Consumer Reports and Access to Housing for Domestic Violence Survivors

GoToWebinar Interface

1. Viewer Window

2. Control Panel
Housekeeping

- Materials were emailed to registrants and will be emailed again after the webinar, along with evaluations.
- Materials and recording will be posted at www.nhlp.org/OVWgrantees.
- MCLE certificates will be emailed to California attorneys.

Goals of Today’s Presentation

- Understand the role of consumer reports in accessing rental housing
- Help survivors to obtain and understand credit and tenant screening reports
- Learn about laws that protect consumers
  - FCRA and ICRAA
- Obtain tools to dispute errors on credit reports
- Understand the basics of credit scores
- Help survivors prioritize debt
- Learn about special protections for survivors of DV
Poll Question?

- Does your organization include questions about financial abuse during the screening/intake process?
  - Yes
  - No
  - Sometimes / to a limited extent

Screening for Financial Abuse

- Incorporate questions about credit/banking/debt into DV intake interviews
  - Prior economic harms
- Ask about control over and knowledge about financial resources in the home
  - Future economic security
- Important for divorces – access to property to which survivor is entitled
  - Ask for kickout order/rental payments in restraining/protective order
- Best source for information – client’s credit report
Debt and Domestic Violence

- Debt collectors can further traumatize survivors
  - Abusive debt collection methods
  - Debt collection lawsuits
- Old debts haunt survivors when they try to obtain housing/loans/credit cards
  - Consumer reports (credit reports)
  - Debt/bankruptcy/foreclosure
  - High cost credit
- Specific vulnerability of DV clients
  - ID theft
  - Inability to budget due to crisis
  - Lack of control over financial resources/decisions
  - Limited English proficiency or limited education

Marital Debt: Joint Bank Accounts

- Joint bank accounts
  - Either accountholder can take all of the funds
    - Neither accountholder can close the account unilaterally or remove the other person from the account
    - If parties are married, may be required to return 50% of the funds
  - Advise client to open a new account – can remove funds she reasonably believes to be hers and place them in a new, individual account
    - Bank accounts are important for applying for housing
    - If abuser overdraws the joint account, survivor may be unable to open a new account, so it is important to act proactively
Marital Debt: Shared Credit Cards

- Authorized user and joint credit cards
  - Creditor cannot collect from or sue authorized user, but account history is reported on both credit reports
  - Remove abuser as authorized user on survivor’s credit cards and remove survivor as authorized user
  - Joint credit cards
    - Under CA community property laws, can allocate charges to each spouse after date of separation
    - Creditor may still attempt to collect from either joint accountholder, but can use to offset in property/debt allocation in divorce

Marital Debt: Individual Account

- Individual credit cards with charges incurred during marriage
  - Community debt – can be allocated 50/50 to each party
  - Charges after date of separation belong to each individual
  - Creditor will only sue the person whose name is on the card
  - In community property states, a family law attorney can help survivor to obtain property to which she is entitled by allocating 50% of debt to the abuser, even if the card was in the survivor’s name
  - Check your local laws for non-community property states
Second-Chance Banking Products

- The problem: Chexsystems
  - Overdraft → can remedy by paying balance
  - “Suspected Fraud Activity” → if no fraud on part of survivor, dispute through FCRA and request reinvestigation and verification of alleged fraud
  - If applicable, assert ID theft in dispute letter
- Bank on California program – check for local participation in your city
  - [http://www.bankoncalifornia.ca.gov/](http://www.bankoncalifornia.ca.gov/)
- Bad credit
  - No social security number needed
- Wells Fargo Opportunity Checking
  - Direct deposit or $8/month fee
- Local credit unions are often more accommodating
  - Call manager of branch in advance and/or accompany survivor to the bank to apply for account

Consumer Reports

- Consumer reports include any information about an individual consumer's "character, general reputation, personal characteristics, or mode of living" when made by a consumer reporting agency
  - Can include credit, criminal record, and civil judgment information
What Is a Tenant Screening Report?

A consumer report compiled by a “specialty consumer reporting agency”

- Will likely be compiled from multiple sources
  - Credit data from TransUnion, Equifax, or Experian
  - Criminal record data from public record data collected by private vendors
  - Civil judgment (including unlawful detainer - eviction - information) from public record data collected by private vendors

Who Is Allowed to Request a Report?

- A user of a report must have a permissible purpose to request a consumer report
- When a consumer applies for housing, they give consent for a consumer report to be obtained by the landlord
- Other permissible purposes:
  - To collect a debt
  - For certain kinds of employment
  - To make a decision on extending or offering credit
Obtaining Consumer (Credit) Reports

- Before DV survivor applies for housing, know what is on her credit report.
- Look for unknown accounts – flag as ID theft and place a security freeze with credit bureaus.
- www.annualcreditreport.com
  - Obtain all three – Experian, Equifax and TransUnion
  - Print a hardcopy of each report
  - Keep a **SAFE ADDRESS CONFIDENTIAL** – do not report it to the credit bureaus - use an old address instead
  - If client has insufficient knowledge for online request, order by mail
- Dispute inaccurate information
  - Send certified letter from consumer, not from your agency
  - Keep a copy of all communication
  - Provide as much information about dispute as you have
- Mitigate harm of debts for which she is legally responsible by providing letter of explanation.

Obtaining Tenant Screening Reports

- No central database of reports like www.annualcreditreport.com
- Upon adverse action (denial of housing), landlord is required to provide a notice with a tollfree number that consumers can call **within 30 days** to obtain a copy of the report
- Dispute mechanisms still apply to public record data
Obtaining ChexSystems Reports

- Upon notice of an adverse action (denial of a new bank account), consumer may call 1-800 number and request a copy of report
- Dispute processes apply to ChexSystems, tenant screening, and credit reports

Fair Credit Reporting Act

- Protects consumers against reporting of inaccurate or outdated information
  - 100% accurate reporting
  - Adverse information may only be reported for 7 years
  - Public record information must be complete
  - Right to dispute inaccuracies
  - Right to reinvestigation within 30 days
Disputing an Inaccuracy

- Send a certified letter, return receipt requested
  - Do not use the online dispute process
    - Lose rights to litigate a case in court
    - Harder to track the progress of the issue
  - Dispute triggers a reinvestigation of the issue with the furnisher of information within 30 days (if adverse notice) or 40 days (if you find the error on your own)
- Include a copy of the credit report and circle the error
- If no response in 45 days, send a follow up letter insisting that the inaccurate information be deleted
- Dispute addresses can be found on the websites for each of the credit reporting agencies

Identity Theft and Credit Reports

- The FCRA and CA law protect victims of identity theft
  - Upon notice that an item is a result of ID theft, the consumer reporting agency must remove the information within five days
  - Including supporting documentation, like a police report and an FTC Affidavit of Identity Theft
- Place a 90-day freeze on the consumer’s account by calling the numbers here:
  - https://www.annualcreditreport.com/cra/helpfaq#fraudalert
- Place a seven-year freeze on the consumer’s account by sending a request by mail with a police report
Identity Theft and Eviction Records

- UD (eviction) records are public records
  - If the survivor actually lived there, she may have to explain the eviction to future landlords
  - Dispute process will not remove an eviction if the tenant was actually on the lease and a UD was filed
  - UDIs remain on a tenant report for seven years
- If someone illegally uses another person’s identity to rent an apartment, the consumer should file a dispute with the tenant screening company with proof that she lived somewhere else during that time

Is There Any Way to Clear UDIs?

- Unfortunately, there is no way to remove an eviction from a consumer’s tenant report if the court entered a judgment for the landlord
  - The information will time out in seven years
- If a case was filed but the tenant moved out, the case may have been dismissed
  - The record should reflect that, i.e., no “judgment for plaintiff” should be reported if the tenant and landlord worked out an agreement and the case was dismissed
  - If the tenant did not show up to the UD court date, a judgment may have properly been entered against her
  - If the information is inaccurate, consumer may file a dispute under FCRA to have the information updated to be 100% accurate
- A landlord may voluntarily agree to set aside a judgment
  - Example: Tenant moved out and is on good terms with LL
California Law: ICRAA

- More protective of consumers than the FCRA
  - Important for criminal records
  - May only be reported for 7 years
  - Arrest-only records may not be reported
- Courts have held does not apply to UDIs
  - Unlawful detainers may be reported if filed and dismissed
  - But under FCRA cannot inaccurately state “judgment for plaintiff” unless that occurred

Estimated Effects on FICO Score

<table>
<thead>
<tr>
<th>Activities</th>
<th>Effect on 680 score</th>
<th>Effect on 780 score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maxed-out card</td>
<td>-10 to -30</td>
<td>-25 to -45</td>
</tr>
<tr>
<td>30-day late payment</td>
<td>-60 to -80</td>
<td>-90 to -110</td>
</tr>
<tr>
<td>Debt settlement</td>
<td>-45 to -65</td>
<td>-105 to -125</td>
</tr>
<tr>
<td>Foreclosure</td>
<td>-85 to -105</td>
<td>-140 to -160</td>
</tr>
<tr>
<td>Bankruptcy</td>
<td>-130 to -150</td>
<td>-220 to -240</td>
</tr>
</tbody>
</table>

## Poll

- What is the best way to improve a credit score?
  - Hire a debt settlement company
  - Try to make the abuser pay the debts
  - Consolidate debt onto a credit card
  - Build good credit and wait for old debt to time out

## “Credit Repair” Is Frequently a Scam

- There is no such thing as a quick-fix for “credit repair”
  - In general, debt settlement and credit repair companies are a scam
    - They take consumers’ money and file frivolous disputes (the entries remove briefly and then reappear)
    - Or, they take consumers’ money for fees and never settle debts
How to Improve Credit Scores

- The consumer’s best friend is time
  - Wait out the seven years
  - Try to not incur additional negative entries
- Build credit with secured credit cards
- Use asset-building techniques like peer-lending circles
- Use credit cards carefully – pay the balance down and keep less than 50% debt-to-credit ratio on each card

Answer to Poll

- Debt settlement companies are a scam!
- The abuser can only be forced to pay reimbursement
  - If married, through family law property/debt distribution order
  - If not married, through a small claims case
  - Survivor is still liable to creditor
- Credit cards have high interest rates – consolidating onto a card can be very expensive
- The best option is to wait and attempt to explain bad credit to landlords
Prioritizing Debt

- Two kinds of debt
  - Secured debt
    - Car, mortgage
  - Unsecured debt
    - Credit cards, student loans, medical bills, personal loans

- Pay family necessities first
- Pay housing costs second – rent/mortgage/utilities
- Risk of losing property if secured loans go unpaid – debtor should pay her car loan and insurance if the car is a necessity

Prioritizing Debt: Unsecured Debt

- Little immediate risk for not paying unsecured debt
  - Do not pay if there is a good legal defense to repayment
  - Do not enter into a repayment agreement for a small payments on an old debt

- Court judgments are scary, but for low-income debtors, they are very hard for creditors to collect
  - Claim of exemption for wage garnishment for low-income wage earners
  - TANF/CalWORKs and federal benefits (Social Security, SSDI, SSI) are exempt
Should the Consumer Settle Old Debt?

- Do not make small payments on a debt
  - Debts accumulate interest at rate set by statute – in CA, 10%.
  - Many small payments do not even pay the monthly accrual of interest
  - To settle, a consumer should save the money and make a lump-sum offer
    - “Settled for less than the full amount” is still a negative entry on a credit report
- A decision should be made whether to pay off or to wait out the 7 years
  - If many debts, it may be easier simply to wait
  - If old debts, it is almost always better to wait
  - Many consumers simply cannot afford to settle enough debt to make a difference

The Right to Sue is Limited by Law

- The right to sue is limited by the statute of limitations – look for the SOL for “contracts”
  - In California, four years from the date of the last payment
  - Check your own state law for the local SOL
  - Each payment resets this time limit so it is better to settle in one lump sum than to make small payments
- Old debt should be allowed to time out from a credit report
  - Never make payments on a debt that is beyond the statute of limitations unless a lender or landlord specifically requires the settlement of that debt as a condition of providing housing
  - Some states do not permit the “reawakening” of a debt that is a “dead debt” - beyond the SOL – but some, like CA, do.
  - Don’t create A ZOMBIE DEBT by making payments on a dead debt
Asking Debt Collector to “Cease and Desist” Collection Calls and Letters

- Every debtor has a right to ask collector to cease and desist all calls and letters
- Doing so leaves debt collectors only one option to collect → file a lawsuit in court
- For clients whose income is exempt from collection (disabled or elderly), collectors are unlikely to sue once they are aware of this information
- Other clients may end up facing a collection lawsuit
- Okay to send a letter explaining DV and temporary inability to pay – ask for no calls, just letters

The Life Cycle of a Debt

- Late on payments
  - Reporting on credit report
- Calls and letters
  - Your original creditor
- Delinquent 30/60/90
- Reported on credit report
- Sold to 3rd party collector
  - Often starts legal action at this point
- Professional Collectors
  - Larger, more aggressive
- "Collections" often internal to original creditor
- Charged off
  - Account is written off on creditor’s books
- Expires from credit report
  - In seven years (6 years if CA)
Explaining Mitigating Circumstances to Landlords

- Survivors may wish to bring a letter to a landlord that explains bad credit or evictions were a result of DV
  - Letter from social worker, shelter, attorney or other advocate
  - Some survivors do not wish to talk about DV
  - However, a landlord may be more likely to rent to a survivor if he knows her story and that she is now starting over without the abuser

Housing Protections for Survivors


Conclusion

- Screen for issues at initial intake → minimize harm and maximize opportunities for clients
- Request credit reports
  - Open individual accounts now & stop using joint accounts
  - Analyze report for identity theft & mitigate harm
- Send dispute letters to challenge inaccurate information
- Build good credit and wait for old debt to time out
- Don’t spend scarce resources to settle old debts
- Send clients with letters to explain poor credit and prior evictions to prospective landlords and help prepare client to explain

Additional Resources

- Claire Johnson Raba – consumer law/DV attorney
  - cjohnson@baylegal.org
  - 415-982-1300
- National Consumer Law Center
- Center for Survivor Agency and Justice
  - Consumer rights for DV survivors initiative - search Economic Justice in the resource library at www.csaj.org
- NOLO self-help resources for dealing with debt
Thank you!

This project was supported by Grant No. 2008 TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.