

# Idaho Legal Aid Services, Inc.

Advocacy. Education. Representation.

[www.idaholegalaid.org](http://www.idaholegalaid.org)

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## Your Money <sup>[1]</sup>

### Protecting Your Money

*“I notice my neighbor giving lots of her money away...and now she isn’t able to pay her bills.”*

*“My brother is taking mom’s Social Security and buying things for himself .”*

#### **Financial Elder Abuse:**

Not all elder abuse involves physical harm. Financial exploitation is a form of abuse. Examples include scams, undue influence, misuse of a senior’s property, and outright theft. Common signs of financial exploitation include:

- A senior has a sudden, unexplained inability to pay bills or buy necessities
- A senior transfers an unusual amount of money or property to others or has withdrawals or transfers from his account that he cannot explain
- A senior has anew “best friend” with an unusual or suspicious interest in his or her finances and assets
- The senior makes large withdrawals of cash or checks written to “Cash”
- Changes are made to a senior’s advanced directives that they can’t explain or understand
- Someone assists the senior with their finances, but refuses to provide copies of bank statements or an accounting of how funds are being spent.
- Property is missing or being sold without the senior’s consent

An attorney may be able to help a senior recover some money from an abuser through a civil lawsuit. Some of these actions may be considered a crime (theft or fraud). You can call Adult Protection or the police if you suspect financial abuse and would like it to be investigated; or you can call Idaho Legal Aid’s Senior Hotline if you have legal questions related to financial exploitation.

#### **Be smart about Scams:**

New scams are created every day and many target seniors. Be wary and don’t buy anything

under pressure. **YOU CAN SAY NO!** Don't give your credit card number, Social Security number or other personal information to anyone who contacts you over the phone. Don't pay for anything that comes in the mail if you didn't order it. The Idaho Attorney General's Consumer Protection Division prints a Senior Citizens Manual that describes many common types of scams that target seniors, such as:

- Telemarketing & Online shopping scams
- Identify Theft & Password problems
- Sweepstakes & Prize scams
- Home Repair & Contractor scams
- Prescription Drug & Medical Aid scams
- Living Trust & Legal scams
- Charity & Church scams

Get a copy of the Manual by calling the Consumer Protection Division 1-800-432-3545 or online at [www.ag.idaho.gov](http://www.ag.idaho.gov) [2]. Have you been defrauded? If someone defrauds you, call Idaho Legal Aid's Senior Hotline. You can also file a complaint with the Attorney General Consumer Protection Division and the Better Business Bureau at 1-800-218-1001.

## **Be smart about Contracts:**

Contracts are legally enforceable promises. Some contracts are written and some are spoken. Sometimes people enter into contracts without knowing everything that they've promised. Unless you were greatly pressured or deceived about what's in the contract, a court will probably hold you to the contract. Idaho does not have a "cooling off" period to get out of a contract except for telemarketing and certain door-to-door sales. That's why seniors should take care to protect themselves from problems with contracts before they sign.

Before you sign any type of contract, **READ ALL OF IT.**

If you don't understand anything, **ASK QUESTIONS.**

**DON'T SIGN IT** until you understand it.

If the contract has un-filled-in blanks, **DON'T SIGN IT!**

**GET A COPY** of the contract and take it home before you sign it!

You can sleep on it! If someone won't give you a copy,

**DON'T SIGN IT!**

## **Did somebody break a contract?**

### **Contracts**

If someone has broken a promise that was made to you in a contract, that is called a breach of

contract. You can write them a demand letter (send it certified mail, receipt requested), stating what you want them to do (pay you money, finish work, etc.). If that doesn't work, you may bring a suit for damages (money) that you are owed, but you have to start your lawsuit within a certain time from the date the other party breached the contract. In Idaho, for oral (spoken) contracts, you have four years. For written contracts, you have five years.

## **Warranties**

A warranty is a type of contract that comes when you buy a product and can be express (written or spoken) or implied (something you can assume, like a product will work in the way it's supposed to). Implied warranties come along with most products, unless they are marked with a disclaimer (tagged "as is" for example). If a company's product has not performed as promised, that may be a breach of an express or implied warranty, and you may have the right to ask them to honor the warranty and fix the problem or to bring a suit against the product manufacturer or seller of the product; If they won't honor the warranty, you should discuss your case with a lawyer right away.

## **Do you have a complaint about merchandise?**

You can write a demand letter (certified mail, receipt requested) to the business. Specifically describe your complaint and include a copy of your purchase receipt, contract, warranty or other documents. Keep a copy of your demand letter. If you do not receive a satisfactory response within a reasonable time, you can take follow-up actions such as filing complaints with the Better Business Bureau or the Attorney General's Consumer Protection Division ([www.ag.idaho.gov](http://www.ag.idaho.gov) <sup>[2]</sup>). If the amount in dispute is less than \$5,000 you can sue in small claims court. The Idaho Consumer Protection Act protects seniors (over 62) and disabled consumers. You may recover triple damages (three times the money that you actually lost) from deceptive merchants in a civil lawsuit. Learn more about filing demand letters and lawsuits on page 40. If the amount of your claim is more than \$5,000, then you may want to contact a private attorney to discuss your case.

## **Be Smart about Loans and Credit**

You may get a loan or credit card offer that sounds like a great deal. Or you may seek out a loan because you need cash, and want to sign the loan in a hurry. Be careful, because credit can sometimes cause more problems than it solves. Loan products are often created to make the lender as much money as possible and seniors are often targeted by predatory lenders. Seniors should be very cautious before they use a credit card or sign a loan, especially if they plan to secure the loan with their home, a car title or other property.

### **KNOW before you sign:**

KNOW how many payments you'll have to make and when the payments are due. Some loans have large "balloon" payments due later that are hard to pay.

## **Think twice before co-signing a loan:**

Many seniors get into trouble because they agree to co-sign on loans for children, grandchildren or other loved ones. This often turns into a disaster as the person they are trying to help fails to make the loan payments and the senior is held fully responsible for the debt.

## **KNOW your budget:**

Can you really make the loan payments and still comfortably afford important living expenses such as rent, food, utilities and medicine?

## **Don't hesitate to get help:**

Ask an attorney to review the terms of a loan if you are unsure whether they are fair or if you can't understand the loan documents. Taking a little more time before you sign may save a lot of difficulty later!

## **Falling behind? Check the facts about the Debt!**

You are not legally excused from debts because you have lost your job, get sick, or can't afford to pay for some other reason. If you owe a creditor, they may report your default to a credit bureau and sue you to collect the debt. The creditor may also sell the debt to a debt buyer or a collection agency to pursue collection.

Collection letters or bills sometimes have errors in them. Keep all records of your debt. Pay attention to the numbers. If you dispute that you owe the debt or the amount of a debt, send a letter to the creditor or collection agency. Keep copies of all the letters that you send and receive about the debt. Contact an attorney to help review the disputed debt. If it has been more than four or five years since you made a payment or charge on the account, then the statute of limitations (time the creditor can legally enforce the debt) may have passed, which could be a defense if a creditor sues you. If you think this may be the case, consult with an attorney.

**If you dispute that you owe a debt, write a letter to the collection agency within 30 days of receiving a collection notice to explain why you dispute the debt.**

## **Debt Collectors cannot harass you!**

**A federal law, the Fair Debt Collection Practices Act prohibits lenders, collection agencies and their lawyers from:**

- Harassing, scaring, or threatening you with violence or criminal prosecution
- Calling you at work if your boss doesn't allow it.
- Calling your friends or neighbors

- Calling before 8:00 am or after 9:00pm
- Calling or writing you after you send them a “cease communication letter.”

If a collection agency violates the Fair Debt Collection Practices Act, you should report the agency to the Idaho Department of Finance (1-888-346-3378). You also have the right to sue collection agencies for \$1,000 for each violation of the Fair Debt Collection Act. If you are interested in bringing this type of lawsuit, contact a consumer law attorney.

### **Writing a Cease Contact Letter:**

- Include your account number
- Ask for written proof of the amount you owe
- Ask for a copy of the agency’s Idaho Collection Agent permit
- Request that they stop contacting you.

Even if you do send a cease communication letter, the agency may still sue to collect the debt. You don’t need a lawyer to write this letter. Contact Idaho Legal Aid’s Senior Hotline for a sample letter or visit [idaholegalaid.org](http://idaholegalaid.org) to download a sample form for free.

### **You can negotiate with the creditor**

You can avoid harassment before it starts by contacting the creditor and explaining your situation. If you offer to make a small payment each month, the creditor may accept the offer and not turn your debt over to a collection agency. If the creditor accepts a lower payment plan, ask them to send you a written agreement showing the new arrangement. If you need help paying debts, you may think about going to a Debt Counseling Service which can counsel you about debt and possibly help work out a new payment plan with your creditor. However, be wary of “Debt Consolidation” companies and some counseling services-- some are scams! Call the Idaho Attorney General’s Office (1-800-432-3545) if you aren’t sure about a particular debt consolidation or a debt counseling service.

### **Are you being sued over debt?**

If you owe a debt, the creditor may bring a collection suit against you to get a judgment so they can collect what they’re owed. Sometimes a store or credit card company will sell the right to collect the debt to a debt buyer and the debt buyer will sue you. If you’ve never heard of the company suing you, it might be a debt buyer.

### **20 days to file an Answer**

If you are sued, you will typically receive a Summons (a court document telling you that you are being sued) and a Complaint (a court document that says why you’re being sued). After you receive the Complaint, you have 20 days to file a written Answer with the court. If you have a valid defense to the collection suit, you should bring it up in your Answer. State if you think that the debt isn’t yours, if the amount they are asking for is wrong or if the statute of limitations on the debt has passed. Some collectors have inaccurate records. The collector will have to prove

you owed the debt and it may be hard for them to do so. Talk to an attorney about defenses available in your particular case. Answer forms are available through your local Court Assistance Office ([courtsselfhelp.idaho.gov](http://courtsselfhelp.idaho.gov) <sup>[3]</sup>).

### **Some common defenses:**

- Statute of Limitations. If it's been over 4-5 years since you last made a payment or charge on the account, the creditor can't sue to collect the debt.
- Mistaken or Stolen identity. "I didn't run up this debt!"
- Debt already discharged. "I paid that!" or "I discharged that in bankruptcy!"
- Wrong amount. "My records show I paid part of that debt off!"

### **What if I don't have a defense?**

If you don't dispute that you owe the debt and you have no other defenses, then you may lose the collection suit, whether you file a written Answer or not. In fact, filing an Answer may increase the collector's attorneys' fees awarded against you. If you lose your case or do not file an Answer, you will receive a paper called a "Judgment," which is the court's decision that you owe the money. The creditor may then try to collect the money from you either by asking your employer to garnish your wages (take some of your earnings), asking your bank to give the creditor funds from your bank account, or even taking some of your personal property to sell and collect the money. However, creditors cannot take "exempt" property or income.

## **A lot of your property and money may be "exempt"**

### **To collect on a judgment, the creditor has to go through a legal process:**

After a creditor has a court judgment against you, they can go to the Sheriff and get a "Writ of Execution." This is a legal paper that allows a creditor to try to take some of your wages, bank account, or property, or put a lien on your real estate (so if you sell it, some of the money goes to the creditor). However, the state of Idaho has declared that some of your property and income is exempt from collections, and cannot be taken or garnished, even if the creditor has a judgment against you!

### **14 days to claim your exemptions**

The sheriff will typically provide you with the Writ of Execution and a Claim of Exemption form. The Claim of Exemption form is your opportunity to tell the creditor what income and assets you have that are protected from being seized.

You MUST fill out and return this form to the Sheriff within 14 days, listing all the items that you claim are exempt.

**Here some examples of income or property that are exempt (protected from creditors) under Idaho Law:**

- Social Security income
- Retirement benefits, pension funds, IRA's, and 401k's
- Veterans Benefits
- Unemployment Benefits
- Public Assistance (AABD, TAFI)
- A motorcycle, car, or truck with a net value up to \$7000.
- \$7500 worth of appliances, furniture, books, clothing (if none of the things are worth more than \$750 by itself)
- \$800 worth of miscellaneous other personal property

## **Be careful not to mix exempt income or funds with non-exempt money like gifts or your wages.**

Having the funds mixed together can make the entire amount available to a creditor. Therefore, it is a good idea to keep non-exempt funds in a separate bank account from exempt money or income.

## **Can a creditor take my home?**

Up to \$100,000 of the net value (the value of the property minus how much you owe on it) of a house or manufactured home is protected from creditors. This is called a "homestead exemption." There are many additional exemptions not discussed above. Contact Idaho Legal Aid Services for a detailed list of exemptions and how to claim them. Also, find a free Claim of Exemption form and more information at [www.idaholegalaid.org](http://www.idaholegalaid.org) [4].

## **Bankruptcy**

If you've fallen behind on debt, you might have considered declaring bankruptcy. When you file for bankruptcy, the court will issue an "automatic stay" which is an order that will stop most collection activity against you, such as collection calls or garnishment of your wages.

## **Chapter 7 versus Chapter 13**

In a Chapter 7 bankruptcy, the Court will appoint a Trustee who will sell any non-exempt property you may own, but will allow you to keep exempt property. After a Chapter 7 bankruptcy is finalized, you will receive a discharge of most of your debts (there are some debts that cannot be discharged, such as student loans and tax debts). In a Chapter 13 bankruptcy, you enter into a repayment plan set by the court and lasting 3-5 years prior to receiving the discharge of remaining debts.

## **Costs**

The filing fee that you must pay the court to start your case is \$310 for a Chapter 13 and \$335 for

a Chapter 7 case (in 2015). If you want to hire an attorney to help you with your case, there will be an additional fee for the attorney. However, many bankruptcy lawyers will let you make payments to pay their fee and the court will sometimes allow you to make payments on the filing fee as well.

Because bankruptcy damages your credit and reduces your credit score, you need to be aware that it will be harder to get credit or loans after you file, and any credit or loans you do qualify for after a bankruptcy will likely have higher interest rates and cost you more.

The timing of when you file your bankruptcy can be very important. If you are considering getting married, getting divorced, or anticipate additional debts in the near future, you should consult with a bankruptcy lawyer before you file. You can contact the Idaho State Bar Lawyer Referral Service at (208) 334-4500 or look online for an attorney at: <http://isb.idaho.gov> [5].

## **Social Security and SSI Benefits**

There are three types of Social Security benefits, 1) Retirement, 2) Disability, and 3) Supplemental Security Income (SSI). All are run by the Social Security Administration (SSA). Contact the SSA at 1-800-772-1213 or visit their website at [www.ssa.gov](http://www.ssa.gov) [6] for more information. You can find out what benefits you may be eligible for by using SSA's Benefit Eligibility Screening Tool (BEST) available at [ssabest.benefits.gov](http://ssabest.benefits.gov).

### **Social Security Retirement.**

When you work and pay taxes, you earn credits toward qualifying for Social Security retirement. You must earn 40 credits (10 years of work) and have reached retirement age (65-67 depending on the year you were born). Before you can begin collecting retirement benefits. The amount of money you get depends on how much you earned over your career. You can get early retirement benefits as early as age 62, but your benefit will be reduced. If you delay your retirement, your benefit amount will be higher.

### **Social Security Disability.**

If you are unable to work due to a disability that is expected to last more than one year or until your death, and have worked during 5 out of the last 10 years, you may qualify for Social Security disability. You can apply for Social Security disability on your own or with the help of an attorney. Most people receive an annual statement which projects their Social Security retirement and disability benefits.

### **Supplemental Security Income (SSI).**

You can qualify for SSI benefits even if you don't have enough work "credits" to qualify for Social Security retirement or disability, but you must be able to show:

- You are over 65 or blind or disabled
- You are low-income (your income is lower than \$733 monthly or \$1100 per month if

married; these amounts are for 2015, and typically go up annually).

- You have few assets (less than \$2000 for single person or \$3000 if married, not counting your house).

**If your application for disability or SSI is denied you can request a reconsideration, but you have a limited time to do so, so contact a lawyer right away if you need assistance with your request. A free brochure explaining this process is available on the Idaho Legal Aid Services website at [www.idaholegalaid.org](http://www.idaholegalaid.org) [4].**

## **Other Benefits**

### **Veterans' Benefits**

Disabled veterans may receive compensation for injuries and diseases they received during military service. Veterans may also receive pensions if they are low income, have few assets and are permanently disabled. There are other veterans' benefits including payment for medical aids, prosthetics, education and loans. If you are denied VA benefits, you can request a hearing, but must do so quickly. Contact the Veteran's Affairs regional office nearest you or visit [www.va.gov](http://www.va.gov) [7].

### **Unemployment Benefits**

Unemployment benefits are collected from the state after a job loss, such as a layoff or plant closure. The amount you get is based on how much you earned when working. You have 14 days from the time you are denied to protest your denial and request a hearing. Additional information about unemployment benefits, how to apply and appeal forms is available at <http://labor.idaho.gov> [8]. Or you can call the Idaho Dept. of Labor at 208-332-3570.

### **Aid to the Aged, Blind & Disabled (AABD)**

AABD is a state program that provides cash assistance to individuals who are 65 or older, blind, or disabled. This cash benefit of up to \$53 (in 2015) can be used to help cover everyday living expenses. To qualify, your income has to fall below the limit set by the state (below \$786 for an individual and \$1120 for a couple in 2015). Contact your regional Idaho Dept. of Health and Welfare (IDHW) office to apply for AABD.

### **Supplemental Nutrition Assistance Program (SNAP)**

SNAP helps low income families by providing funds to buy food. In order to qualify, your income has to be below \$1,265 for a single person or \$1,705 for a couple (2015) and your resources or assets have to be below \$5,000. You also have to be a citizen, a resident of Idaho, and either employed, in a training program, elderly (age 60+), or disabled. Contact your regional IDHW office to apply for SNAP benefits.

## **General Tips About Government Benefits**

Apply early. Apply for benefits programs well before the time you think you'll need the financial help. The application process can be confusing, and you may need to gather lots of personal and financial information to fill out the application.

Write it down! Keep every written statement you get from a government agency in a special file. Read everything carefully and pay attention to dates! Keep a written record of every time you call a government agency when you are applying. Write down the person's name, what they tell you and what you tell them.

Appeal denials. If you've been improperly denied a benefit, or if your payment is reduced or cut off, you may want to appeal that decision. You can appeal on your own or with the help of an attorney. Don't wait to take action, because there are short time limits for requesting appeals!

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