

PROTECT YOUR INCOME & ASSETS

An assortment of brief articles on relevant topics for those concerned about losing their social security, other retirement benefits and assets.

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WHY AM I RUNNING OUT OF MONEY?

Individuals are living longer than they ever have. The result is the money runs out but there still is plenty of life remaining to live. The increased physical well-being of the elderly population has caused a significant decrease in the overall financial health of older Americans. The fact is we need more money because we are living longer. It is common sense that the longer we live the less money we have.

CREDIT CARD DEBT IS ON THE RISE

Most elderly who file for bankruptcy have two main characteristics: 1) very low incomes and 2) substantial credit card debt. Many who fit into the category are widows living alone whose main source of income is Social Security; about 50% of those described own their homes. The most shocking statistic is that only about five percent reported medical bills as part of their debt. The only conclusion is that the elderly are taking on more and more unsecured debt to make ends meet. Many elderly are using Visa to pay MasterCard or Discover as the lines of credit run out.

LIVING ON A FIXED INCOME

When living only on a fixed income, like social security and/or some form of pension, individuals have the impossible task of planning life around the impossible, a perfect financial outlook, where there are no surprises and all financial decisions are predictable. Unfortunately it is common for those living on a fixed income to fall into the trap of not making ends meet because something unexpected happens on the financial front; examples include car repairs, plumbing issues, unexpected medical issues, family emergencies, sick pets, damage to the home, falling victim of crime, needing dental work not covered by Medicare, etc. When something unpredictable occurs, persons on fixed incomes inevitably have difficulty paying bills. The individual is sometimes strapped with debt and under the stress of a predicament that fosters poor financial decisions.

It is not unusual for the person to get desperate and take out additional lines of credit to pay off other debts. It's often easy to obtain credit because the person has a high credit score and a reputation for paying back debts. The unfortunate reality is the person is in a sinking financial condition. Later, the

same person will seek out additional, non-traditional credit, like PayDay Loans or reverse mortgages to pay off creditors. When choosing these alternative avenues of credit the individual somehow overlooks the fact that their income is fixed and is not going to increase. They also fail to realize that their income is protected under federal and state law.

WHAT HAPPENS WHEN I GET SUED?

The problem is only exacerbated when a creditor files a lawsuit against the person. Often judgements are obtained and the individual is convinced that they should make token payments monthly in low amounts to prevent the creditors from harassing them. What the person fails to realize is that their income is protected and that they are “judgement proof.” The person should prioritize paying for their daily needs first and pay unsecured creditors last. If there isn’t enough money left to pay unsecured creditors then the creditor should not be paid and the person should not fear being sued. State and federal law protect the debtor on a fixed income.

SOCIAL SECURITY PAYMENTS ARE AUTOMATICALLY PROTECTED UNDER FEDERAL LAW

Every recipient of Social Security funds should understand that those funds are protected under Federal Law. Social Security payments are not assignable, attachable, or garnishable. The best news is that federal laws and regulations prevent state courts from issuing garnishment orders against Social Security payments, and if one is issued anyway the bank will not honor it. In other words, if a creditor obtains a judgement against an individual whose only source of income is Social Security and then obtains a court-ordered bank garnishment on the account where the payments are automatically deposited the bank is required by federal law and regulation to not honor the garnishment; even though 100% of the payments from Social Security are protected, only three months of payments are automatically protected.

WHAT ABOUT PRIVATE PENSIONS & RETIREMENT PLANS?

Most private pensions and retirement plans are also protected under Kansas law. KPER’s is protected as well as other state’s pension plans. It is important to note that while these funds are protected under Kansas law they are not automatically protected like Social Security funds are. This means

that if a judge signs a garnishment order the bank will freeze those funds and give them to the creditor.

The aid of a lawyer may be needed to protect these types of funds because if the court is not notified of the protected funds and orders are not in place to prevent those funds from being garnished the debtor may temporarily lose those funds until the court orders them returned.

CAN PROTECTED FUNDS BE RETURNED?

Yes. I have dealt with the situation where an elderly man had his bank account emptied because the creditor garnished all of his KPER's retirement. He had a difficult time paying for prescriptions and his everyday living expenses while I sought court orders for the return of the funds. It took some time, but all funds were eventually recovered. Even though the money was returned irreparable damage had been done. It is much better to seek a protective order on the front-end to prevent the creditor from getting at the funds.

KANSAS LAW PROTECTS OTHER ASSETS FROM CREDITORS

The State of Kansas exempts the property and income below from seizure by any court to pay creditors; although some items listed apply only in bankruptcy cases.

REAL ESTATE

Real property or mobile home used as residence, unlimited value, up to one acre in town or city or 160 acres on farm [K.S.A. 60-2301 and Kansas Constitution 15-9].

PERSONAL PROPERTY

Household furnishings and equipment, unlimited amount [K.S.A. 60-2304(a)]; books, documents, furniture, instruments, breeding stock, equipment, seed, livestock and grain used in farm business, up to \$7,500 total [K.S.A. 60-2304(e)]; clothing, amount needed for one year [K.S.A. 60-2304(a)]; food and fuel, amount needed for one year [K.S.A. 60-2304(a)]; motor vehicle up to \$20,000 (unlimited amount if vehicle equipped for disabled person) [K.S.A. 60-2304(c)]; National Guard

uniforms, arms and equipment, unlimited amount [K.S.A. 48-245]; funeral plan prepayments, unlimited amount [K.S.A. 16-310(d)]; burial plot or crypt, unlimited amount [K.S.A. 60-2304(d)].

INSURANCE & ANNUITIES

Life insurance proceeds if policy prohibits proceeds from being used to pay creditors, unlimited amount [K.S.A. 40-414(a)]; cash value of life insurance if bankruptcy filed at least one year after policy issued, unlimited amount [K.S.A. 40-414(b)]; fraternal life insurance benefits, unlimited amount [K.S.A. 40-414(a)].

PUBLIC BENEFITS & ENTITLEMENTS

Unemployment compensation, unlimited amount [K.S.A. 74-7313(d)]; workers' compensation, unlimited amount [K.S.A. 44-514]; aid to families with dependent children, general assistance and welfare benefits, unlimited amount [K.S.A. 39-717]; crime victim's compensation, unlimited amount [74-7313(d)] Wages: 75% of earned but unpaid wages [K.S.A. 60-2310].

CAN A JUDGE ORDER ME TO MAKE PAYMENTS?

No. After a judgement is obtained by a creditor all the judge can do is require the individual owing the debt to come to court and answer questions about his or her income sources and assets. If the individual's income and assets are exempt from collection then there is nothing the court can do to the creditor; this is the very essence of being "Judgement Proof".

Yes, this means the individual can tell the creditor that he or she has no funds to pay the debt. The creditor cannot do anything to the "Judgement Proof" debtor and the judge cannot legally order a debtor to make a payment on a debt. The debtor cannot be jailed for not paying on debts.

SHOULD I MAKE PAYMENTS TO CREDITORS SO THEY WILL STOP HARASSING ME?

No. If the debtor is "Judgement Proof" then the only thing the creditor can do to the debtor is call, send demands for payment, and bring the debtor back to court to answer questions about their finances. If the debtor's

situation is not going to change there will be a point where the creditor will have to leave the debtor alone.

The debtor should never compromise their health by not buying prescriptions or groceries or paying their electric bill because they are making what are essentially ransom payments to a creditor. Don't pay the creditor, the debtor maintaining their general welfare is more important.

HOW OFTEN CAN I BE BROUGHT BACK TO COURT?

If a judge is convinced that a debtor is disabled and unable to work and that the debtor's situation will not likely change in the foreseeable future then the judge can order the creditor not require the debtor to come back to court any more often than once per year. K.S.A. 61-3605. Usually the debtor has to file a special request for the creditor to be limited. An attorney with legal services can help get this accomplished.

WHAT SHOULD I DO WHEN I HAVE DIFFICULTY PAYING MY UNSECURED DEBT?

The most important thing you can do is send a letter directly to your creditor (keep a copy) telling them that your only source of income is social security or some other form of protected retirement when you stop making payments. Some creditors may harass you at first but eventually some will give up and leave you alone.

If you are sued you should seek the help of an attorney and if one is not available you should write a letter to the Court where the judgment was obtained. When you send your letter to the Court make certain you reference your case number and specifically tell the Court what bank your social security funds and other retirement funds are deposited in. You should provide the account number to the Court and request that the creditor not be allowed to garnish the accounts protected funds, especially the funds that are not automatically protected.

The letter should be notarized and a copy should go directly to the creditor's attorney and your bank. You should save a copy of the letter for your records. You should ask for a court hearing to discuss your income and at the hearing tell the judge what you understand your rights to be.

THE PAYDAY LOAN - INSTANT CASH! PERPETUAL PAYMENTS

The number of Payday lenders has grown exponentially over the past few decades, especially in low-income areas. Typically these lenders market directly to low-income borrowers--especially those with steady, fixed, and guaranteed incomes. Borrowers are usually at or below poverty level. Many live off only Social Security or some form of disability payment, and are elderly and/or disabled.

The lenders boast that borrowers can get cash "Now!" and without credit checks. Advertising focuses on borrowers' needs for quick fixes in emergency situations. The reality: most borrowers who take out these loans unintentionally trap themselves in a never-ending cycle of renewing their loans. The "quick fix" turns into a very stressful quagmire that often requires help from an aggressive advocate.

The borrower's guaranteed income is central to how the Payday lender operates. The typical payday loan is short-term and high-cost and has one single payment due on the borrower's payday. Loans are usually for \$500 or less and the interest ranges anywhere between 125% to more than 700%. When a borrower takes out the loan they only have to produce a statement showing the amount of their guaranteed income and the day it's deposited. After a borrower is approved for the loan, the borrower gives a post-dated check to the lender and agrees that the lender will cash this check on the due date unless the borrower comes back to personally discuss the loan.

The Payday lender literally banks on the borrower not being able to pay the loan back. When the borrower meets with the Payday lender to explain that they cannot pay the loan back, the lender usually agrees to collect the interest and immediately renew the loan.

A typical loan of \$500 (for 30 days) usually has an interest fee of \$75 (a 182.5% interest rate). When the borrower comes in to explain they cannot afford to pay the \$575 that day, the lender accepts the \$75 interest payment, and then agrees to renew the loan until the next month. With this new renewal the borrower will still owe \$575 the next month having gotten nowhere but further behind financially and another post-dated check will be given to the lender.

Most borrowers wanted the loan in the first place because they were short on cash because of their fixed or low incomes. Loans are typically taken out to pay expenses like rent, food, utility bills, car repairs, etc. When the next month comes and the borrower doesn't have the money again the cycle continues. Basically the borrower pays the lender \$75 to not cash the post-dated check (collect on the loan).

Of course, the Payday lender is in a strong position. The borrower knows that if the loan is not paid that the lender will cash the post-dated check, usually making the borrower's deposit account negative--and no money to pay bills and necessities. If the check bounces then the borrower incurs additional fees with their bank and the Payday lender. It becomes an impossible situation because even though Social Security and/or disability payments are protected by Federal law, this protection is lost if recipients voluntarily grant creditors access to the funds.

These situations often end terribly with borrowers defaulting and not only owing the Payday lender additional fees but also owing their own financial institutions because of negative account balances. Some borrowers take out other Payday loans to prevent the catastrophe that eventually happens. These loans should be avoided.

KANSAS LEGAL SERVICES CAN HELP!

If you or someone you know is over 60 and does not understand their rights, what it means to be judgement proof or potentially in financial trouble because of PayDay loans please contact Kansas Legal Services for free legal help from a licensed attorney.

1-800-723-6953

The information in this booklet is provided as a public service by Kansas Legal Services, It was compiled by Paul Shipp (Managing Attorney in the Flint Hills Offices of Kansas Legal Services). It was written to provide you with helpful information regarding the subject matters covered. This publication must not be used as a substitute for the advice of an attorney. If you require legal advice then you should seek out a qualified, competent attorney.

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**To apply for assistance with your local KLS Office call
800-723-6953**

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(Marilyn Harp, Executive Director)



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