

Tyndall AFB Preventive Law Program Series
Legal Assistance Series

CONSUMER CREDIT

This handout contains basic information. If you have specific questions, come in to see a Judge Advocate for legal assistance.



**OFFICE OF
THE STAFF JUDGE ADVOCATE 325 FW/JA
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Consumer Credit

Consumer credit transactions are regulated both by state law and federal statutes, commonly referred to as “truth-in-lending acts,” which give the consumer certain rights and protections with respect to issued credit and credit reporting.

Credit Cards

Consumer Credit refers to short-term loans to individuals for the purchase of consumer goods and services. You use credit whenever you borrow money, pay for a product in installments, or use a credit card. A *creditor* is someone from which a consumer has borrowed money. Usually they are banks, credit unions, or other institutions. When you use a credit card, the card issuer becomes your creditor until the loan (your credit card balance) is repaid.

Applying for Credit

When you apply for credit, including a credit card, you are likely to be asked for information about your past credit history, employment (salary, length, and type of employment), home ownership, and assets. Grantors of credit ask these questions in order to determine the likelihood that you will be able to live up to the terms of the credit agreement. Factors indicating a steady income, a history of paying your debts on time, and an ability to live within your means enhance the likelihood that you will be granted credit. Creditors also look at the amount of credit you have already been granted by other institutions. If you have a great deal of available credit in relation to your income, such as many credit cards with high credit limits, a lender may decline to extend additional credit to you even if you are using your credit responsibly. The creditor is concerned primarily with your ability to repay any debt incurred when credit is extended to you, and if you have a lot of credit already available a potential lender may doubt your ability to repay your debts if your spending habits change and you start using more of that credit.

Credit card advertisements and/or applications must disclose to you the terms of the credit agreements, including annual percentage rates, applicable finance charges, and the grace period, if any, you have to repay what you borrowed. Credit cards companies are generally barred from charging interest rates or finance charges that are higher than those that are disclosed.

You have a right to know if your application was accepted or denied within 30 days of filing an application for credit. If your application for credit is denied, or if you are offered credit on terms less favorable than those you applied for, the potential lender must disclose to you the reason for the less favorable offer or denial.

Lenders may not deny you credit, or offer you credit on less favorable terms, because of race, gender, national origin, religion, marital status, living in a minority neighborhood, or because you receive public assistance income. If you believe you have been discriminated against you may contact the U.S. Attorney General’s Office to determine if

the creditor has violated federal law. You may also contact state consumer protection agencies to see if a suit could be brought against the creditor in state court.

In some cases, a lender may want you to obtain a co-signer. This is someone who agrees to be equally responsible for the amount of the debt in case you cannot or do not pay the debt. Often, a lender will ask you to obtain a cosigner if you have little, or poor, past credit history. **Before** you act as a cosigner to help someone else obtain credit, you should be aware that courts **will not** recognize a disclaimer of responsibility for the debt made at the time, or after, you agree to accept responsibility for the debt. You are signing a document accepting full responsibility for the debt should the primary borrower not pay, and the lender is relying on that guarantee when he extends the credit. Therefore, you cannot argue that you were just signing the paperwork to help another individual obtain credit but did not really intend to accept responsibility for the debt.

If you have poor credit or little credit history you could encounter some difficulties obtaining a credit card, or other credit. One option is a secured card. With this type of card, you deposit money in an account and may make purchases up to that amount each month using the credit card. A history of timely payments will help you build a favorable credit history. However, beware of companies that offer advanced fee or guaranteed loans. These companies often request you to send a fee with your application, and often you send the fee but never receive the loan. If you are going to deal with a company offering one of these services it is a good idea to call the Florida Department of Financial Services (www.dbf.state.fl.us) at 1-800-848-3792, or the Better Business Bureau, to find out about the company before you send them any money. The Florida Department of Financial Services web site has a complaint form that you can send in for any complaints about financial services.

Lost or Stolen Cards

If you notice that your credit card has been lost or stolen, you must report the loss to the credit card company as soon as possible. If you do not notify the company promptly, you may be held liable for the first \$50 of unauthorized charges on your card. Call first, then follow up with a written notification of the loss (and keep a copy of the letter). Promptly notifying the credit card company will protect you from being held responsible for someone else's misuse of your credit card.

Opting Out of Credit Card Solicitations

You may opt out of receiving pre-screened offers of credit. You may do this by calling 1-888-5-OPTOUT (1-888-567-8688).

Credit Reports

What is a credit report (“consumer file”)?

Credit reporting agencies (CRA's), such as Equifax, Experian, and TransUnion (the three major CRAs), keep "consumer files" on individuals who borrow money or use credit cards. These files contain information on how you pay your debts, including whether you have declared bankruptcy, missed payments on a loan, or have a history of late payment of bills. Adverse information generally stays on your credit report for 7 years; however bankruptcies may be on your credit report for up to 10 years. It is important to check your credit report periodically to ensure that it is correct, because mistakes in your credit report may adversely affect your ability to obtain additional credit.

You have the right to know what your credit report says. You may obtain a copy of your credit report from the credit-reporting agency. Usually, the CRA will charge a small fee, which varies by state, to print and mail you a copy of your consumer file. Currently, the fee to request a copy of your consumer file from Equifax, TransUnion, or Experian is \$9.00. You may order your report through the mail, by calling the company, or on-line. CRAs will not give you credit information over the phone, however, due to the confidential nature of the information. Currently, all three accept on-line orders.

- TransUnion – www.transunion.com – 1-800-916-8800
- Experian – www.experian.com – 1-888-397-3742
- Equifax – www.equifax.com – 1-800-685-1111

Who has Access to your Credit Report?

Your credit report is not public information. Only people with a genuine need to access the information may do so. This includes yourself, those you designate in writing, any person who presents a court order or subpoena requiring disclosure of the information or those who have a legitimate business purpose. Typically involving extending credit, insurance, employment or government benefit.

What to do if Information on your Report is Inaccurate

The Fair Credit Reporting Act establishes procedures for correcting mistakes on your credit report. If you notice an error on your credit report, you should first call the CRA, then follow up in writing including copies of your supporting documents. Next contact the bank or company that provided the wrong information. The CRA then usually has 30 days to investigate the disputed item. If the investigation confirms an error, the item will be deleted from your credit report. When the investigation is complete, the CRA must give you the written results and free copy of the report if the dispute results in a change.

Debt Collection

If you obtain credit and use that credit you then become a debtor, and the person from whom you borrowed is called a creditor. You have an obligation to repay your debts. If you do not, not only may the creditor report negative information about you to a CRA, but it also may take steps to collect the debt.

Debts may be secured or unsecured. If a debt is secured, this means you provided something as collateral, or security, for the payment of the debt. This means that if you do not pay your debt, the creditor may take action to seize or repossess the collateral. If the amount of debt is more than the value of the collateral, the creditor may then sue you for the shortfall. If a debt is unsecured, the creditor will have to sue you and obtain a judgment for the amount of the debt. If you do not pay that judgment, you may be found in contempt of court.

Many debts contain what is called an “acceleration clause.” This means that if you miss a specified number of payments, or default on the debt, the creditor may demand immediate repayment of the entire debt, not just the missed payments (this is especially common in mortgages, but may exist in other types of debts as well). Always read your loan agreements to determine whether they contain an acceleration clause. If you have a secured debt with an acceleration clause, and the creditor invokes that clause, you will not be able to prevent repossession of the collateral simply by paying the missed payments. Instead, you would have to pay the entire balance of the debt.

What if I cannot pay my debts?

Always contact your creditors if you know you will not be able to make a payment on a debt. If the problem is short term, or if the agreed periodic payments are too high for you to pay, the creditor may be willing to work with you to determine an alternate payment schedule that will prevent you from defaulting on the debt. For instance, the creditor may agree to allow you to pay less each month, but extend the payments over a greater amount of time. However, creditors are **not** required to work out an alternate payment plan with you; they can demand that you stick to the original payment terms and sue you for defaulting if you do not abide by those terms. Most creditors will work with you if they believe you will eventually pay back the debt because it is in their interest to do so. A court judgment will not get the creditor its money if the debtor does not have the money to satisfy the judgment.

If the problem is more severe, such as having amassed a large quantity of debts you do not believe you will ever be able to repay, you may want to speak to an attorney and consider whether bankruptcy is appropriate in a given situation. However, this option should be considered only as a last resort because of the negative effects on your ability to obtain credit in the future. Also, not all debts are dischargeable in bankruptcy (for instance, judgments against you for personal injuries, and federally guaranteed student loans debts are not dischargeable.)

Are there restrictions on what creditors and collection agencies can do to collect a debt?

Yes. The federal government passed laws to prevent abuse and harassment of consumers by creditors and collection agencies. Debt collectors may not call you at home before 8 a.m. or after 9 p.m. local time. They may not call you at work if they are informed that your employer does not allow such communication. And they must communicate only

with your attorney, and not you directly, if an attorney represents you. Furthermore, if you notify a debt collector in writing that you do not wish to receive further communications, they must cease contacting you except to inform you that the collection efforts are being terminated, that the collector may invoke a specific legal remedy, or that the debt collection in fact intends to invoke a specific remedy (e.g. that the debt collector intends to seek repossession of an item, or to initiate court action).

Debt collectors may not communicate with parties other than you, your spouse, your attorney, and in some cases a credit reporting agency. A debt collector may not call your parents (if you are an adult) or other relatives in reference to collecting the debt.

Debt collectors may not use threats of violence or other criminal means to harm you, your family, your property, or your reputation. They may not use obscene language, and may not call you repeatedly or continuously with the intent to annoy, abuse, or harass you. They may not falsely represent the amount or nature of the debt, tell you that you may be imprisoned if you do not pay the debt, or that any property will be garnished, repossessed, or seized unless the debt collector would in fact have a legal right to undertake those actions. They may not communicate with you via post cards or through mailings that indicate the mailer is a debt collection agency.

If you have trouble dealing with a creditor, CRA, or credit bureau, you should contact the Florida Department of Agriculture and Consumer Services at 1-800-435-7352, or the Federal Trade Commission. You may file complaints at the Federal Trade Commission's web site under Consumer Sentinel (www.consumer.gov/sentinel/index.html), or for military members, on the Military Sentinel (www.consumer.gov/military).