About the Authors

The National Consumer Law Center (NCLC) is the nation's expert on the rights of consumer borrowers. Since 1969, NCLC has been at the forefront in representing low-income consumers before the courts, government agencies, Congress, and state legislatures.

NCLC has appeared before the United States Supreme Court and numerous federal and state courts and has successfully presented many of the most important cases affecting consumer borrowers. NCLC provides consultation and assistance to legal services, private, and government attorneys in all fifty states.

NCLC publishes a nationally acclaimed series of manuals on all major aspects of consumer credit and sales. (For a complete list of NCLC publications, go to www.consumerlaw.org.) NCLC also conducts state and national training sessions on the rights of consumer borrowers for attorneys, paralegals, and other counselors.

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Introduction

When an abuse survivor separates from her abuser, she will likely have physical, emotional, and financial concerns. (Throughout this handbook, the term "survivor" is used for the person who has been subjected to abuse. The term "abuser" is used for the perpetrator of the abuse. Although both men and women suffer abuse, the female pronoun has been used for simplicity.) Immediately after she leaves an abusive situation, physical and emotional needs will probably take precedence. After the immediate crisis, however, she may be left with no income and a stack of bills that she cannot pay. If she is unable to take control of her financial situation she may even be tempted to return to the abuser for financial reasons.

The survivor's fragile financial and emotional situation also makes her vulnerable to predatory behavior. She may be pressured by debt collectors, tempted by high-cost credit products, ripped off by shady car dealers, or feel desperate enough to turn to expensive private child support collectors. If she was married to or shared a household with her abuser, he may have left her with onerous debts that ruined her credit record.

The survivor may have been the target of financial abuse as well. Abusers often control their partners by limiting their access to cash, checking accounts, financial records, and credit cards. As a result, survivors may lack experience dealing with money and basic financial literacy skills. Abusers have even been known to purposefully damage their partners' credit records. The abuse itself may create expenses for the survivor by making her liable for property damage, medical bills, and legal expenses.

This guidebook is intended to assist advocates for domestic violence survivors help survivors who are grappling with these issues. For many years, a major goal for advocates has been helping survivors become economically independent and secure. Advocates have worked toward this goal principally by focusing on raising or preserving the income of survivors.

While income is critical to economic independence, focusing solely on income addresses only part of the equation. Ensuring the economic security of a survivor requires both maximizing income and minimizing expenses. Consumer law advocacy helps survivors minimize their expenses through effective budgeting, obtain access to credit, avoid debts that should be the abuser's liability, and avoid scams and predatory creditors.

Before counseling a survivor who is experiencing financial distress it is important to let her know that it is all right (and common) to have money problems after leaving or escaping an abusive situation. Nearly everyone in this country—including some very prominent people—experiences some type of financial difficulties at one time or another. Many of them did not also have to go through the harrowing ordeal of abuse at the same time. It is important to emphasize to the survivor that there is nothing to be ashamed of or embarrassed about.

As an early step, the survivor should get an overall picture of her financial situation. An advocate or counselor can help the survivor develop a budget. Budgeting is discussed in the next chapter of this guidebook.

The advocate may also assist the survivor in invoking her consumer rights under various federal and state laws to stop debt collection harassment or clean up her credit record. The survivor may also need advice to steer her away from scams that would drain her limited resources.

This guidebook provides an introduction for advocates to many of the most critical consumer issues faced by low-income survivors of domestic violence. More extensive resources are cited throughout. In addition, this guidebook discusses some common scams and scams that particularly affect domestic violence survivors. It also addresses ways that the survivor can increase her income, or shift debts to the abuser, through child support orders, orders requiring the abuser to pay certain debts or expenses, and victim compensation funds. In addition, it addresses tax and driver's-license issues that can affect the survivor.

One caution about using this guidebook is that some of the remedies discussed must be viewed with the survivor's safety in mind. For example, before a court action is initiated that would involve contact with the abuser, the survivor and her advocate must consider how such an action could jeopardize the survivor's safety. The abuser may view certain actions, such as cancellation of a joint credit card, as a direct threat and retaliate against the survivor. Sometimes the contact alone, even through a third party such as a lawyer or creditor, might lead to an abusive response. Survivors and their advocates must consider such possibilities when deciding what actions to take. The possibility of retaliation should be included in the survivor's safety planning.

If the survivor's whereabouts are not known to the abuser, she must consider whether a particular action might result in disclosure of her location. If the location of the survivor is known to the abuser, or if the survivor otherwise decides that a particular course of action is best, she might consider obtaining a protective order or requesting that police step up surveillance of her residence immediately prior to any notice to the abuser of action that could impact him financially.

Advocates must remember that the ultimate safety decisions are made by the survivor. She knows best the behavior of the abuser. The thoughtful advocate will present the options and concerns to the survivor so that a meaningful decision may be made.

As the survivor becomes aware of her options as described in this guidebook, she will understand that her situation is far from hopeless. The options presented can be empowering for the survivor. Thoughtful consideration of the remedies available will enhance the survivor's independence and her recovery.

HELP US HELP YOU
We appreciate your feedback. Let us know what you think of the book and how to make it better by going to www.nclc.org\publications\dveval.html.

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Budgeting

REASONS TO SET UP A BUDGET

Setting up a budget is a key element for a survivor trying to get out or stay out of financial trouble. Particularly for a survivor who shared a household and/or finances with an abuser, a budget is essential for the following reasons:

- A survivor who has left her abuser may be experiencing a dramatic change in her income and expenses. The abuser may have been providing most of the income in the household. Even if the survivor is working, overall resources may be considerably reduced, especially if she is taking care of minor children. Budgeting can help the survivor avoid overspending and getting into unmanageable debt by helping the survivor come to a better understanding of her financial situation.
- If the survivor is seeking child support from the abuser, a budget may assist her to demonstrate the true extent of expenses for the children. She can use the budget to avoid getting shortchanged on child support.
- If the survivor is having trouble meeting all her bills, she may want to work with her creditors and propose a payment plan or modification of the debt. The survivor's ability to qualify for these programs will be based on her budget. If the survivor has already done some of the work to develop a budget, she will have a sense of what she can afford to offer creditors. She will also be able to provide basic information to creditors that will make negotiating with them easier and give her additional credibility.

HOW TO SET UP A BUDGET

Here are some suggestions to help a survivor set up a budget:

1. Start with a current budget using existing income and expenses, without anticipating future changes. A sample budget form is included at Appendix C.

➡ **POINTER:** If the survivor does not have bills, documents, or other information about her debts because she had to flee quickly, one way to obtain information about these accounts is to obtain a copy of her credit report. Information about how to obtain a credit report is discussed in Chapter Twelve.

2. For the income budget, include all sources of income that the survivor receives on a regular basis, including wages, child support, or public assistance. Make sure that the survivor can realistically expect the receipt of income from these sources. For example, only include child support payments if the survivor can reasonably expect to receive them.
3. For the expense budget, include all food, shelter costs, utilities, clothing, transportation, and medical expenses. Food bills should include, for example, grocery bills, estimated trips to the convenience store for special needs, and the occasional restaurant or fast food meal. If possible, a review of the survivor's checkbook and credit card bills may be helpful.
4. It is important to determine which debts are the survivor's debts. Survivors should not include in their budget debts for which they have no personal liability. For a more through discussion of liability for joint debts, see Chapter Six.
5. If the survivor is having trouble making ends meet, do not include credit card bills and other unsecured debt (see Chapter Three for an explanation of unsecured debt) in the expense budget. Do not even include minimum payments if it means the survivor cannot pay her housing costs or car loan. Explain to the survivor the reasons for not paying credit card bills using the principles of debt prioritization discussed in the next chapter. For more information on credit cards, see Chapter Fifteen.
6. Evaluate what the survivor expects for the near future. This is often a difficult task and even harder for survivors whose situations may be still in turmoil. Ask if the survivor's income is likely to go up or down over the

next few months. See if there is anything she can do to reduce expenses. Will there be new expenses not included in the current budget?

7. After completing the budget, review it again with the survivor. Can she afford the future budget that she has set up? If not, don't despair. There are ways for the survivor to reduce or eliminate obligations.
8. The survivor should try to live on the budget for a month to see if it works. At the end of the month, adjust the budget based on the experience.

MAXIMIZING INCOME

Advocates for survivors must be adept at helping survivors become aware of various federal and state government benefits for which the survivor might be eligible. Advocates can also assist survivors in applying for these benefits and other private assistance programs. Advocates should help survivors investigate their eligibility for Food Stamps, WIC (a federal nutrition program for Women, Infants, and Children), TANF (Temporary Assistance for Needy Families), unemployment benefits, and other programs to assist those in need.

There are other programs that are sometimes overlooked. There are a number of utility assistance programs that can help, including the federal Low Income Home Energy Assistance Program (LIHEAP) and Lifeline telephone assistance program. More information on these programs is included in Chapter Seven. The survivor may also be eligible for the Earned Income Tax Credit. For more information on tax issues for survivors, see Chapter Twenty-One.

In addition to public assistance, survivors may be eligible for assistance from private institutions. Advocates can help survivors seek child support from the abuser or any other non-custodial parent. For more information on child support see Chapters Eleven and Seventeen. Survivors may also be able to improve their financial situation by seeking compensation from the abuser. For more information, see Chapter Nine.

MINIMIZING EXPENSES

An important means of lowering expenses is to reduce or eliminate the debts that a survivor owes. Consumer law can be extremely helpful in reaching this goal. Consumer law may reduce or eliminate debt by providing

- defenses against mortgage foreclosure and car repossession;
- defenses against unconscionably priced loans and goods;
- protections from overreaching creditors and collectors, including abusive debt collectors;
- access to reasonably priced energy and credit;
- discharges of student loans or reduction of the monthly payment; and
- reduction of debt through bankruptcy.

This guidebook includes chapters that cover many of the above issues. These issues are also addressed more extensively in the *NCLC Guide to Surviving Debt* (2006) (hereinafter *"Surviving Debt"*), written for consumers and published by the National Consumer Law Center. This publication can be ordered by calling the NCLC Publications Department at 617-542-9595 or going to www.consumerlaw.org.

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Prioritizing Debt

A recent survivor may have trouble keeping all of her debts up to date. This is not surprising since she has just emerged from a difficult crisis that may have changed her life situation. The survivor may find her income reduced or expenses increased so that she cannot always pay all of the household expenses each month. This leaves the survivor with no choice but to delay or not pay some debts.

Once the survivor determines that not all of the household bills can be paid as they come due, she will have to make hard choices about which bills to pay first. Unfortunately survivors and other debtors often pay particular bills because of a harassing debt collector rather than deciding which bills are most important and paying those. The home or apartment, the utility service, the car, and even household possessions may be at risk if survivors fail to prioritize their debts. Following the rules described below may make the difference between keeping and losing important property.

UNSECURED VERSUS SECURED DEBT

The most important principle in setting bill-paying priorities is to understand the concept of "collateral." Collateral is property that a creditor has the right to seize if the survivor does not pay a particular debt. The most common forms of collateral are the family home in the case of a mortgage and the car in the case of most car loans. A creditor may also have collateral in household goods, business property, bank accounts, or even wages. When a creditor has taken collateral for a loan, it has a "lien" on the property.

Creditors who have collateral are usually referred to as "secured" creditors. They may be entitled to take the collateral and sell it to get their money if the debtor fails to pay as agreed. Creditors without collateral are often referred to

EXAMPLES OF UNSECURED VERSUS SECURED DEBTS

The following is a list of common unsecured and secured debts. Remember that secured debts have some type of collateral, such as a house, attached to them.

SECURED DEBTS:
Mortgages
Car loans
Loans secured by household goods

UNSECURED DEBTS:
Credit and charge cards
Legal or medical bills
Loans from friends or relatives
Department store and gasoline cards (unless the card specifically says that it is a "secured credit card")

as "unsecured." It is usually hard for unsecured creditors to collect what they are owed unless a consumer pays voluntarily. The survivor should determine which of her debts are "secured" and which are "unsecured." Survivors should almost always pay secured debts first.

Instead of delaying or eliminating certain debt repayments, survivors may be tempted to take on more debt to repay old debts. This is generally a bad idea. The best strategy in dealing with too much debt is deciding which debts to pay first, which debts the survivor can refuse to pay, and which debts can be put off until later. The most important creditor to pay is not necessarily the creditor that screams the loudest or the most often.

If the survivor is not paying all of her debts, she will probably experience creditor harassment. Chapter Four provides important information on how to deal with and even stop debt-collection harassment. In terms of priority-setting, it is important to remember this axiom: creditors who yell the loudest often do so only because they have no better way to get their money than to intimidate the survivor into paying. Of more concern are creditors who not only threaten but also actually can take quick action against the residence, utility service, car, or other important assets.

Survivors should direct their limited resources to what is most necessary for their families—typically food, clothing, shelter, and utility services. Unfortunately, there is no magic list indicating the order in which debts should be paid. Everyone's situation will be different. Instead, what follows are sixteen rules about how to set priorities. Information about the consequences of not paying certain types of debts is also discussed in *NCLC Guide to Surviving Debt.*

Always Pay Family Necessities First. Usually this means food and unavoidable medical expenses.

Pay Housing-Related Bills Next. The survivor must keep up the mortgage or rent payments for the home where the survivor lives, if at all possible. If she owns or has possession of the family home, real estate taxes and insurance must also be paid unless they are included in the monthly mortgage payment. Similarly, any condo fees, payments toward the purchase of a mobile home, or mobile-home-lot payments should be considered a high priority. Failure to pay these debts can lead to loss of the home. If the survivor previously had a household with the abuser and no longer lives in that home, the mortgage or rent on that home would not be as important as the payments for the home or apartment where the survivor currently lives. To learn more about a survivor's liability under a mortgage or lease with the abuser, see Chapter Six.

Pay the Minimum Required to Keep Essential Utility Service. While full and immediate payment of the entire amount of the bill may not always be necessary, the minimum payment necessary to avoid disconnection should be made if at all possible. Working hard to keep the house or apartment makes little sense if the survivor's family cannot live there because there are no utilities.

Pay Car Loans or Leases Next If the Car Is a Necessity. If the survivor needs the car to get to work or for other essential transportation, the car payment must be the next priority after food, housing costs, unavoidable medical expenses, and utilities. The survivor may even want to pay for the car first if the car is necessary to keep her job. The car insurance must be paid as well. Otherwise the creditor may buy costly insurance for the car at the survivor's expense. And, in most states, it is illegal not to have automobile liability coverage.

Child Support Debts Must Be Paid If the Survivor Owes Them. If the survivor owes child support, she must pay it. If she feels the award of support is unjust, she needs to seek the assistance of a family lawyer. Ignoring child support debts will not make them go away and can result in very serious problems.

Income Tax Debts Are Also High Priority. Survivors must pay any income taxes owed that are not automatically deducted from wages and must file federal income tax returns even if they cannot afford to pay any balance due. The government has many collection rights that other creditors do not have, particularly if the survivor does not file a return.

Loans Without Collateral Are of Low Priority. Most credit card debts, attorney bills, doctor and hospital bills, other debts to professionals, open accounts with merchants, and similar debts are of low priority. Survivors have not pledged any collateral for these loans, and there is rarely anything that these creditors can do to harm survivors in the short term. Many professionals will not bother to try to collect in the long term, either.

Loans with Only Household Goods As Collateral Are Also of Low Priority. Sometimes a creditor requires the survivor to place some household goods as collateral on a loan. This loan can generally be treated in the same way as an unsecured debt—as a low-priority debt. Creditors rarely seize household goods because they have little market value, it is hard to seize them without involving the courts, and it is time-consuming and expensive to use the courts to seize them.

A Debt Should *Not* Be Moved Up in Priority Because the Creditor Threatens Suit. Many threats to sue are not carried out. Even if the creditor does sue, it will take a while for the collector to seize any property, and much of the survivor's property may be exempt from seizure. On the other hand, nonpayment of rent, mortgage, and car debts may result in immediate loss of the home or car.

Do Not Pay When There Are Good Legal Defenses to Repayment. Some examples of legal defenses are that the goods were defective when purchased or that a creditor is asking for more money than it is entitled to. A survivor whose agreement to a loan was coerced or forged may have a viable legal defense. If there is a defense, the survivor should obtain legal advice to determine whether the defense will succeed. In evaluating these options, remember that it is especially dangerous to withhold mortgage or rent payments without legal advice.

Court Judgments Move Up in Priority, But Often Less Than One Would Think. After a collector obtains a court judgment, that debt often should move up in priority because the creditor can enforce that judgment by asking the court to seize certain property, wages, and bank accounts. Nevertheless, how serious a threat this really is will depend on the law in the state where the survivor resides, the value of the survivor's property, and the survivor's income. As discussed in Chapter Five, there are a number of protections for consumers even after a judgment has been obtained. It may be that all of the survivor's property and wages are protected. If so, the survivor should pay off more pressing obligations first and then come back and pay this debt.

Student Loans Are Medium-Priority Debts. They should generally be paid ahead of low-priority debts but after top-priority debts. Most delinquent student loans are backed by the United States. The law provides special collection remedies to the government that are not available to other creditors. These include seizure of tax refunds, special wage garnishment rules, and denial of new student loans and grants. More information is included in Chapter Thirteen.

Debt-Collection Efforts Should *Never* Move Up a Debt's Priority. Survivors should be polite to the collector but make *their* own choices about which debts to pay based on what is best for the family. Debt collectors are unlikely to give good advice. Survivors can easily stop debt-collection contacts and have legal remedies to deal with collection harassment.

Threats to Ruin One's Credit Record Should *Never* Move Up a Debt's Priority. In many cases, when a collector threatens to report a delinquency to the credit bureau, the creditor has already provided the credit bureau with the exact status of the account. And, if the creditor has not reported the delinquency, a collector hired by the creditor is very unlikely to report it.

Co-Signed Debts Should Be Treated Like One's Other Debts. Sometimes a survivor may be a co-signor on a loan with her abuser. The priority of that debt depends primarily on the same factors that are involved if the loan were her own. If the loan is secured by the survivor's home or car, that is a high-priority debt, especially if the abuser is not keeping the debt current. If the survivor has not put up such collateral, or if the abuser has possession of the home or car, she should treat the co-signed debts as a lower priority.

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