



CENTER FOR SURVIVOR
AGENCY & JUSTICE

GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



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The Center for Survivor Agency and Justice is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence. CSAJ envisions a world where all people have equal access to physical safety, economic security, and human dignity. CSAJ develops and promotes advocacy approaches that remove systemic barriers, enhance organizational responses, and improve professional practices to meet the self-defined needs of domestic and sexual violence survivors.

The Consumer Rights for Domestic and Sexual Violence Survivors Initiative (Consumer Rights Initiative) is a national project of CSAJ that seeks to enhance consumer rights for domestic and sexual violence survivors by enhancing the capacity of and partnerships between domestic/sexual violence and consumer law and advocacy. Consumer and other economic civil legal remedies have the potential to provide survivors with the legal tools to address issues such as debt collection, credit discrimination, bankruptcy, damaged credit, tax liability, and foreclosure. To achieve survivors' joint goals of physical and economic safety also requires purposeful cross-training, networking, and sustained partnership building on the local and national levels. Therefore, CSAJ's Consumer Rights Initiative offers technical assistance to lawyers, advocates, programs, and communities across the nation through: advocacy tools and resources, webinar trainings, national conferences, individual technical assistance, and Building Partnerships Demonstration Sites.

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Bankruptcy & Alternatives for Survivors

By Karen Merrill Tjapkes & Sarah Boiling Mancini

Introduction

Filing bankruptcy may allow an individual to obtain relief from all or most of their debts. It can be a powerful tool for a person who is overwhelmed by debt and attempting to restructure or reduce their financial obligations. This ability to reduce or restructure debt can be especially important for survivors of domestic violence, who may have debt problems arising from or exacerbated by the violence they have experienced.

This chapter will cover the basics of bankruptcy, the differences between Chapter 7 and Chapter 13 bankruptcy, important timing considerations, and alternatives to bankruptcy. We also explore ways to protect a survivor's privacy and safety in bankruptcy and issues that may arise when a survivor is a creditor in a former partner's bankruptcy case.

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?

Domestic Violence and Bankruptcy

Unfortunately, and all too often, survivors of domestic violence may find themselves saddled with debt as they attempt to establish a life separate from their abusive partners. Survivors who stay in the relationship might also be dealing with burdensome debt problems. Survivors can incur debt in myriad ways during a relationship (e.g. coerced debt or other economic abuse, medical debt from injury – see earlier **Credit Reporting & Repair** and **Debt** chapters in this Guidebook) and in seeking safety or leaving (e.g. using credit for relocating, legal fees). Survivors can also incur debts in the short and long-term due to reduced income or failure of an abusive partner to pay child support or joint debts.

Survivors face unique circumstances that might lead to filing bankruptcy. A substudy within the Consumer Bankruptcy Project, the leading national study of consumer bankruptcies, found that among partnered women filing bankruptcy, 17.8% (or nearly 1 in

5) reported experiencing domestic violence within a year before filing bankruptcy.¹ Some of the debt may be itself abuse—using debt as a means of exercising abusive control—a concept termed “coercive debt.”²

There are often limited ways to deal with these debts. The domestic relations court may allocate payment responsibility between spouses, but the domestic relations court is unable to amend or modify the underlying contract with the creditor, and thus cannot force the creditor to accept this allocation of responsibility.³ This means the survivor can, and probably will, be sued if the debt remains unpaid even if the domestic relations court orders that it is the ex’s responsibility to pay. While the survivor may have defenses especially if it is a situation of coerced debt that may rise to the level of fraud or identity theft (See both **Debt, Identity Theft**, and **Family Law** chapters in this Guidebook), often the survivor may end up with a judgment against them.

If a survivor is then subject to collection that puts their wages and assets at risk, they may very well find that their independent financial life will begin to fall apart. Wage garnishment can lead to an inability to pay rent or the mortgage, putting them at risk of homelessness. The risk of homelessness may result in threats of removing the children from their custody.

Because of the inability of the domestic relations court to adequately address these collection situations, and because of the potentially catastrophic consequences of doing nothing, many survivors may find that bankruptcy may be the last and best option to preserve their family and housing stability. This chapter is intended to provide an overview of the bankruptcy process, the advantages and disadvantages of filing bankruptcy, and special considerations that are an important part of helping a survivor making the decision to file, and filing, a bankruptcy petition.

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?

¹ Professor Angela Littwin, the co-principal investigator on the Consumer Bankruptcy Project IV, discusses these findings in *Coerced Debt: the Role of Consumer Credit in Domestic Violence*, Vol. 100, pp 1-74.

² A For more information about coerced debt, see CSAJ’s [webinar](https://csaj.org/calendar/view/149/) featuring Angela Littwin and Adrienne Adams: Debt in the Context of Safety: Coerced Debt and Debt Defense: <https://csaj.org/calendar/view/149/>

³ See Chapter 12, Addressing Barriers for Domestic Violence Survivors in Civil Court.

- What kind of income and assets do you have that might be at risk if a creditor obtains a judgment against you?
- Have you made large payments to any single creditor? Have you given money to any friends or family members in the last year?
- Have you ever filed bankruptcy before? If so, when?

The impact of bankruptcy

Bankruptcy is ultimately about a fresh start for a debtor, and there are many important things that filing bankruptcy can do for a survivor. The most important benefit of bankruptcy is eliminating the legal obligation to pay most (and sometimes all) of their debts by entry of the **bankruptcy discharge**. Even before the discharge is entered, under a legal concept called the **automatic stay**, the filing of bankruptcy will stop all collection efforts including halting foreclosure, repossession, or wage garnishment. The automatic stay can also prevent the termination of utility service or require that utilities be reconnected. Filing bankruptcy may discharge amounts due for the overpayment of certain governmental benefits, such as an overpayment of Social Security, as long as there was not fraud involved. In some cases, filing bankruptcy may even force the return of property or wages that have been seized by a creditor. Indeed, bankruptcy presents a powerful tool that should be considered for survivors in financial distress.

Limits of bankruptcy

There are some things, however, that bankruptcy cannot do or does not do easily. Bankruptcy cannot eliminate all the rights of "secured" creditors. For example, while filing bankruptcy can stop the mortgage bank from foreclosing or the car financing company from repossessing the car temporarily, the secured creditor can seek permission from the bankruptcy court to proceed against the collateral, unless the debtor can bring the loan current. In a Chapter 13 bankruptcy, discussed below, the bankruptcy plan may provide the opportunity to get the loan caught up. And, the debtor may at least discharge any deficiency even if the collateral is sold. Additionally, if a landlord has already obtained a judgment for possession against a survivor and they do not meet the special requirements set out in the bankruptcy code, then the bankruptcy usually will not prevent the landlord from moving forward with the eviction.

Case Scenario: *In talking with Padma, you learn that her landlord is threatening to file for eviction at the end of the month unless she can pay up by then, which she says she can't do. You explain that if she wants to try to stay in her apartment, and use the bankruptcy to stop the eviction, she would need to file before he obtains a judgment against her in an eviction case. This will be an important timing consideration if she decides to file for bankruptcy.*

Key Terms

Bankruptcy discharge: the order from the court saying that certain debts are wiped out and may no longer be collected from the debtor.

Automatic stay: the injunction that takes effect immediately upon filing of a bankruptcy case that prevents any actions to collect a debt or take the debtor's property – including stopping a foreclosure, repossession, or garnishment in its tracks.

Adversary proceeding: A separate court case within the bankruptcy case.

Chapter 7 bankruptcy: The debtor asks the court to discharge their debts without undertaking a formal payment plan or reorganization of the survivor's financial affairs. Debtors must pass an income based "means test."

Chapter 13 bankruptcy: A form of bankruptcy most often filed when a debtor is attempting to make payment arrangements so they can keep property, for example, if the debtor wants to bring their mortgage payments current so that they can keep the house.

Debt management plan: in which the debtor pays one monthly payment that gets distributed among the existing creditors, who often waive interest or late fees as part of the plan.

Debt settlement company: These companies collect payments from the debtor over time and hold the money in an account, then attempt to negotiate short payoffs with creditors in one-time lump sum payments.

Loan modification: This typically means bringing the mortgage current and reducing the monthly payment to an affordable level.

Judgment proof: A term to describe debtors who do not have any income that is subject to collection by creditors.

Meeting of creditors. A meeting where the bankruptcy trustee is there to ask questions of the debtor under oath, to ensure that all information has been truthfully and completely disclosed in the case. Creditors are allowed to attend but rarely do.

Proof of claim: A form that lets the bankruptcy court know how much is owed to that creditor and the nature of the debt.

Priority Debts: Certain debts that get paid before other creditors, and are not dischargeable in the bankruptcy.

Domestic support obligations: Child support and alimony. These obligations are both priority debts and nondischargeable in bankruptcy.

There are also certain debts that are treated differently and often cannot be discharged, including child support or spousal support/alimony (the bankruptcy code calls these “domestic support obligations”), criminal fines, debts that were incurred due to fraud, most student loans,⁴ and some taxes.⁵ Often, whether one of these debts is dischargeable will be determined in an **adversary proceeding**, which is a separate court case within the bankruptcy case.

Case Scenario: *In Padma’s situation, you are able to determine that all of her debts would be dischargeable in bankruptcy. She explains to you that aside from her rent, she owes \$2,500 to Discover Card, which is now garnishing her paycheck, \$3,700 to Citibank, \$300 in medical bills, and \$250 to Sprint for an old cell phone that has now been disconnected. There was also a car that she and her ex-husband bought together that was repossessed a few months before their divorce, and after selling it, the creditor claimed that \$2,300 was still owed. After assessing her situation, you can see that Padma, by filing bankruptcy, would be able to discharge her unsecured debt and stop the garnishment of her wages so that she could afford to catch up on the rent. You learn that Padma is hesitant about the idea of filing bankruptcy, in part because of her religious beliefs. She tells you that debt is very problematic for her as a Hindu. However, she wants to consider bankruptcy as an option, because she is struggling to pay her bills and the fear of losing her children is her biggest concern. You explain that you know this is a difficult decision, that you are going to advise Padma about things she would need to know before filing bankruptcy, and that she can then make a decision about next steps in light of all of her options and priorities.*

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.⁶ 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.

⁴ See Guidebook Chapter 6 regarding Student Loans.

⁵ See Guidebook Chapter 9 regarding Income Taxes.

⁶ Approved credit counselors by state may be found here: <https://www.justice.gov/ust/list-credit-counseling-agencies-approved-pursuant-11-usc-111>. Many of these agencies will waive fees for low-income individuals, upon request.

installments. No fee waiver is permitted for a Chapter 13 filing, but the filing fee may be either paid in installments or as a part of the Chapter 13 plan to pay creditors.

There may also be attorney's fees if the survivor retains an attorney to represent them. It is highly recommended that a survivor considering filing for bankruptcy do so with the help of an attorney. Survivors may want to contact local legal services programs to see if they are eligible for assistance or contact several attorneys to compare fees and services.

Practice Tip

It is a good idea to become aware of any free legal services providers in your area that might be willing to represent survivors in bankruptcy cases, to partner with these organizations. Or, especially if you don't have access to a free legal services program close by, it might be possible to partner with a private bankruptcy firm that can handle a certain number of cases for free, or "pro bono."

Survivors should be cautious of national bankruptcy firms who may not have local attorneys available for in-person consultations. Additionally, some may look to bankruptcy preparers as an affordable alternative; however, bankruptcy preparers are not attorneys, are usually not well qualified to assist with the preparation, and are not permitted

to give individualized legal advice, which can lead to complications. The potential pitfalls for a debtor filing bankruptcy "pro se," without an attorney, are substantial, and can result in a debtor being denied a discharge or failing to obtain relief that might have been available.

Practice Tip

Abusive partners will sometimes threaten to force a survivor into bankruptcy, often to maintain control over the survivor's finances or to scare them into staying. The survivor should be counseled that the abusive partner cannot make good on this threat—*only the survivor* can file bankruptcy if and when they choose to. While there is a process for involuntary bankruptcies, this applies mainly to business debtors; it is very rarely if ever possible to use that process to force a consumer into bankruptcy. Survivors should be encouraged to make their decision about whether to file for bankruptcy, knowing that an abusive partner cannot legally file a bankruptcy case on the survivor's behalf without consent.

After the bankruptcy case is filed, the debtor will have to attend a meeting of creditors. This usually involves meeting with the bankruptcy court trustee, an individual who represents the interests of the creditor in the bankruptcy, to review the financial disclosures. While other creditors may attend, this rarely occurs. If there are disagreements within the bankruptcy case, such as whether a debt is dischargeable or whether a piece of property can be protected, then there may also be an adversary proceeding within the bankruptcy case to litigate those questions.

The next section discusses the differences between the two kinds of bankruptcy cases most commonly filed by individual consumers, Chapter 7 and Chapter 13 bankruptcies.

Chapter 7 Bankruptcy

In a bankruptcy filed under this Chapter, the debtor asks the court to discharge their debts without undertaking a formal payment plan or reorganization of their financial affairs. In order to prove eligibility for a Chapter 7 bankruptcy, the debtor must provide their income information for the household for six months before filing and show that they are below a certain income level. The survivor can also show that they have expenses that make it unlikely they will be able to repay any significant portion of their debts; this is

called the “means test.” If the debtor does not “pass” the means test, they may be required to file a Chapter 13 payment plan bankruptcy instead of Chapter 7. However, any debtor who is below the median income for a household of their size in their state will automatically pass the means test, and will, therefore, be able to choose between filing under Chapter 7 or Chapter 13.

Think About It

Because average household income over the six months before filing is used for the calculation, if the survivor has recently split from their abusive partner, they may need to consider whether they will have to include their abusive partner’s income in the means test, whether they will have access to that information and, if required to include the income, whether this will change the result of the means test.

The debtor will also have to disclose all of their assets to the bankruptcy court. Understandably, this can be an intimidating and uncomfortable conversation for many survivors, particularly if they feel (or were made to feel) ashamed or responsible for their debt. They may have additional worries that the bankruptcy court will take their property, or may have been threatened with such by their abusive partner. However, debtors are often allowed to keep most if not all of their property in the bankruptcy process. The law establishes exemptions, and if the property the debtor owns is under the dollar amounts allowed by those exemptions, then the debtor may retain the property. If the value of the debtor’s property exceeds the amount the survivor is entitled to exempt, then the bankruptcy court may require that some of the property be sold so the value can be used to pay something to the creditors. There are exemptions under the federal bankruptcy law and also under state law; some states require the debtor to use state law exemptions, and others give the debtor a choice between the state or the federal exemptions. Most debtors who file under Chapter 7 are able to keep all of their property, but ensuring that no property will be lost is an important reason to file bankruptcy with the help of an attorney, rather than filing unrepresented.

Practice Tip

Many people feel overwhelmed, guilty, and scared about the very idea of filing bankruptcy. It is a good idea to remind the survivor that the bankruptcy and their debt are not “them.” It may be helpful to describe the bankruptcy process and what is involved so that you can address some fears promptly and directly.

Chapter 13 Bankruptcy

A Chapter 13 bankruptcy is most often filed when a debtor is attempting to make payment arrangements so they can keep property, for example, if the debtor wants to bring their mortgage payments current so that they can keep the house. In a Chapter 13 case, the debtor is required to file a proposed payment plan with the bankruptcy court that outlines how much they will pay and how those payments are to be distributed. The payment plan is usually three to five years long.

Some debts may be modified in a Chapter 13 bankruptcy. For example, sometimes the interest rate or amount of a car loan can be adjusted, and unsecured creditors will often receive a small fraction of what is owed, with the remaining balance being discharged. If a debtor

Think About It

It is important to note that under the bankruptcy code, the bankruptcy court cannot modify the terms of a first mortgage secured only by the debtor’s primary residence. This means that the debtor will not be able to adjust the interest rate or payment amount of that mortgage, and so they need to be able to afford to pay the usual monthly payment to maintain the mortgage as well as an additional amount to cure the past due balance if they want to keep the home in bankruptcy.

has more than one mortgage loan, sometimes a second mortgage may be modified, depending on the value of the house and the amount owed on the priority mortgage.

Unfortunately, this may make Chapter 13 unaffordable for some survivors, and they may need to consider other options to keep their home, such as a mortgage loan modification.⁷

After consideration of the debtor's financial disclosures and proposed payment plan, including whether any creditors or the bankruptcy trustee object to the plan, the bankruptcy court will determine whether to confirm the plan. If the plan is confirmed and the debtor makes the payments as required by the plan, then the debtor's remaining debts will be discharged at the end of the plan.

Case Scenario: *Based on what you know of Padma's situation, how would you advise her about her options? What other information do you need in considering bankruptcy under either Chapter 7 or Chapter 13? Padma informs you that she is up to date on her car payment, and she believes she can quickly catch up on her rent if the garnishment is stopped. Her debts are mostly unsecured debts, and she does not own any property beyond the amount she can claim as exempt under state law, so she would not lose any property in a Chapter 7 case. You advise Padma that it sounds like a Chapter 7 bankruptcy would fit her needs; although she could decide to file under Chapter 13, and should discuss both options with a bankruptcy attorney.*

Deciding Whether and When to File a Bankruptcy Case

Deciding if and when to file a bankruptcy case can be a very difficult decision, with many different factors that a survivor and advocate must take into consideration.

The first step should be a thorough review of the survivor's financial position. This should include a review of the survivor's income and expenses, their debts, the nature of the debts (for example whether they are tax debts or other debts that may not be dischargeable), and the property they own.

The advocate should help the survivor determine whether their property or income is subject to collection efforts by creditors or if there are ways to make other arrangements to protect the survivor's financial interests. This information is necessary to evaluate whether bankruptcy will give the survivor the hoped for relief despite any disadvantages.

The next step is to consider the timing of the bankruptcy. For example, is there an emergency situation that requires the survivor to file quickly, such as stopping a foreclosure? It may also be necessary to file quickly if the survivor is seeking to recover property that was seized by a creditor, such as the seizure of funds from a bank account. Indeed, if a creditor has taken either wages or money from the debtor's bank account through a garnishment within the 90 days before a bankruptcy is filed, the debtor should usually be able to recover that money.

⁷ See Guidebook Chapter 8 regarding Mortgage Foreclosure for more information regarding mortgage foreclosure and possible options to avoid foreclosure.

In other situations, where the survivor is not yet financially stable and may incur additional, unavoidable debt, and there is no pressing reason to file soon, the survivor may want to delay filing until they are unlikely to keep building debt. For example, if a survivor is without health insurance and knows they need to have a major surgery, they might consider waiting to file bankruptcy until after they recover from the surgery and anticipate they are finished incurring additional debt. This is important because any debts incurred after the bankruptcy petition is filed (even the very next day) will not be included in the bankruptcy discharge. Another timing issue is that if the survivor has made large payments to some creditors (including repaying a debt to a friend or family member), they may want to delay filing so that the bankruptcy trustee does not attempt to recover those payments.

Case Scenario: *Padma shares with you that another reason that she is scared about eviction is because she is scheduled for a minor surgical procedure and she will be physically unable to move her belongings for several weeks after the surgery. You will need to learn more about Padma's medical insurance situation, whether she is going to incur debts related to this surgery as well as when she would be medically able to participate in the required steps for filing bankruptcy. How would this information affect your advice regarding timing the bankruptcy filing, should Padma decide to proceed with filing?*

Another factor to consider in the timing of a bankruptcy filing is how it will impact other pending legal proceedings. For example:

Many survivors are going to worry about what their financial situation will look like coming out of bankruptcy and whether the perceived negatives are worth the benefits. First, by comparing the survivor's assets to the allowed exemptions in their state, the advocate can properly address the survivor's concerns regarding whether they can keep their house or their car if they file bankruptcy.

Think About It

If a survivor is still in the midst of a divorce proceeding and files for bankruptcy, they will need to seek relief from the automatic stay before the family law court can equitably divide marital property.

If a survivor is not a citizen and perhaps has a pending immigration case, such as seeking protection under the Violence Against Women Act or proceedings to adjust their immigration status, a survivor should take care to consult with an immigration attorney regarding how the bankruptcy proceedings will affect their immigration matter. While a bankruptcy filing itself should not be grounds for denying a request to adjust status, other matters raised in the bankruptcy petition, such as payment of taxes, may be important to the immigration proceeding.

Second, some survivors may be worried about the impact filing bankruptcy will have on their credit score, especially as credit scores are now so often considered in non-credit contexts. Unfortunately, there is no clear answer to this question. Many survivors with high debt loads and judgments against them may already have a credit score that is so low that bankruptcy will not make a significant difference. Alternatively, although a bankruptcy can stay on a credit report for ten years, a survivor who files bankruptcy may be able to rehabilitate their credit now that they can afford to pay their bills going forward. See the **Credit Reporting & Repair** chapter in this Guidebook.

Lastly, survivors will be able to get credit in the future if they can show that they are now paying their bills and any subsequent debts incurred after the bankruptcy have been paid promptly.

Practice Tip

Many credit offers after filing bankruptcy are likely to come with high costs and high-interest rates; advocates should counsel survivors about such credit offers that might derail the survivor's financial recovery after bankruptcy. Discuss strategies for using credit wisely after bankruptcy (for more information, see the **Credit Reporting & Repair** chapter of this guidebook). It may be wisest to avoid using credit for a period of time after the bankruptcy, by saving up cash for necessary purchases. Getting a credit card, even a secured credit card, and using it carefully (paying off the balance each month), may be a way to help rebuild one's credit history after bankruptcy.

Alternatives to Bankruptcy

Sometimes a survivor may have other options to deal with their financial strain outside of bankruptcy, such as settling with creditors or making payment arrangements. It is important to counsel the survivor about those alternatives as part of the consideration of whether bankruptcy is the best available option.

If a former partner is failing to comply with an order to pay child support or spousal support, the survivor may explore enforcement of the court order through a contempt action, seek to have the support payments deducted from the partner's wages (if employed), or pursue other assets for collection. However, this will not help unless the former partner has income or assets that can be reached.

Practice Tip

You discuss with Padma what her ex's reaction to a contempt charge might be. Will he retaliate in some way? It will be important to help Padma weigh the potential safety implications of this possible course of action.

Another alternative to filing bankruptcy is to attempt to set up a payment plan with one or more creditors (See the Credit Reporting & Repair chapter of this Guidebook). If the survivor can make some (even minimal) payment on the debt, it may be possible to delay the creditor seeking a judgment or garnishment.

Sometimes debtors will enter into a **debt management plan**, in which the debtor pays one monthly payment that gets distributed among the existing creditors, who often waive interest or late fees as part of the plan. However, such plans only work if the monthly payment is affordable. Survivors should be cautious if they decide to hire a debt management company, as many will charge high fees, taking money that could be used to pay the debts.

A similar option (though often more risky, and sometimes abusive) is working with a **debt settlement company**. These companies collect payments from the debtor over time and hold the money in an account,

Case Scenario: *You talk with Padma about the pros and cons of bankruptcy. She is concerned about impacting her credit score, but at this moment it is more important for her to gain relief from the garnishment, which is making it impossible for her to afford her rent. On the question of when to file, Padma explains that she does not expect to incur any new debt soon. Moreover, it is urgent for her to stop the garnishment of her wages, and she may be able to recover the money that has been garnished within the past 90 days, so it would be in Padma's best interest to file bankruptcy as soon as possible.*

then attempt to negotiate short payoffs with creditors in one-time lump sum payments. Again, many of these companies will charge large fees that they usually take before paying any creditors; it may take a long time for the survivor to build up enough of a balance to have funds with which to negotiate. These companies tell consumers not to make any payments directly to their creditors in the interim – which can lead to consumers getting sued by those creditors.

If a survivor is concerned about saving a home from foreclosure, there are often other options that may be preferable to bankruptcy. For example, the survivor can apply for a **loan modification** by submitting proof of income (disclosing child support payments as part of household income is optional) to the mortgage company and explaining the hardship that caused them to fall behind on the payments. A mortgage modification, if approved, typically means bringing the loan current and reducing the monthly payment to an affordable level (see the Foreclosure chapter in this Guidebook for more).

Finally, some survivors who are concerned about debt may not have any income that is subject to collection by creditors. These debtors are referred to as **judgment proof**. Although creditors may still seek a judgment, if the debtor's only income is Social Security, workers compensation, or some other protected source (including most pensions), the creditors will not be able to garnish their income. A survivor whose income is all protected from collection may not need to file bankruptcy. Sending creditors a letter asking them to cease communication regarding the debt may be an alternative way to end harassing phone calls. Under the Fair Debt Collection Practices Act, creditors must comply with this kind of stop-contact request from a consumer (also see the **Debt** chapter in this Guidebook).

Protecting the Survivor's Privacy and Safety

If the survivor decides that filing bankruptcy is the best alternative to deal with their financial situation, the survivor and their bankruptcy attorney may need to request accommodations from the court to ensure that their privacy and safety are protected. For example, the debtor typically must list their name and address on the bankruptcy petition, which is publicly filed and searchable by other parties. If revealing their address puts the survivor at "undue risk of unlawful injury," however, they can ask the court to excuse them from listing their address on publicly filed documents. See 11 U.S.C. 107(c).

Acting as a Creditor in a Former Partner's Bankruptcy

Sometimes a survivor may need to take steps to protect their rights when their former partner files for bankruptcy. The survivor is a creditor in their former partner's bankruptcy case if they have a right to receive any payment from the partner, such as child support, alimony, marital property, or damages in a personal injury case or another lawsuit. As a creditor, a survivor has the right, although not the obligation, to participate in the partner's bankruptcy case.

One way that creditors can participate in the bankruptcy is by filing what is called a **proof of claim**. This is a form that lets the bankruptcy court know how much is owed to that creditor and the nature of the debt. Some debts get special treatment in bankruptcy

An Analysis of Padma's Situation

Padma is concerned about eviction because she does not have enough money to pay her rent. The main reason she is behind on her rent is because creditors are garnishing her wages. Although her ex-husband is supposed to be paying those debts, the domestic relations court is unable to amend the underlying credit contracts, and so Padma remains financially liable for the debts as to the creditors. While she may have the option to seek some relief in the domestic relations court, that relief may not be granted fast enough and may be quite dependent on her ex-husband's ability to pay.

Additionally, Padma's situation is time sensitive. Her landlord has threatened eviction but has not filed a court case at this time. The bankruptcy code gives special consideration to landlords who already have a judgment for possession of the property—and the bankruptcy's automatic stay will often not stop eviction in those circumstances--so it may be important to file bankruptcy quickly if there are no other appropriate options for Padma.

It will be important to review with Padma the advantages and disadvantages to filing bankruptcy, and whether there are circumstances weighing against bankruptcy despite the need to prevent an eviction. Also, Padma is very worried that her financial circumstances will lead to the removal of her children. Therefore, it will be important to counsel her as to the appropriate state laws concerning custody to assure her that failure to pay debts or filing bankruptcy, by itself, is not a sufficient basis for a judge to change custody.

Additionally, it will be vital to evaluate whether Padma needs and has a sufficient safety plan in place. Padma is in the best position to predict how her ex-husband will react to a bankruptcy filing: will he be mad that she is discharging debts he will likely now have to pay? Will he attempt to change custody? Will he retaliate in a manner that will place her in danger? If she needs to maintain a confidential address, then her bankruptcy attorney will need to bring this up with the bankruptcy court.

Bankruptcy may provide Padma with valuable relief from her debts and help her to maintain her stability, but these issues will have to be addressed in helping her make the decision whether filing bankruptcy is the right choice.

because they are **priority** debts (meaning they get paid before other creditors) or are not dischargeable in the bankruptcy. Child support and alimony, which are called **domestic support obligations** in bankruptcy vocabulary, are both priority debts and nondischargeable in bankruptcy. Therefore, if a former partner files bankruptcy and owes

Practice Tip

If the survivor chooses to participate in a partner's bankruptcy case, one way to do this is to file a proof of claim stating the amount that is owed as of the date of the bankruptcy filing indicating that the debt is a priority debt. This way, the survivor can get paid from any assets of the partner's bankruptcy estate. Also, if the partner files under Chapter 13, the court will not be able to confirm the Chapter 13 plan unless the domestic support obligation will be paid in full through the plan. If a survivor has questions about how or whether to participate in the bankruptcy, it is a good idea to consult with an experienced bankruptcy attorney.

the survivor either child support or alimony, these obligations will not be wiped out by the bankruptcy discharge. Also, as priority debts, the survivor is entitled to get paid before certain other general unsecured creditors, like credit cards.

If the former partner is filing bankruptcy under Chapter 7 and has no assets above the amount that can be claimed as exempt, there may be no funds available

to distribute to creditors. This is known as a **no asset** case. In such cases, filing a proof of claim is not necessary because money will not be distributed to the creditors in any event.

Another way a survivor may participate in the bankruptcy is by attending the **meeting of creditors**. Creditors do not typically attend the meeting, and the bankruptcy trustee is there to ask questions of the debtor under oath, to ensure that all information has been truthfully and completely disclosed in the case.

However, as a creditor, the survivor has the right to attend the meeting, listen to the trustee's questions and the debtor's answers, and then ask any additional questions relevant to the bankruptcy case. This could help the survivor get more information about, and flag for the trustee, any assets they might be aware of that the debtor has failed to disclose.

The money that a former partner owes to the survivor under a property settlement agreement, unlike a domestic support obligation, may be discharged in the partner's bankruptcy. Also, a civil judgment against the abusive partner for personal injury or the like may also be discharged in bankruptcy. But criminal fines and restitution are not discharged. If the survivor receives notice that the former partner is attempting to get the court to order that a certain debt is dischargeable, it is important for the survivor to seek legal advice and file an answer. Alternatively, if the survivor believes that their former partner is attempting to discharge a debt owed to them that they believe should not be discharged, they can file papers to request that the bankruptcy court make a determination that those debts are not dischargeable.

A former partner's bankruptcy filing may also raise concern over debts that were jointly owed by both parties. The abusive partner's liability on the debt may be discharged in the bankruptcy, leaving the survivor as the only remaining debtor and potentially facing more pressure from the creditor to pay. However, the debtor's legal obligation to make payments directly to a third party and hold the former spouse harmless from those debts may be a nondischargeable support obligation. The abusive partner would remain liable on that debt, although the survivor will also still be liable unless they file for bankruptcy (remember, the family court order cannot remove the survivor's

Practice Tip

If the survivor is uncertain whether the partner has assets that could be made available for payment to his creditors, it may be best to go ahead and file a proof of claim even in a no asset case. The survivor can also look at the bankruptcy documents filed by the former partner (online or at the bankruptcy clerk's office) to see whether the partner has accurately listed any assets he may own. Assets, including real estate, cars, potential legal claims, cash, and any other thing of value, should be disclosed by the debtor in Schedule A/B.

Think About It

There is no requirement that the survivor attends the meeting of creditors if it would be dangerous or unpleasant; in fact, most creditors do not appear. It is a good idea to discuss whether the survivor is comfortable seeing and confronting an abusive partner in this meeting. Are there any safety considerations to talk through in making this decision? The survivor may still file a proof of claim even if they do not attend the meeting of creditors.

Practice Tip

Evaluate with the survivor whether they need to file additional court pleadings, such as an adversary proceedings, to assert the nondischargeability of such a debt when a partner files bankruptcy.

obligation on the contract). Sometimes additional complications will arise when the abusive partner and the survivor are jointly obligated on a mortgage loan. If the mortgage is in default and the survivor is trying to work out a loan modification or repayment plan, these efforts may be interrupted if the abusive partner files for bankruptcy. However, the survivor should be able to explain to the mortgage creditor that they can still communicate with them regarding the loan. If the creditor requests it, a survivor could agree to a consent order in the bankruptcy court making it clear that the mortgage company may talk with them about the loan (this may be referred to as an order modifying the **co-debtor stay**, and would only come up in a Chapter 13 case).

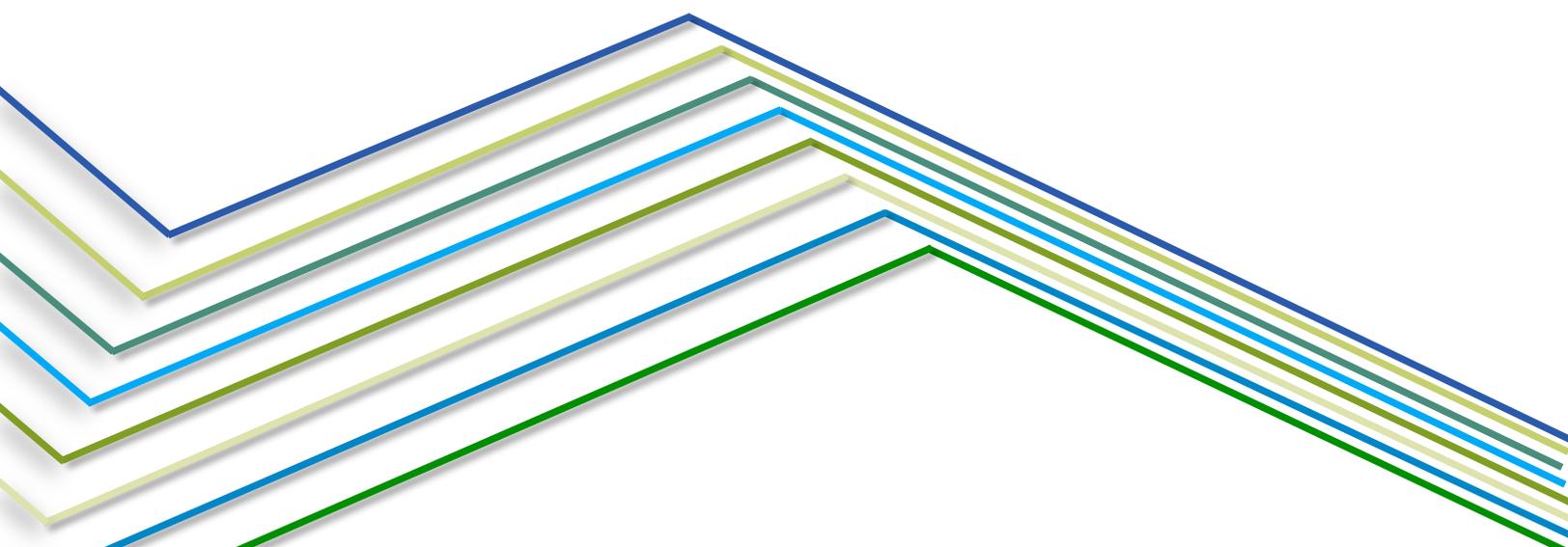
The abusive partner's bankruptcy filing may show up on the survivor's credit. If this happens, the survivor has the right to dispute it and have their credit report corrected. For more information on how to dispute inaccurate information in a credit report, see the Credit Reporting and Repair chapter in this Guidebook.

Conclusion

Survivors who are overwhelmed by debt, and facing housing and family instability as a result, may want to consider filing bankruptcy as an option for a financial fresh start. With individualized advice and planning, survivors can decide whether they should pursue the protections of the bankruptcy code.

Additional Resources

- National Consumer Law Center, Consumer Bankruptcy Law and Practice (11th Ed. 2016).
- National Consumer Law Center, Bankruptcy materials, including pro bono training materials, available at <http://www.nclc.org/issues/bankruptcy.html>.



GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



**CENTER FOR SURVIVOR
AGENCY & JUSTICE**

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