

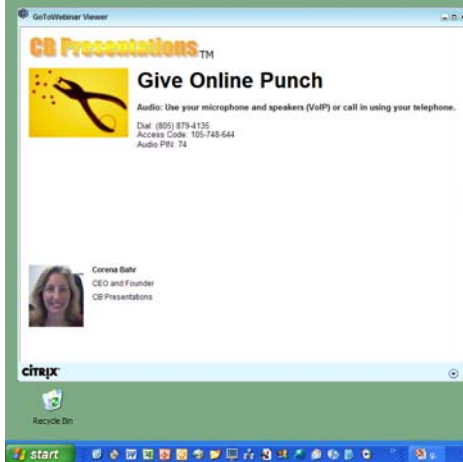
Consumer Reports and Access to Housing for Domestic Violence Survivors



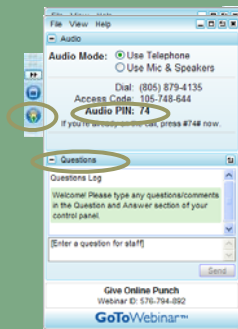
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1. Viewer Window



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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/>
 - 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
 - UDs 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 UDs?

- 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 UDAs
 - 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

Activities:

- **Maxed-out card**
- **30-day late payment**
- **Debt settlement**
- **Foreclosure**
- **Bankruptcy**

	Effect on 680 score	Effect on 780 score
□ Maxed-out card	-10 to -30	-25 to -45
□ 30-day late payment	-60 to -80	-90 to -110
□ Debt settlement	-45 to -65	-105 to -125
□ Foreclosure	-85 to -105	-140 to -160
□ Bankruptcy	-130 to -150	-220 to -240

Source: FICO via <http://money.msn.com> Sept. 17, 2010

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



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

- Violence Against Women Reauthorization Act of 2013 (VAWA 2013), <http://nhlp.org/ovwgrantees>
- NHLP, State and Local Law Compendium: Housing Rights of Domestic Violence Survivors, <http://nhlp.org/node/1436>

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
 - Guide to Consumer Rights for Domestic Violence Survivors – available at www.nclc.org for \$15
- 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
 - <http://www.nolo.com/legal-encyclopedia/collection-agencies/>



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