you may reduce your creditor's expenses, which you would be responsible for paying. But even if you return the car voluntarily, you still are responsible for paying any deficiency on your contract, and your creditor still may enter the late payments or repossession on your credit report.

Finally, if you are facing, or already in, bankruptcy, ask an attorney for information about your rights to the vehicle during that process.

Resources

Some content on this page was gathered from documents found on the website for the Federal Trade Commission: www.ftc.gov.

Communicating with Debt Collection Agencies

The Fair Debt Collection Practices Act (FDCPA) outlines the procedures debt collectors must follow to notify debtors about the amounts they allegedly owe.

Notification

Either in the first communication with the debtor, or within five days after first contacting him or her about a debt, a debt collector must send a written notice that contains the following information:

- The amount of the debt
- The name of the creditor to whom the debt is owed
- A statement that the debt will be assumed to be valid unless a letter disputing its validity in whole or part is written within 30 days of the notice
- A statement that if the debtor disputes the debt in writing within 30 days, the collector will obtain verification of the debt or a copy of any judgment obtained against the debtor and mail the verification or judgment to the individual
- A statement that the collector will provide the name and address of the original creditor if different from the current creditor

Disputing Debt

If the debtor disputes the debt, requests verification of the debt or requests the identity of the creditor during the 30-day period, the collector is prohibited from taking any further action or having any further contact with the debtor.

A sample letter to the collection agency could look like this:

To whom it may concern:

I have received your letter indicating that you are collecting a debt on behalf of Named Company.

I hereby dispute this debt. Thank you for your attention to this matter.

Sincerely,

(Debtor's Signature)

Debtor's Name (Printed)

Debtor's Address including City, State and ZIP Code

The debtor should send the letter by certified mail, return receipt requested. This provides proof that the document was mailed within the 30-day period and that it was received by the collection agency.

Proof is important because the FDCPA does not punish collectors if their actions are the result of negligence on their part rather than intentional conduct. By showing compliance with the terms of the law, a debtor has a better chance of winning a case against a collection agency that has violated the FDCPA.

Note that some debt collectors are perfectly willing to try to collect debts based entirely on the assurances of their clients that the debt is legitimate. They rely on the debtor's fear of having his or her credit ruined, and hope that at least some partial payment is made.

However, if the individual does not owe the debt, he or she should not be bullied by a debt collector. The FDCPA forbids such actions.

Breaking Off Contact

One very important provision of the FDCPA provides debtors complete protection from letters, calls and visits of debt collectors. When a debtor notifies the collector that he or she does not want further communication with the collector, the collection agency cannot make any further contact. It does not matter whether there is a debt or not. After notifying the debt collector to stop contacting the debtor, they must comply.

The collection agency can only state it has received the notification or that it will take other action, such as filing a lawsuit.

Resources

- Federal Trade Commission: www.ftc.gov
- MyMoney.gov: www.MyMoney.gov
- National Foundation for Credit Counseling (NFCC): www.nfcc.org

Contributed by: Joseph W. Mierzwa ProSe Associates, Inc.

Are debt negotiators who promise to settle debts for pennies on the dollar legitimate?

Unfortunately, no. Most people who use debt negotiators end up worse financially than before they started.

Debt negotiators convince people to stop paying their debts and write their creditors letters stating not to contact the debtor. The Fair Debt Collection Practices Act (FDCPA) provides debtors complete protection from letters, calls and visits of debt collectors. When a debtor notify's the collector that he or she does not want further communication with the collector, the collection agency cannot make any further contact.

Thus, the creditor is not allowed to contact the individuals to inform them that they do not work with that debt negotiator. Many debtors become trapped as their credit score deteriorates and other solutions are no longer available to them.

The debt negotiator collects monthly payments from debtors in the ruse of building an account for debtors to use to settle with their creditors. However, the debt negotiator typically takes several of the initial monthly payments as a commission, delaying the opportunity for the debtor to build funds with which to settle.

During this accumulation period, many creditors may choose to sue the debtor for any collection action their state allows including wage garnishment if it is available.

Debt negotiators can often settle one or two of the outstanding debts, but many charge a percentage of the debt forgiven as an additional fee to the debtor. Most also fail to inform the consumer that forgiven debt is taxable as income and they will need to pay the IRS at the end of the year.

Consumers need to be wary of telephone solicitations and advertising for debt negotiators. The sales people work on commissions and rarely reveal the risks of using their services to clients.

Resources

- Federal Trade Commission: www.ftc.gov/bcp/edu/pubs/consumer/credit/cre27.pdf
- Financial Literacy Education Commission: http://MyMoney.gov
- Internal Revenue Service: www.irs.gov
- American Bar Association: www.americanbar.org

What is a debt management plan?

A debt management plan (DMP) is a personalized method for helping people in debt pay outstanding bills and creditors. These plans are developed by the debtor with the assistance of credit counselors or other personal finance experts. The successful implementation of a DMB can help people avoid having to file for bankruptcy.

In a debt management plan, the person in debt deposits money each month with the credit counseling organization. The organization uses the deposits to pay the debtor's outstanding bills. These debts can include things like credit card bills, outstanding medical expenses, student loans and other unsecured debts (unsecured debts are debts that do not have any assets or property tied to them as collateral).

It is necessary to make sure you are working with a legitimate company. Companies who ask for money up front are most likely trying to scam you. To find a reputable source, visit the National Foundation for Credit Counseling's website. Going to www.nfcc.org will help you locate the nearest company affiliated with them. The NFCC is a nationwide nonprofit that specializes in DMB, credit counseling, and pre-bankruptcy counseling. They can be reached by telephone at 1-800-388-2227.

Debts are paid off according to a payment schedule negotiated by the credit counselor and creditors. Occasionally, creditors will agree to waive some of their fees and lower the interest rates they charge to people who are following debt management plans.

A person filing for bankruptcy is not required to have a debt management plan. If a person has a debt management plan and ends up filing for bankruptcy they will need to provide the court with a copy of the plan they were following.

Resources

Some of the information on this page was gathered from the website for the United States Federal Trade Commission. Their website is located at www.ftc.gov.

The Fair Debt Collection Practices Act

The most important protection Americans receive from debt collectors is contained in the Fair Debt Collection Practices Act, or FDCPA, which was passed by Congress in 1978 and has since been amended several times. Under this law, consumers have a number of important rights.

To Whom the FDCPA Applies

The FDCPA applies to collection agencies and attorneys who are engaged in the collection of consumer debts owed to creditors. It does not apply to the creditor itself. The FDCPA also exempts government employees, such as tax collectors, from its provisions. Commercial debts incurred by businesses also do not receive protection under the FDCPA.

If you owe money to Jack's Friendly Furniture Mart, and Jack or one of his employees calls to collect the debt, or if a state's department of revenue calls about your back taxes, the FDCPA does not apply. While there is not much you can do about government bill collectors, state laws that regulate debt collection practices usually do prevent private creditors from using harassing debt collection techniques. You can find out about the specific debt collection laws in your state by contacting your state attorney general's office or department of consumer protection.

FDCPA Limits a Debt Collector's Tactics

The FDCPA sets limits on the tactics a debt collector can use when communicating with you about a debt it claims you owe. Unless you give a debt collector prior authorization to do so, he or she cannot communicate with you under these circumstances:

- If you send a letter demanding that the collection agency cease calling you
- At any unusual time or place, or at any time or place which the collector should know is inconvenient for you – specifically, the FDCPA prohibits debt collectors from contacting you before 8 a.m. or after 9 p.m.
- At your place of employment, provided that the collector knows, or has reason to know, that your employer prohibits you from receiving calls or personal visits at work
- If the collector knows that you are represented by an attorney in regard to the debt he or she is trying to collect, unless the attorney gives the collector permission to call you directly.

Debt Collectors and Third Parties

The FDCPA also prohibits debt collectors from communicating with third parties, such as your spouse, your employer or your neighbors, about your alleged debt. A collector may make a report to a credit bureau. A debt collector can communicate with other people who know you for information about where you can be found if, for example, your address has changed. If the collector does contact people you know, such as your former neighbors, he or she is severely limited in what he or she can say to them. The collector cannot tell your neighbors that he or she is trying to collect a debt. The collector cannot contact these people more than once, unless they ask the collector to, or unless he or she believes they provided incorrect information and they now have access to the right information.

The FDCPA also limits the ways a collector can communicate with you or with others in writing. For example, a collection agency cannot send you a telegram or a letter with anything on the outside of the envelope that indicates the letter is from a collection agency. The FDCPA also prohibits a collection agency from sending you a postcard of any kind about your debt.

Under the FDCPA, a debt collector is prohibited from taking any actions that might be considered harassing, oppressive or abusive. Among other actions that are prohibited, a debt collector cannot:

- Use or threaten to use violence or other criminal means to harm you, your reputation or your property
- Use obscene or profane language
- Publish lists of consumers who are alleged to refuse to pay debts, except to credit bureaus and some other authorized parties
- Advertise the sale of a debt in order to coerce payment

- Cause a telephone to ring repeatedly, or engage in repeated telephone conversations with the intention to abuse, annoy or harass anyone at the called number
- Place telephone calls without meaningful disclosure of the caller's identity. For example, a debt collector cannot pretend to be from a government agency or the police. In some cases, debt collectors have been known to claim that they were calling with news of an accident involving a family member, or even a death in the family, in order to reach the debtor.

Keep in mind that this is only a partial list of prohibited activities, and that other kinds of common tactics used by debt collectors are also violations of the FDCPA. In one case, a debt collector called a young mother about a debt she was alleged to owe. During the course of the conversation, the collector made snide references to the woman's jewelry and asked whether she had a wedding ring, remarked that the woman "shouldn't have children if she can't afford them," and used a false name to identify themself. All of this was found to be a violation of the FDCPA's prohibitions against harassment, oppression and abuse.

Other abuses by debt collectors have had even more tragic consequences. In the January 1993 issue of the American Bar Association Journal, an article tells of the case of a woman who attempted suicide after a bill collector called her at her job and threatened to have her arrested if she did not make good on a bounced check in the amount of $212.

FDCPA and Post-dated Checks

One way in which debt collectors try to convince debtors to make past due payments is by offering to take post-dated checks. A post-dated check is one that you write today but date for some time in the future. "Of course," the collector tells you, "your bank cannot cash a check until the date on its face." If you are expecting to receive money in the near future, you may be tempted to go along with the collector's suggestion.

Do not give in to the temptation. Because checks are now processed electronically, there is nothing to stop the collector from taking a post-dated check and cashing it immediately. As a result, you could end up with your checking account overdrawn and bounce other checks you have written. Guess what? That means overdraft and bounced check charges, and possibly calls from other merchants, your utility or telephone companies, or even more collection agencies.

Under the FDCPA, a debt collector cannot accept a check that is post-dated by more than five days, unless they notify you in writing than they plan to deposit it between three and 10 business days before doing so. To see exactly what this means, suppose you give a bill collector your check on July 1 but date it July 4. The bill collector can deposit that check immediately.

But suppose you post-date the check to Aug. 1. The bill collector is in violation of the FDCPA if they deposit that check without notifying you in writing at least three business days, but no more than 10 business days, before doing so. If they notify you more than 10 business days before Aug. 1, they are also in violation of the FDCPA. In fact, not only is the bill collector in violation of the FDCPA by depositing a post-dated check without giving you proper notice, they are also in violation merely by threatening to do so.

Other actions prohibited by the FDCPA include implying that the collector is vouched for or bonded by the U.S. or state government, or using a badge or uniform or anything that resembles a badge or uniform. A debt collector cannot threaten or imply that your failure to pay a debt will result in your arrest or imprisonment – or the seizure, garnishment, attachment or sale of your property or wages – unless taking such action is lawful and the debt collector or the creditor actually intends to take such action. Making an empty threat to take any of these actions (whether they are legal or not) is a violation of the FDCPA.

Resources

Federal Trade Commission: www.ftc.gov

Contributed by: Joseph W. Mierzwa ProSe Associates, Inc.

Loan Consolidation

Many banks and mortgage companies advertise deals on home-equity loans. These allow you to borrow against the accumulated equity in your home; with the cash you receive, you can pay off your high-rate credit cards and thus drastically reduce your monthly credit-card payments. This concept of borrowing one large amount at a lower rate to pay off many smaller amounts that are charged at higher rates is called loan consolidation.

Pros and Cons

In theory, loan consolidation makes economic sense. It is easy to see the benefits of paying a single $10,000 loan at 8 percent instead of five $2,000 loans each at 19 percent. Depending on the terms of each of these debts, you can reduce your monthly payments significantly. Other benefits of loan consolidation include the convenience of dealing with fewer creditors and improved monthly cash flow.

One significant drawback to consolidating your debts with a home-equity loan is that, as with a mortgage, you can lose your home if you fail to make the payments. Your home is the collateral on the loan, meaning the lender can foreclose and take your home for lack of payment.

A Slippery Slope

There is another underlying problem that makes this type of loan consolidation a dangerous proposition. If a consumer has considerable high-interest credit-card or consumer debt, it most likely is due to a long-term pattern of spending and poor money management. Even the most resolute consumers cannot be expected to change their behaviors and attitudes about money and spending overnight. If you pay down all your credit cards with the lump sum from the consolidation loan, you may fall back into the same pattern of spending, now that more money seems to be available on the credit cards. If these previous patterns and attitudes return, you will be worse off than before, now needing to make a consolidation-loan payment in addition to the credit-card payments that were supposed to disappear. In addition, you run an increased risk of losing your home if you cannot make the mortgage payments.

Because of these potential problems, many personal-finance experts recommend consumer credit counseling in conjunction with consolidation loans. Improving one's financial health is usually a gradual process with occasional failures. Many community colleges and adult continuing-education centers offer programs that teach financial fitness and help consumers develop budgeting plans. Credit counselors can help consumers accurately map out the road to financial recovery, showing, in writing, exactly how the plan will progress. Seeing hard numbers that indicate the results of a financial recovery plan can be the inspiration needed to stick to the plan.

Credit Rating Concerns

Often, when a consumer seeks to consolidate debt, one's credit rating becomes an issue. As a reflection of one's ability to pay obligations on time and as an indicator of debt-to-income ratio, a credit rating can determine whether a lender grants a consumer more credit and, if so, at what interest rate. Many not-for-profit credit counselors will try to sell consumers what seems to be an ideal solution. By simultaneously arranging for a consolidation loan, dealing with existing creditors and handling all the processing, many of these companies offer the consumer a deal that is too good to be true. Often it is: be wary of firms that offer to help repair your credit rating while simultaneously offering low-interest consolidation loans based on the equity in your home. The term not-for-profit does not always mean charitable, and many of these companies have made matters worse for well-intentioned consumers eager to repair their financial situations.

Research the Options

Whether considering a home-equity consolidation loan through an apparently trustworthy mortgage company or through one of the many companies that regularly advertise on the internet, in newspapers and through other less traditional means, do not make significant financial decisions without doing some research. Make sure that any banks, mortgage companies or consolidation and credit-counseling agencies are in good standing with the Better Business Bureau. In addition, also call your state's consumer protection agency or attorney general's office to see if other consumers have registered complaints against these organizations.

Loan consolidation may be right for you, but it is best to do your homework before you decide to consolidate and select a lender to assist you.

Resources

- Student Loan Consolidation: https://studentaid.ed.gov/sa/repay-loans/consolidation
- National Foundation for Credit Counseling: www.nfcc.org
- Federal Deposit Insurance Corporation: www.fdic.gov

Contact us anytime for confidential assistance.

Obtaining a Loan

Most banks and other financial institutions offer a variety of loans to consumers. Home mortgages and auto loans are probably the most commonly offered loans.

However, it is also possible to obtain loans for home improvements and remodeling, medical bills, college and technical school tuition and other items consumers may need to finance.

Personal Loans

As with credit cards, the interest rates and payment schedules for loans offered by financial institutions can vary greatly. It pays to shop around among several institutions when applying for a personal loan.

Keep in mind, however, that many financial institutions charge a loan-application fee. Find out what that fee will be before applying for the loan.

In some cases, a lender may require a co-signer, sometimes called a guarantor. A co-signer agrees to assume responsibility for repayment of the loan if the borrower fails to make the required payments.

If asked to cosign a loan for a friend or relative, carefully consider the responsibilities.

In many states, a lender may seek repayment in full from a co-signer if the original borrower misses a single payment. Before co-signing, recognize that the lender probably would not require a co-signer if the borrower's credit record was good. Thus, individuals should really think about the risk involved.

Federal Trade Commission regulations and the law in most states require the lender to provide the co-signer with a copy of the underlying loan agreement and a separate document that explains the co-signers rights and obligations.

A lender who fails to provide these documents may be unable to obtain repayment from the co-signer if the borrower defaults.

Home Equity Loans

It can be tempting to refinance or to pay off other debts by taking out a home equity loan. Interest rates are usually lower and the interest itself may even be tax-deductible. In some cases, tapping the equity in a home can lead to real financial disaster.

Using a home to secure a loan means that the lender can foreclose on the property if the homeowner fails to make payments.

While many lenders now offer loans equal to as much as 125 percent of a home's value, none of the interest on the amount in excess of that value is tax deductible. So if a home is worth $200,000 and a homeowner has a first mortgage of $180,000, only the interest on the remaining $20,000 would be tax deductible.

Getting a loan of $70,000 would yield no tax benefits on interest charged on the extra $50,000 borrowed.

Economic downturn or other real estate-related event could cause the value of a home to drop. This would leave the homeowner with an even larger debt and no way to pay it off, even if the house was sold. Thus, the homeowner could end up selling the house and still owing the lender a considerable amount.

Another trap with some home equity loans is what is known as an equity-sharing requirement. In order to obtain the loan, the homeowner must agree to share a percentage of any increase in the home's value with the lender.

A number of elderly consumers have been victimized by this provision when it was time for them to sell their homes. In some cases, lenders who made loans of only a few thousand dollars were able to obtain tens of thousands of dollars through equity-sharing provisions in the loan contract. This gain by the lender was in addition to the fees they charged to grant the loan in the first place.

Note that home equity loans are not always a mistake. Using the equity in a home to improve its value or to pay for absolute necessities like major surgery or medical care may make sense, depending on an individual's financial situation.

But using a home equity loan to finance a vacation or to pay off credit cards may not make sense. The vacation will be over and chances are the credit card balances will begin to pile up again. Think long and hard before putting a home at risk for things that are not truly essential.

Resources

- MyMoney.gov: www.mymoney.gov
- Federal Deposit Insurance Corporation: www.fdic.gov

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Payday Loans

Payday loans can be a quick fix in a time of financial need, but can turn into a large debt if they are not fully understood. Use the following information to learn about what a payday loan is, who uses them and how you can use one without racking up debt.

How Payday Loans Work

Payday loans are small loans, typically $200 to $500, offered for very short periods of time, usually two weeks. They come in many forms and several names. "Payday Loan," "Cash Advance" and "Post-dated Check Loans" are all monikers these loans carry.

A payday loan typically works something like this: an individual fills out an application, provides the lender a copy of his or her most recent pay stub, a copy of a bank statement, proof of residency, and a signed check for $25 per $100 more than the amount borrowed. For example, someone taking a $200 payday loan would give the lender a $250 check.

The loans generally last two weeks. After this period, the check is cashed and the loan is paid in full. Most loans also allow the borrower to extend the term of the loan for two weeks for an additional $25 per $100 borrowed. Most lenders allow an unlimited number of extensions so long as the borrower can cover the fees.

Payday Loan Customers

The typical payday loan customer is someone who has little in the way of financial resources or is desperate for funds. Often people who use payday loans are suffering the effects of losing a job, have extensive credit-card debt, a sudden or prolonged illness, or are just unable to meet their income requirements under their current spending plan. Payday loans are almost always the choice of last resort.

The Cost

Payday loans are probably the most expensive way to legally borrow money. Though lenders are required to inform borrowers of both the amount to be repaid and the annual percentage rate (APR) on the loan, few ensure that borrowers understand the rates they will be charged. Most borrowers concentrate on the weekly finance charge and lenders often gloss over the APR as an "administrative" figure.

In the example above, a $200 loan with no extension, the finance charge for the two-week loan is $50. The APR, the annualized cost of borrowing, is much higher. It comes in at an unbelievable 650 percent. For a $200 loan that is extended for one year, this translates into a total cost of $1,300.

What to Do if You Have a Payday Loan

For someone already using a payday loan, there are often few choices to get out from under the crushing debt. The borrower usually cannot spare an extra $200 to close out the loan and still meet his or her other financial obligations and so is often stuck. Maintaining the status quo is not an option, due to the high fees. So, what can be done to stop using payday loans?

Tightening the budget is always the first step. For instance, if a person has a $200 payday loan and can cut spending by $50 a month, he or she should be able to retire the obligation in about four months.

Loans from family, friends or qualified retirement plans such as a 401(k) or 403(b), if properly structured, can be used to retire payday loans. If these are options, the borrower should ensure that the repayment schedule is workable. The worst thing that could happen is that one takes out a 401(k) loan and sets up payments that are too high, causing the borrower to need another payday loan to meet expenses.

Hardship withdrawals from qualified retirement plans or taxable withdrawals from IRAs may be used to retire the debt. In both cases taxes and penalties may apply, requiring careful analysis of the tax consequences versus the cost of carrying the debt. A taxable distribution is often less expensive than continuing to extend the payday loan.

For homeowners with credit that is not too badly damaged, a home-equity loan or line of credit may provide funds to pay off a payday loan. The borrower must be very careful since he or she is putting his or her home on the line if he or she defaults on the loan.

Finally, if the debt is just too much to be retired, bankruptcy may be the only option. Because bankruptcy will adversely affect an individual's ability to obtain loans or credit for a number of years, it also should be considered only as a last resort.

Contact us anytime for confidential assistance.

Taking a Loan or Distribution From a Qualified Retirement Plan

A retirement plan is considered to be a qualified plan if it meets certain requirements set by the Internal Revenue Service and the Employee Retirement Income Security Act of 1974 (ERISA). Qualified plans are subject to favorable tax rules, such as pre-tax contributions.

Examples of qualified plans include 401(k) plans, 403(b) plans, 457 plans and pensions. Most qualified plans, other than pensions, allow loans for any reason, and many also offer early distributions.

If you have run into a tight spot, you may have considered borrowing or withdrawing money from your qualified plan to help you past the trouble. Read more to help you decide if this is the right option for you.

Borrowing From a Qualified Plan

The Internal Revenue Code governing qualified plans allows participants to request loans, but individual plan sponsors can be more restrictive with loan options and are not required to offer them at all. Most employers limit plan participants to one or two loans at a time. Loans are available for a maximum term of five years, or in the case of a first-time homebuyer, for a maximum of 10 years.

Vesting refers to how much of the funds in the qualified plan belong to the participant. Participants are fully and immediately vested in all contributions they make to the plan, while employer-matching contributions generally require a period of years to become fully vested. For instance, if John starts a new job and contributes $3,000 to his 401(k) plan, and his employer matches with a $1,500 contribution during his first year and offers a graded vesting schedule option, John will "own" the $3,000 he contributed. However, if John were to leave the company after one year, he would forfeit the employer match. In year two, John would keep 20 percent of the employer contribution; in year three, he would keep 40 percent, and so on until he is fully vested in year six.

Loans can be taken for the entire vested account balance for balances of $10,000 or less. For vested account balances between $10,000 and $20,000, the maximum loan amount is $10,000. For vested account balances greater than $20,000, the maximum loan is half of the vested balance up to $50,000, minus any outstanding loan amounts. For example, if the vested account balance is $100,000 and there is a current loan with a $20,000 outstanding balance, the maximum that may be borrowed with a new loan is $30,000.

Loans must be repaid at a "reasonable" rate of interest. Repayment is handled by payroll deduction over the term of the loan and is made directly to the plan participant's account. Loans may also be paid early with a single lump sum payment. In these cases, a cashier's check is sent to the plan administrator to cover the remaining balance, and payroll deductions are stopped.

If a borrower fails to repay the debt, the outstanding loan balance will then be treated as a distribution for tax purposes.

Taking a Distribution

Distributions are withdrawals from qualified plans that do not have to be repaid. All distributions are subject to tax as ordinary income at the participant's highest marginal tax rate. Some distributions are also subject to a 10 percent penalty on the amount distributed.

There are three types of distributions that are available from qualified plans:

- Qualified distributions: These are distributions that meet the requirements of section 72(t) of the Internal Revenue Code. There is no penalty attached to these distributions.
- Hardship distributions: These are available to cover medical expenses, to keep from being evicted, to stop a foreclosure, to cover tuition expenses and to pay tax liability arising from the distribution. In most cases, the participant is unable to make contributions to the account for a period of one year after a hardship distribution. Plan sponsors are required to withhold 20 percent of any requested distribution to cover the participant's tax liability. An additional 10 percent penalty also applies to hardship distributions, although the employer is not required to withhold this amount. Employees taking a hardship distribution often find themselves owing additional taxes at the end of the year due to the penalty.
- Deemed distributions: These are distributions arising from the failure to repay a qualified plan loan. This can happen for a number of reasons, but most often, this occurs when an employee has an outstanding loan and is either laid off or leaves the employer for another company. If the loan is not repaid before the termination date, the outstanding balance is deemed a distribution and is subject to both ordinary tax and the 10 percent penalty.

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