



**Legal Aid  
Society  
of Hawai`i**

# **Debt Collection**

## **Choices That Get You Into Trouble**

This brochure provides useful information on how to avoid problems with your debts. For more information, call Legal Aid's hotline. Phone numbers are in the back of this brochure.

Prepared by  
National Consumer Law Center  
Reformatted for use by  
Legal Aid Society of Hawai'i

# Choices That May Get You In Trouble

*Unmanageable debt and creditor harassment may tempt you to resort to solutions which may actually worsen the problem. This article, prepared by the National Consumer Law Center, will discuss harmful choices consumers make regarding debt management. Some of those choices include the following:*

## 1. Bouncing Checks.

It may be tempting to write a check when you know that you have insufficient funds in your account to cover it. At best, you may hope to make a deposit before the check is cashed. At worst, you may be deliberately using the check as a way to make the creditor temporarily happy.

However, bouncing checks is never the answer. Not only will you be charged a fee by the bank and by the creditor which will put you in a deeper hole, but you will open yourself up to criminal prosecution for false pretenses or fraud.<sup>1</sup> If criminally prosecuted, you will have a number of possible defenses, but it is far better not to have to deal with this problem at all.

Whenever you are in doubt, ascertain your balance with the bank before writing a check. Remember that you may have written other checks that have not yet been deducted from your account. If you have a joint account, coordinate your check-writing carefully with any other person who has power to write checks and make withdrawals.

## 2. Post-Dating Checks.

A post-dated check is one dated later than the date on which the check was written, with the expectation that it will not be cashed until that later date. Usually this is done with the hope there will be sufficient funds in the account by the time the check is cashed.

Never give a creditor a post-dated check. Even if you believe that you will have the money in your account to pay the check by that date, you may be wrong because something unexpected could happen. If that happens, you will bounce the check or you will not have the money for something else that is more important. Addi-

tionally, creditors occasionally deposit checks before their due date, and while this may be improper, it may cause you substantial problems. Finally, if you have given a post-dated check and later change your mind about paying that debt, stopping payment is difficult and expensive.

Creditors often encourage you to write post-dated checks as a collection tactic—often demanding that a check be dated with your payday. They want your check in hand as a way to get their money. You should resist the urge to give in to pressure to do this. You can offer instead to deliver the check on the day you write it — a day on which you have sufficient funds in your account. This preserves your choice not to deliver the check if your priorities change or you do not later have enough money in the account.

## 3. Selling or Giving Away a Creditor's Collateral.

You may have property which serves as collateral for a loan from one of your creditors. A common example is a car which serves as collateral for your car loan. It is a bad idea to deliberately sell or give away collateral, especially if you are experiencing financial problems. In some parts of the country, people are criminally prosecuted for “conversion” of collateral — meaning that you intentionally prevented a creditor from collecting its debt by disposing of the creditor’s property. If you have already lost, given away, or sold collateral, and if you are prosecuted by a state official or sued by the creditor, there are many defenses to such a suit. The most important defense is that your conduct was not intentional. In most cases, this means that you did not understand that the property was collateral or that you did know the consequences to the creditor of disposing of the property. In addition, most such prosecutions and lawsuits can be ended by payment of the

<sup>1</sup>HRS §490:3-506: If a creditor sues you to collect on a bounced check, Hawaii law allows the court to award the creditor three times the face value of the check or \$100, whichever is more, but not more than \$500 over the check value *plus* attorney fees, costs, and interest.

value of the collateral either in installments or in a lump sum if you have it. Given overcrowding in most prisons and the technical nature of the supposed crime, jail time is rarely or never imposed.

#### **4. Giving away property to protect it from Creditors.**

If you are in debt and now have valuable property to protect from your creditors, it may occur to you to give it away to a friend or relative or to sell it for a small percentage of its real value to someone who will later return it. Some people believe that this will protect property from judgment liens and other creditor collection.

There are a variety of potential pitfalls in these types of property transfers. When you transfer property when your other assets are insufficient to pay your debts, creditors can have the transfer voided under your state's law concerning "fraudulent transfers" or "fraudulent conveyances."

To void the transfer, the creditor will have to bring a legal action, and this may delay or prevent the creditor's seizure of the property. But, if the creditor does challenge your transfer, this will increase the amount you owe the creditor. The creditor is also likely to sue the person to whom you have transferred the property. You also may have to pay additional damages and you can lose your right to bankruptcy protection. In rare cases, you could be criminally prosecuted.

A fraudulent transfer may be different than exemption planning. Generally, only certain types of property are exempt from seizure under your state's laws. Through exemption planning, you keep the total value of all of your property, but trade one type of property that is not exempt for another type that is. For example, the money in your bank account may not be exempt from seizure, but you could take that money and purchase a life insurance policy which is exempt from seizure. Small transfers of this type are usually acceptable, but state laws on these issues vary a great deal. You may wish to obtain expert advice before engaging in exemption planning.

#### **5. Misleading Your Creditors.**

It is a bad idea to lie or mislead your creditors. However, you have no obligation to tell a debt collector anything, and in general it is a bad idea to give a debt collector too much information about your circumstances. The best rule of thumb is to refuse to answer any prying questions. For example, if you tell a debt collector about your bank account, it may use the information to seize money in the account after the collector obtains a judgment against you. An exception to the rule of not volunteering information to creditors applies when you try to work out a deal with a creditor for a temporary change in loan terms, for installment payments in lieu of the creditor seizing your property, or for similar purposes. In those instances, the creditor will want and is entitled to information about your circumstances. When you are asking for help from a creditor, provide that creditor with accurate information.

Lying or misleading that creditor can not only get you into serious trouble for fraud, but also undermine the creditor's confidence in working with you to reach a mutually acceptable solution. Since much of the information you give to a creditor can be independently verified, your lie will be caught.

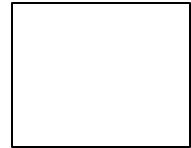
Occasionally, you may feel that a creditor wants you to lie in a written statement to qualify for a particular repayment option or refinancing. This is a good sign that the creditor is unscrupulous. The creditor may want a signed statement from you which misrepresents your financial situation for use in a later lawsuit against you if you fail to pay. These types of misstatements can also be used in some cases to prevent you from getting relief in bankruptcy.

#### **For More Information**

More information on your legal rights and debt strategies is provided in *Surviving Debt: A Guide for Consumers, 3rd Edition*. The handbook is available for \$17.00 from National Consumer Law Center, 11 Beacon St., Boston, MA 02108. (617) 523-8010, and in some bookstores.



Legal Aid Society of Hawai'i  
924 Bethel Street  
Honolulu, HI 96813



## Useful Names and Numbers

### **Legal Aid Society of Hawai'i**

<http://www.legalaidhawaii.org>

LEGAL HOTLINE OPEN MON-FRI:  
9:00a.m.-11:30a.m. & 1:00p.m.-3:30p.m.

Oahu: 536-4302    Kauai: 245-7580  
Hilo: 934-0678    Lanai: 565-6089  
Kona: 329-8331    Maui: 242-0724  
Molokai: 553-3251

### **Credit Counseling Services**

#### **Consumer Credit Counseling Service of Hawaii**

841 Bishop Street #550  
Honolulu, HI 96813  
532-3225  
1-800-801-5999

#### **Hawaii Credit Counseling**

2153 North King Street #316  
Honolulu, HI 96819  
842-5777  
1-800-320-5777

### **Credit Reporting Agencies**

#### **Credit Bureau of the Pacific**

P.O. Box 17458  
Honolulu, HI 96817  
808-533-7197

#### **Experian Consumer Assistance Center**

P.O. Box 2104  
Allen, TX 75013-2104  
800-392-1122

### **Equifax Credit Information Services**

P.O. Box 74021  
Atlanta, GA 30374-021  
800-685-1111

#### **Trans Union Corp.**

P.O. Box 390  
Springfield, PA 19064  
800-526-0001

### **Financial Counseling Service**

Family Financial Counseling Program  
Department of Human Resources  
Krauss Annex 7  
University of Hawaii  
Honolulu, HI 96822  
956-6519