Bankruptcy & Alternatives for Survivors

January 16th, 2019
2:00 – 3:30pm EST

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Faculty Today

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Director of Strategic Litigation
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Hosted By: Erika Sussman & Sara Wee, CSAJ
Objectives

After today’s training, you should walk away:

- Familiar with bankruptcy concepts;
- Able to identify when bankruptcy might be an option to address debt facing survivors;
- Understanding the connection between bankruptcy and family law;
- Equipped with unique or innovative practices from group discussion.
What We Will Cover

- Bankruptcy Basics
- Considerations When Deciding to File Bankruptcy
- The Intersection Between Family Law and Bankruptcy
- Moving Forward: Mulitlevel Advocacy Tips
Before we begin...

- Don’t forget Part 2 on January 30th!
- Navigating Student Loan Solutions with Survivors
  - Wednesday, January 30th @ 2:00 – 3:30pm ET
  - Register here: https://ta2ta.org/webinars/registration/addressing-bankruptcy-student-loan-issues-for-surv.html
- Come with questions and ready to talk!
Are you doing innovation work in this area? Other economic or consumer work?

We want to Spotlight you!

**Purpose:** Spotlights are a Peer Exchange opportunity to share best-practices in consumer and economic advocacy with the field.

**Interested?** Complete this form [https://goo.gl/forms/jDpmAIQKDZqpoG3t2](https://goo.gl/forms/jDpmAIQKDZqpoG3t2)
Using the Guidebook

1. Introduction: Economic Coercion and Survivor-Centered Economic Advocacy
2. Credit Reporting & Repair for Survivors
3. Credit Discrimination & Predatory Lending
4. Debt, Debt Defense, and Safety Considerations for Survivors
5. Identity Theft
6. Navigating Student Loan Solutions
7. Bankruptcy & Alternatives
8. Foreclosure
9. Tax Advocacy
10. Consumer Issues in Family Law
11. Using the Civil Protection Order as a Tool for Economic Justice
12. Civil Court Barriers
13. Housing Protections
14. Workplace Discrimination & Advocacy
15. Criminal Records & Employment Rights

https://csaj.org/Guidebook
Using the Guidebook: Survivor Stories

Diverse survivor stories bring content areas into focus and center the challenges, strengths and opportunities of survivor centered economic advocacy.

Padma’s Story

Padma’s story below highlights the circumstances that may lead a survivor to consider filing for bankruptcy and how bankruptcy might help.

Padmasari is a 41-year-old woman from India. She was forced by her now ex-husband to move with him to the United States. He was abusive when she first married him, and he continued to be abusive after they moved to the US, including forbidding her from having contact with the outside world. In noticeably broken English, she contacts you because she is about to be evicted from her apartment due to inability to pay the rent.

She obtained a divorce from her abusive ex-husband about a year ago, after her neighbors called the police during the last physical assault. Although her ex-husband was ordered by the domestic relations court to pay their joint credit card bills and to pay child support to her, he has not paid anything. Instead, he has threatened that if she doesn’t pay the credit card bills herself, he will take the children away from her. Even though she has secured a full-time job, while raising her two children, she still cannot always make ends meet.

Because her ex-husband will not pay the credit card bills, creditors have sued Padma. The creditors are garnishing her wages and threatening to seize other property as well. Padma is losing so much of her weekly paycheck that she cannot afford to pay her rent. Her landlord has said that she must pay up or move out by the end of the month. If she doesn’t, he will take her to court. Padma is desperately worried that she will become homeless and that the court will allow her ex-husband to take custody of their children.

Think About It
Now that you know a little about Padma’s situation, you start to think about questions you will need to explore with her to determine if bankruptcy could help her address these problems. What are her top priorities? What is her perspective about bankruptcy as an option, in light of her culture, beliefs, and life experiences? What impact might bankruptcy have on her safety and what risks might her ex-husband pose if she decided to file bankruptcy?
Using the Guidebook: Issue Spotting & “Think about it”

Assessing bankruptcy as an option

Because of the complicated experiences and feelings surrounding finances and debt for many survivors, advocacy to address bankruptcy requires an open, honest, and sensitive assessment. The screening and assessment questions presented here are for issue spotting (often called “intake questions”), are not meant to be prescriptive, and conversations around a survivor’s financial situation and bankruptcy should not be limited to these questions. For a fuller description of a survivor centered approach to economic assessment, see the Introductory chapter in this Guidebook (pg. 11).

Here are some initial screening questions that may prove helpful in working with a survivor of intimate partner violence to evaluate bankruptcy as an option:

- How much debt do you have, and what kinds of debt? (Such as mortgage, car loan, credit cards, medical debt, payday loans, car title loans, student loans, or tax debts?)
- Have you been able to maintain minimum payments on your debts?
- Are your creditors threatening to take action against you? What measures, and when?

- Assessment questions throughout help frame, guide, and deepen survivor centered economic advocacy (SCEA)
- “Think About It” sections challenge readers to broaden perspectives on SCEA
- Focus on how intersectional identities impact SCEA
Using the Guidebook: Practice Tips

Easily located information

Clear practice tips

• Direct, hands on practice ideas for effective SCEA with survivors

• Tips come from practitioners in the working in the field

Filing for Bankruptcy

Consumers usually file either a Chapter 7 (liquidation) or Chapter 13 (payment plan) bankruptcy. There is also a special bankruptcy process for family farmers and fishermen (Chapter 12) or for business reorganization (Chapter 11). To obtain relief under any Chapter of the bankruptcy code, consumers must first complete a pre-filing credit counseling course within 180 days before filing bankruptcy, and they must complete a financial management course after filing to receive the discharge order. Some bankruptcy attorneys typically use a particular counseling agency for their clients; otherwise, the survivor can find a list of approved agencies online. Consumers must also file substantial financial disclosures with the bankruptcy court in support of their petition for bankruptcy.

There are fees for filing bankruptcy. The costs include the price of the credit counseling and financial management courses (which range from $15 to $50, although some providers will waive the fee for lower income debtors). There is also a filing fee of $335 for a 7 case and $310 for a Chapter 13 (these fees are adjusted periodically, so it is wise to double check your local bankruptcy court’s website). The bankruptcy court has the discretion to waive a Chapter 7 filing fee for debtors under 150% of the poverty level; the bankruptcy court may also permit a debtor to pay the filing fee in

Practice Tip
You might consider setting up an emergency fund to help pay the Chapter 13 filing fee for survivors who are unable to pay it, or partnering with other community organizations that can help with this kind of emergency expense.
Bankruptcy and Alternatives for Survivors

KAREN MERRILL TJAPKES
EXPERT ADVISOR, CENTER FOR SURVIVOR AGENCY AND JUSTICE
Objectives for Today:

- Become familiar with bankruptcy concepts;
- Be able to identify when bankruptcy might be an option to address debt facing survivors;
- Explore the connection between bankruptcy and family law;
- Discuss unique or innovative practices with the group.
Bankruptcy Basics
POLLs

Do you work with survivors facing debt-related issues?
1. Yes, all the time
2. Yes, sometimes
3. Yes, once or twice
4. Never

Do you work with survivors on bankruptcy?
1. Yes, all the time
2. Yes, sometimes
3. Yes, once or twice
4. Never
Survivors Unique Risks: “The Economic Ripple Effect”

- **During**
  - Nearly all experience Economic Abuse
  - 43-52% Pressured to take out credit; debt fraudulently put in name
  - 71% Lack access financial information (controlled by partner)

- **Safety Seeking**
  - Partners refuse to pay custody/alimony
  - Partners stop/refuse to pay debts
  - Damaged credit makes finding housing/employment difficult

- **Short-Term**
  - Creditors & Family Courts don’t work together (e.g. relief thru divorce but still sued by creditors)
  - Personal information shared when trying to access and correct finances (e.g. closing credit cards, pulling reports)
  - Wages and assets garnished by creditors
  - Can’t resolve coerced debt via family court (identity theft defenses only)

- **Long-Term**
  - Housing insecurity and homelessness
  - Lose child custody because “financially unstable”
  - Damaged credit/bankruptcy impacts access to housing, employment, education, future credit/loans


Help with Debt Collection

Bankruptcy can:

- Stop debt collection harassment
- Stop garnishment of wages or a bank account (and get back money taken in the 90 days before filing, or possibly longer)
- Stop foreclosure and/or repossession
- Prevent government agencies from collecting overpayments (such as Social Security), unless the overpayment was obtained by fraud
- Avoid judicial liens and non-purchase security interests on household goods
Types of Bankruptcy

- **Chapter 7: Liquidation**
  - Filing fee: $335 + credit counseling (waiver)
  - No formal payment plan or reorganization
  - Under the “means test”

- **Chapter 13: Payment Plan/Reorganization**
  - Filing fee: $310 + credit counseling
  - Involves payment plan (60 months maximum)
  - “means test” used to determine how long you must pay your disposable monthly income into the plan.

- **Chapter 12: Family Farmers/Fishermen**

- **Chapter 11: Business Reorganization**
The Bankruptcy Estate

- Creation of the Bankruptcy Estate: 11 U.S.C. § 541
  - Generally, all property interests, unless exempt, are included in estate unless/until abandoned by the trustee

- Exemptions:
  - State or Federal exemptions, 11 U.S.C. § 522. Some states have state exemptions. Some states require you to use one exemption scheme or the other; some states allow you to opt.
    - Federal exemptions include: homestead ($23,675), motor vehicle ($3775), household goods ($12,625 total), wildcard ($1250 plus unused homestead up to $11,850)
  - If properly scheduled, then absent an objection the debtor retains the exempt property

- Non Exempt property treatment:
  - Chapter 7: liquidation
  - Chapter 13: liquidation analysis in the payment plan
The Automatic Stay

- Filing a bankruptcy petition creates an “automatic stay.”

- The automatic stay prohibits most attempts to collect pre-petition debts, including by judicial proceedings, creating liens, taking possession of property, or setting off debts.

- Exceptions to the stay include criminal proceedings, domestic relations (other than equitable division of estate property) and repeat bankruptcy filings within one year.

- Creditor may ask to “lift the stay” under certain circumstances and to take certain actions
  - For cause, including lack of adequate protection (not making post-petition mortgage payments, no insurance, etc).
  - Lack of equity and property not necessary for effective reorganization (the stay serves no bankruptcy purpose)
Discharge

- Bankruptcy can eliminate legal obligation to pay most or all debts (even if debt has become a court judgment)

- Discharge operates as an injunction preventing creditors from attempting to collect discharged debts in the future as personal liability of debtor

- Violations of the discharge injunction may be punished by contempt
The Fresh Start

Pre-petition Debts

Included in discharge

Post-petition Debts

NOT included in discharge

Petition Date
Exceptions to the Discharge

Debts that are not dischargeable (no adversary proceeding needed):

Many taxes;

Debts the debtor failed to list in the schedules (unless creditor had notice, or no-asset case, in some circuits);

Domestic support obligations (child support and alimony);

Most fines and penalties owed to government agencies;

Student loans, unless the debtor can prove to the court that repaying them will be an “undue hardship;”

Debts incurred by driving while intoxicated;

Debts the debtor has formally agreed to repay by entering into a reaffirmation agreement.

11 U.S.C.§523(a)
Exceptions to Discharge

Debts *potentially* non-dischargeable:

- Debts incurred by fraud – 523(a)(2)
- Fraud while acting as a fiduciary, embezzlement, larceny – 523(a)(4)
- Willful and malicious injury to person or property (applicable only in chapter 7 cases) - 523(a)(6)

Creditor must bring a timely adversary proceeding to have the debts declared nondischargeable. 523(c)(1); Bankruptcy Rule 4007(c)
Protecting Survivor’s Safety

If revealing their address puts the survivor at “undue risk of unlawful injury,” the survivor can ask the court to excuse them from listing their address on publicly filed documents. 11 U.S.C. § 107(c). Procedures may vary from district to district.
CHAT: What are you seeing?

How does bankruptcy show up in your work with survivors?

What are some challenges you or survivors face in navigating bankruptcy?
Considerations When Deciding to File Bankruptcy
Carol is recently separated from her abusive husband, and is feeling overwhelmed by the costs of living alone on her Social Security and wages from her part time job. Her husband ran up many bills in her name and she is now getting collections calls constantly. She is worried about making her rent payment next month. She wants to know if bankruptcy is an option for her.

Think about it: What additional information do you need to know? What factors should you consider in processing whether bankruptcy is an option for Carol?
Assessing Bankruptcy as an Option

- Collect information regarding the survivor’s financial situation
  - Debts
  - Assets/Exemptions
  - Goals

- Timing Issues
  - Collection activity
  - Stability of income/Likely to incur additional debt?
  - Coordination with other legal proceedings
Assessing Bankruptcy as an Option

- Exploring bankruptcy with survivors—
  - What are the survivors thoughts, feelings and values regarding money, debt and bankruptcy?
    - Is participating in this process going to be traumatizing or overwhelming for the survivor? How can we help support her through the process?
  - What are the safety concerns and is further safety planning required?
    - Gathering documents
    - Disclosure of information
    - Could this escalate the violence in some way?
Alternatives to Bankruptcy

- Is there a financial problem that bankruptcy can solve?
- Settling with creditors
  - Lump sums
  - Payment plans
  - Alternatives for special creditors such as the IRS or student loans
  - Alternatives for mortgage foreclosures
- “Judgment Proof”
- Beware for-profit debt settlement/debt management companies.
The Intersection Between Family Law and Bankruptcy
POLL

Which best describes your situation:

1. I handle bankruptcy issues when they come up in family law cases

2. There are people within my agency I can go to for help with bankruptcy issues.

3. My organization has partnerships with consumer/bankruptcy attorneys to help address problems related to bankruptcy.

4. None of the above.

Please explain your response in the chat.
Maria decides to file for divorce and requests that she be given primary custody of their children, that her husband be required to pay her child support, and that she be allowed to keep the house they own jointly.

In response, Maria’s husband files bankruptcy. He then claims that she has to drop the divorce case because of his bankruptcy. He also insists that Maria has to file bankruptcy with him, even if she doesn’t want to, because they are still married.

Maria wants to know what her options are now.

**Think about it: What else might you need to know/ask? Any concerns? Opportunities?**

**What information does Maria need? What tools can you provide? Who else can you enlist to help?**
The Automatic Stay

Exceptions to the automatic stay for commencement or continuation of civil actions (11 U.S.C. § 362(b)(2)):

1. For the establishment of paternity;
2. For the establishment or modification of an order for domestic support obligations;
3. Concerning child custody or visitation;
4. For the “dissolution of marriage” although the stay still applies “to the extent that such proceeding seeks to determine the division of property that is property of the estate.”
5. Regarding domestic violence
6. Additional provisions regarding the on-going collection of DSOs.
Domestic Support Obligations

- A “Domestic Support Obligation” is a debt that is owed to or recoverable by the spouse, former spouse, or child of the debtor or such child’s parent, legal guardian, or responsible relative, or a governmental unit that is in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child’s parent without regard to whether such debt is expressly so designated. 11 USC 101(14A)

- Domestic Support Obligation: is excepted from discharge under 11 USC 523(a)(5).
  - Labels do not matter—the bankruptcy court may look to the form and intention of the payments in determining whether they are in the “nature of alimony, maintenance, or support”
Hold Harmless/Debt Assumption Provisions

A debtor’s obligations to make payments directly to a third party to but hold a former spouse harmless from those debts may be a non-dischargeable support obligation, with the inquiry of the bankruptcy court beginning with the intent of the parties and/or the state court, and looking at whether the assumed obligation has the effect or providing support.

- Factors will include: the nature of the obligation, the type of payment, the length of the marriage, whether there are children of the marriage who must be supported, the relative earning power of the spouses, the adequacy of support without the debt assumption, and the understanding of the parties concerning the agreement.
Marital Property Division

- Property division provisions may be excepted from discharge in a Chapter 7 bankruptcy: a debtor is not discharged from a debt to a spouse, former spouse, or child of the debtor, that is not a domestic support obligation under (5), that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record or a determination made in accordance with state law. 11 U.S.C. § 523(a) (15)

- However, 11 U.S.C. § 1328(a) permits the discharge of these debts in a successful Chapter 13 bankruptcy
Responding to the Former Partner’s Bankruptcy

Steps the survivor may want to consider if her former partner files bankruptcy:

- Attend Meeting of Creditors
- Proof of Claim
- Adversary Proceeding
- Review Chapter 13 Plan

Think about it: How might her partner respond? Any safety considerations? Challenges you can anticipate? Ways to address the challenges?
CHAT: What else are you seeing?

How does bankruptcy show up in family law cases?

Are there unique barriers or challenges for underserved survivors? (e.g. immigrant, survivors of color, rural areas)
Moving Forward
Ideas for advocating for survivors

- Offering training for bankruptcy attorneys on domestic violence and trauma-informed advocacy
- Partnering with bankruptcy attorneys who understand domestic violence and are experienced with working with survivors
- Breaking down the “silo” of different practice groups in your own program
- Maintaining a fund for assisting survivors with paying bankruptcy court fees
- Advocating with your local bankruptcy court to implement a local rule and/or procedure for implementing the non-disclosure of address provision in the code

Other ideas?
CHAT: What else are you doing?

What has worked well in your bankruptcy advocacy? Debt-related advocacy?

What would you like to see happen? What would enhance your advocacy?

What unique challenges do you face in your organizational or community context?
Questions?
Connect:

Karen Merrill Tjapkes
(616) 608-8042
ktjapkes@lawestmi.org
www.lawestmi.org
Who do you typically work with on bankruptcy issues? Are there unmet needs among underserved communities? How could you learn more?

What partnerships could be helpful to your work?

What are some changes that would make a big (positive) impact to your work? (organizationally, in community, other?)
Worksheets: Needs Assessment

### Articulating the problem/need.

**The issue of focus is:**

- Coerced Debt

*Note: you may not need to go through the 'should be' chart below, thinking about survivors' holistic needs, in order to identify an issue of focus.

#### Think about WHAT SHOULD BE:

<table>
<thead>
<tr>
<th>Information you have (consider survivors' needs, experiences, what has worked well, what has not, etc.)</th>
<th>Where or how you got this information</th>
<th>Information you need to further analyze the issue</th>
<th>How will you get the information you need</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>2.</td>
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- What do survivors say they need to address DEBT?

Based on the above, write an expitational statement about what should be what a survivor faces.

5.

#### Now, think about the CURRENT RESPONSE:

<table>
<thead>
<tr>
<th>What's the general process by which advocates or attorneys within your agency respond to DEBT?</th>
<th>In what ways do partners or other organizations work to address DEBT?</th>
<th>How do you see systems respond to DEBT (e.g., justice systems, government agencies)?</th>
<th>Are there key local, state, federal policies that come into play for DEBT?</th>
</tr>
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<td>6.</td>
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6. **What's the current response to issue ?**

*If you find it difficult to answer for any one level or you're not sure, where can you go for more information? What questions do you need to ask?

---

- **What do you know?**
- **What should be (the ideal)?**
- **What’s currently happening?**
- **What are gaps?**
- **Opportunity Mapping! (goals)**

What could be happening from individual to org to policy level?
Worksheets: Partnership Building

- Who are your partners?
- What’s their perspective on the issue?
- How do you work with them to address the issue? How would you like to?
- Partner Mapping! (strategies) What’s work and what can be done to enlist partners?
Worksheets: Strategic Planning/ Systems Thinking

- What is our policy landscape? How does that impact advocacy?
- What are our goals to address the issue?
- What are steps to get there?
- Who’s needed? What’s needed? By when is it needed?
- If we do these things can we expect to achieve our ultimate goal? How will we know (measurable indicators)?

**Action & Evaluation Planner**

Use this chart as a tool to turn goals into action or to reflect on past work as you continue planning ahead. It can be used for long or short-term planning. The prompts are meant to help your brainstorming. Note: You do not have to fill in all boxes. From there, you can then ensure activities match your intended goals.

<table>
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<th>Strategies</th>
<th>Timeline</th>
<th>Resources Needed</th>
<th>Lead Person</th>
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- Draw connections for other states - let us know if other states.
- Research.
- Draft lost evidence.
- Draft policies/provisions.
- Draft rules/provisions for other jurisdictions.
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**DV Consumer Law Working Group**

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Resources & Announcement
Don’t Forget!

Navigating Student Loan Solutions with Survivors

- **Wednesday, January 30th @ 2:00 – 3:30pm ET**

- **Register here:**
We want to Spotlight you!

- **Purpose:** Spotlights are a Peer Exchange opportunity to share best-practices in consumer and economic advocacy with the field.

- Interested? **Complete this form** [https://goo.gl/forms/jDpmAIQKDZqpoG3t2](https://goo.gl/forms/jDpmAIQKDZqpoG3t2)
  - We’ll follow-up!
Both bankruptcy and student loan webinars, plus other resources, tools, and materials will be posted as a Consumer Rights *Training Toolkit* here, soon!

- [https://csaj.org/webinars](https://csaj.org/webinars)

And look for a Consumer Rights Newsletter & other announcements, here:

- [https://csaj.us5.list-manage.com/subscribe?u=58f89a02f55fbf512cc8a5f88&id=d147e487f9](https://csaj.us5.list-manage.com/subscribe?u=58f89a02f55fbf512cc8a5f88&id=d147e487f9)
Additional Resources

Guidebook Chapters
Chapter 7: Bankruptcy
Chapter 8: Foreclosure

2016 Webinar:
Housing Foreclosure & Defense for Survivors

ProPublica:
Too Broke for Bankruptcy
(Understanding Disparities in Bankruptcy)
Additional Resources

Assessment Tools

Advocacy Tools

- Past Webinar & Training
- Resource Library
  - Federal Taxes
  - Coerced Debt
  - Eviction & Foreclosure
  - Credit Reporting & Repair
  - Banking & financial services
  - Consumer and Criminal Record Barriers
  - Employment & Housing Access
  - ...and more

Download
Guidebook on Consumer & Economic Civil Legal Advocacy for Survivors

A comprehensive and survivor-centered guide for domestic violence advocates and attorneys

Chapters Include:

- Credit reporting and repair
- Debt collections and defense
- Bankruptcy and foreclosure
- Federal tax advocacy
- Economic relief in civil protection orders
- Economic issues in family law
- Barriers in civil court
- Rights and protections: housing and employment

https://csaj.org/Guidebook
Accounting for Economic Security

An Atlas for Direct Service Providers

**Mapping the Terrain**

1. Economic hardship and poverty constrain survivors’ options for safety
2. The economic impact of violence ripples throughout survivors’ lives
3. Systemic barriers impede survivors’ access to economic stability
4. Social inequality restricts survivors’ options for economic security and safety

[Download](#)
Purpose is to dialogue-back with Listening Session conversations in order to aid self-reflection, challenge dominant narratives, support improved data collection and analysis, and to begin, continue, or advance conversations and work toward racial equity for domestic and sexual violence survivors and for all of us.
THANK YOU!

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