



LAWYERS CLEARINGHOUSE

MASSACHUSETTS LEGAL CLINIC FOR THE HOMELESS

CLINIC HANDOUT

2010 - 2011

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Massachusetts Legal Clinic for the Homeless

The Massachusetts Legal Clinic for the Homeless (MLCH) was established in 1994 as a unique collaborative of the state's largest law firms, to provide on-site legal services to the residents of the Pine Street Inn and to assist other groups in carrying out similar clinic programs. The Clinic was expanded in 1999 to provide services to guests of St. Francis House, in 2005 to guests of Shattuck Shelter, and finally in 2007 to guests of Medeiros Center.

The Lawyers Clearinghouse administers these legal clinics. Brown Rudnick LLP, Choate Hall & Stewart LLP, Edwards Angell Palmer & Dodge LLP, Goulston & Storrs, P.C., Mintz Levin, Nixon Peabody LLP, Ropes & Gray LLP, WilmerHale. Each firm volunteers to staff two clinics a year. Their generosity is greatly appreciated by the Lawyers Clearinghouse, the shelters, and the individuals who are helped.

The Clinic collaborates with the Boston University School of Law Civil Litigation Program and the Legal Services Center of Harvard Law Center to ensure that legal advocates have immediate access to legal services attorneys following intake interviews. Case Review attorneys from Boston University include Connie Browne, Robert Burdick, Judith Diamond, and Lois Knight. The Case Review paralegal from Legal Services Center is Julie McCormack. Ellie Hertzberg, Esq. also assists with the Case Reviews.

During the clinics, the lawyers are paired into teams and stationed in private rooms where they meet with the clients. Client-intake is a fact-finding process; the lawyers do not need to provide answers during this initial meeting. After the intake process, all the lawyers meet for a Case Review – a round-table discussion of the potential cases. During this discussion, the firm decides the type of help it can provide and give the volunteer attorneys advice.

The clients at the shelters have a variety of legal needs. The most common issues that arise include SSI/SSDI appeals, outstanding warrants, criminal surrenders, subsidized housing denials, evictions, employment issues, bankruptcy claims, and immigration issues. The volunteer attorneys who take cases through the MLCH are not expected to be experts on every question that arises. In fact, they have access to a myriad of resources to help them with their cases.

This clinic handout is designed to provide basic information on many of the resources available and common issues faced by the volunteer lawyers. For additional information on a specific area of law, the attorneys should feel free to contact the experts listed on the Resources page. Maribeth Perry, the executive director of the Lawyers Clearinghouse, would be happy to answer any questions the attorneys may have regarding the administration of the MLCH.

Pine Street Inn – An Overview

Pine Street Inn
444 Harrison Avenue
Boston, MA 02118
617-892-9207
www.pinestreetinn.org
Contact: Sharon Evans

Every night, close to 7,000 men, women and children in the City of Boston have no home. Founded in 1969, Pine Street Inn serves more than 1,300 homeless individuals daily and 10,000 annually, providing the full spectrum of services to help men and women reach their highest level of independence and get back to a place they can call home.

The Mission of Pine Street Inn is:

- To be a community of respect and hope for each guest it serves;
- To be a resource through which neighbors and friends can help to meet the basic needs of others; and
- To serve as a national leader in the fight to end homelessness.
- Services Include:
 - **Permanent supportive housing** – Over 500 tenants live in affordable housing across Boston and in Brookline, developed by Pine Street Inn since 1984. Twenty-four hour on-site staff provides support services to prevent a return to homelessness.
 - **Emergency and transitional shelter** – 700 beds (450 emergency, 250 transitional)
 - **Food** – over 3,000 meals are prepared each day in Pine Street's kitchen for our own use and for Abundant Table, a social venture enterprise that provides food service to 10 area nonprofits.
 - **Street outreach** – 150 unsheltered homeless men and women are served daily by workers on foot and by van. Pine Street is the only organization that provides nighttime outreach in Boston.
 - **Job training** – 150 men and women annually complete programs in culinary training, building maintenance, literacy and other practical skill development through STRIVE.
 - **Mental health support & substance abuse treatment** – clinical psychiatric staff and specialized programs provide support to nearly 50 percent of Pine Street's guests and 30 percent of tenants. Post-detox and other recovery programs are also offered to those in need.

Programs at the Pine Street Inn

Working Men's and Women's Program

The Working Men's and Women's Programs provide transitional housing for individuals who are employed either part- or full-time and saving a percentage of their earnings to eventually access permanent housing. Those accepted in the program agree to maintain sobriety, open a bank account to save for an apartment and meet with a counselor weekly. Employment assistance and support groups are offered on-site.

Older Men's and Women's Program

Elders are one of the fastest growing homeless populations in the United States. Twenty percent of individuals in Massachusetts over the age of 65 live below the poverty level—half of those are homeless. The Older Men's and Women's Programs at Pine Street Inn serve individuals over the age of 55. Participants in this program are often too old to reenter the workforce and too young to qualify for elder housing.

Men's Transitional Housing Program

For men who are currently sober and progressing in their recovery from addiction, the Men's Transitional Housing Program (MTHP) offers support for a successful transition to permanent housing. MTHP is a two-year, residential program for men over the age of 18. The program is located at Pine Street's satellite location on Long Island in the Boston Harbor. Participants are required to pay a portion of their income as rent and are also required to save at least 20 percent of their income to prepare for their transition into housing.

All participants are referred through Pine Street's emergency shelter. Some may be employed but for those who are not, job training is provided. Case managers work with participants to access recovery support, legal assistance, health care and mental health services, life skills training, financial management and assistance with their housing search.

Pregnant Women's Program

The Pregnant Women's Program at the Women's Inn helps expectant homeless women find housing, provides support with prenatal care and prepares the women to care for a new infant. Participants are in varying stages of pregnancy when they enter the program and may have a history of domestic violence, mental illness or substance abuse.

Substance Abuse Treatment Services

Pine Street provides substance abuse services in both the men's and women's shelters. On-site substance abuse counselors identify individual treatment needs when guests check in, provide short-term assessments and interventions and ensure referrals to appropriate treatment programs.

STRIVE Program

STRIVE (Support and Training Result in Valuable Employees) is a nationally known, three-week intensive job readiness and placement program that serves an average of 150 homeless men and women annually at Pine Street Inn. This program model was originally developed for unemployed adults. In 1998, Pine Street became the first organization to adapt the program specifically for homeless individuals. Since then, nearly 1,000 men and women have graduated from the STRIVE program.

Food Services Training Program

Pine Street's Food Services Training Program, founded in 1990, prepares nearly 100 men and women annually for employment in the food services industry. The 10-week course is divided into two training sessions: Cafeteria Operations and Kitchen Operations.

Students receive both classroom and practical education in customer service, menu preparation, kitchen safety, food sanitation, weights and measurements, deli/cafeteria operations, salad bar preparation and food production. Students work with Pine Street's chefs and professional culinary staff to prepare 3,000 meals each day, and also gain experience serving customers in Pine Street's staff cafeteria.

Abundant Table

Since 2000, Abundant Table, Pine Street Inn's food service enterprise, has prepared and delivered more than one million tasty, nutritious and reasonably priced meals to non-profit institutions, schools and other organizations. We put our 3,000-meal-a-day, state-of-the-art kitchen and a combined 56+ years of food service management expertise into every meal we prepare.

Building Maintenance Training Program

Each year, BMTP trains more than 35 men from Pine Street's transitional shelter programs in building maintenance. During the 12-week program, trainees learn "hard skills"—including floor care, basic carpentry, plumbing and electrical wiring, as well as "soft" skills—showing up on time, professionalism, team work and managing responsibilities.

Information taken from the Pine Street Inn Website- pinestreetinn.org last visited 7/14/09

St. Francis House – An Overview

St. Francis House
39 Boylston Street
Boston, MA 02112
Phone: 617-542.4211
www.stfrancishouse.org
Contact: Jacqueline

St. Francis House believes that homelessness is an experience, not an identity. In that spirit, we provide a safe, caring, and respectful refuge where our homeless brothers and sisters can find the help and hope they need to rebuild their lives. We establish relationships based on trust, and we provide our guests with continuous, comprehensive care.

St. Francis House began in 1984 as a simple bread line, yet quickly grew into a multi-service day shelter. Today, we are the largest such organization in New England, serving more than 800 men and women every day of the year. We provide basic services : food, clothing, daytime shelter, and access to medical care as well as rehabilitative services: mental health and substance abuse counseling, art therapy, and more. We also offer legal aid, job-skills training, and transitional and permanent housing.

St. Francis House is nonprofit and nonsectarian. In the past year, we:

- Served 116,990 breakfasts, 171,340 lunches, and provided 17,593 emergency sandwiches, a total of 305,923 meals
- Filled 8,410 clothing requests
- Provided 8,911 medical appointments
- Provided 1,458 showers
- Counseled 27,575 guests at general and psychiatric counseling sessions

Our guests often say they want "a job and a home," and that's our goal for them as well. We want everyone who walks through our doors to lead a life independent of shelters and institutions. To achieve this, St. Francis House relies on partnerships with community members and local organizations. With their help and yours we will continue to end homelessness in Boston one person at a time.

Programs at St. Francis House

Mental Health Counseling

Without resources to help them access affordable housing, vocational training, family support, and psychological treatment, those who suffer from mental illness are at much greater risk of becoming homeless. Likewise, the stress of being homeless can heighten a mental disorder. It can be a vicious cycle, but St. Francis House strives to intervene. Many of the mentally ill homeless want to make positive changes in their lives, and we invest in building the stable, trusting relationships that will allow them to do so.

A licensed clinical psychologist oversees our counseling program, and four licensed mental health professionals provide more than 7,250 treatment hours of mental health counseling per year. Our counselors provide information about treatment options and resources, including medications, that guests can use to manage their conditions. Three psychiatrists also provide regular onsite services. Services are available in both English and Spanish

Substance Abuse Counseling

Our counselors are dedicated to helping our guest reclaim and rebuild their lives. They are skilled in the dual diagnosis of mental health and substance abuse issues, and emphasize treatment and education, including providing outreach, information, crisis intervention, and relapse-prevention. We encourage guests to complete detoxification, and to live in halfway houses where they can continue to work with us and maintain sobriety.

When guests seek treatment for substance abuse, St. Francis House helps them find beds in area detoxification programs, and encourages them to enroll in transitional programs and live in halfway houses

Medical and Detoxification Referrals

Support Groups

Expressive Therapy Program

St. Francis House believes that the creative process can foster self-awareness, personal growth, and autonomy. Our unique Expressive Therapy Program provides an opportunity for guests to express themselves through visual art, music, and writing, enabling them to feel empowered and productive. This program is especially appealing to our youngest guests, 18-24 years old who are often difficult to engage by more traditional channels. Expressive Therapy is our most popular therapy program, serving at least 25-30 people a day, five days a week, every week of the year. Our newly expanded art room features open studio hours in the morning and structured groups and one-on-one art therapy sessions in the afternoon. We offer a wide variety of workshops including creative writing, music, poetry, children's book writing, technique classes, and our new Saori Weaving Initiative. We acknowledge the therapeutic value of displaying art in public, and our guests have shown their artwork at such places as City Hall Plaza, South Station,

and a variety of local galleries and restaurants. Every year, we feature guest artwork in the *Art from the Heart Calendar*.

Case Management

The St. Francis House Counseling Department includes ten case managers, who provide more than 13,400 counseling sessions per year. Our multilingual, multicultural counselors emphasize autonomy and self-determination as they help guests set appropriate goals. They work with each guest to provide the necessary referrals and resources to help individuals rebuild their lives. Services include:

- Individual counseling
- Substance abuse counseling, including detoxification referrals
- Legal aid
- Immigration services
- Women's Counseling at the Carolyn Connors Women's Center

Info taken from St. Francis House website- stfranchishouse.org last visited 7/14/09

hopeFound– An Overview

hopeFound 170 Morton Street Jamaica Plain, MA 02130 617-983-0351 Contact: Jonathan Hartford

hopeFound ends homelessness, one person at a time, by providing programs and services that help men and women achieve self-sufficiency and secure permanent housing.

hopeFound serves more than 3,500 people each year, in Boston and across Massachusetts. hopeFound is recognized both locally and nationally for program innovation and successful outcomes for chronically

homeless individuals.

hopeFound programs and services are grounded in the values of:

- respect for those we serve;
- the potential of individuals to improve their lives;
- the belief that shelters are an unacceptable form of permanent housing;
- and that homelessness is a problem affecting the whole community and its solutions will come from our collective action and goodwill.

Shelter

Offers year-round overnight shelter and support for 110 guests, 88 males and 22 females. During the winter months an additional 15-25 guests are accommodated on mats. Guests receive meals, access to shower and laundry facilities, and support

from mental health counselors, nursing staff, and case managers for placement in housing and substance abuse treatment.

Outreach and Violence Prevention

Street Outreach teams are active five days a week, reaching out to homeless men and women in downtown Boston. The teams provide emergency provisions, substance abuse counseling, and assistance to those seeking shelter or in need of medical assistance. The Friends of Shattuck Shelter also reach out to battered and addicted homeless women through the Women's Violence Prevention Project (WVPP).

Employment and Other Basic Skills Programs

Job Placement through IMPACT Employment Services

Help finding a job is the most frequently cited need (42%) by homeless individuals. Through IMPACT, more than 700 homeless people a year are educated about ways to secure, retain and upgrade a job, and of the positions they find, they earn an average wage of more than \$10/hour. IMPACT has been nationally recognized as a Best Practice in Employment Services by the National Alliance to End Homelessness.

Because of the success of IMPACT Employment Services, the Department of Transitional Assistance, through the City of Boston's Office of Jobs and Community Services, awarded IMPACT a grant to provide a workforce development, employment and training program for more individuals.

Young Adult Initiative

A career-placement program specifically for 18-24 year old men and women, offering job training and education that meets this group's unique needs. As-needed training in professional behavior, communication, job search skills, and career advancement skills give clients the tools to prepare for their first real employment. We help clients figure out what career interests them and what they need to know to start.

TEAM Program

TEAM is for those who are eligible for Food Stamps and are ready to begin moving toward employment. First, we help clients enroll in the Food Stamp program, then we assess their skills and job readiness and help them take positive steps toward working.

Treatment and Testing

Stabilization Program

Stabilization is a 28-day post-detox program that provides intensive treatment and support for homeless men with histories of chronic substance abuse

Stabilization assists 45 adult males (at any given time) toward successful recovery and reconnection to the community. The goal is to provide short-term clinical and support services that maximize the potential for successful recovery and provide

the client with an understanding and acceptance of the need for continued treatment to prevent relapse. The program has the capacity to serve individuals who are dually diagnosed with a mental illness as well as those living with HIV/AIDS. A key tenet is that treatment must be responsive to the individual's readiness for change and must take place in the context of a respectful and therapeutic environment.

Kitty Dukakis Treatment Center for Women

The Women's Treatment Center is a new 32-bed, 28-day, post-detox facility open to homeless women in the early stages of recovery. Our trauma-informed treatment includes substance abuse, mental illness, PTSD, and individual and group treatment; case management; and extensive aftercare referrals and placement.

Housing

Permanent Housing

The primary cause of homelessness is lack of affordable housing. Over 5 million low income households have serious housing problems due to high housing costs, substandard housing conditions, or both.

Rent Assistance

Rental assistance is provided to clients who have found ready to move into housing, but cannot afford the extremely high upfront costs to move in. provides financial assistance such as first month's rent, last month's rent, security deposits or realtor fees so that our guests can move into their new home without depleting their meager savings.

Shelter Plus Care

Shelter Plus Care is a collaborative effort between hopeFound and the City of Boston to help men and women who are in recovery from chronic addiction to receive a special certificate that helps them move into a private market apartment where they can pay no more than 30% of their income toward rent. Once housed, they work with a Housing Case Manager on issues such as budgeting, sobriety, employment and education.

Spillane Lodging House

hopeFound provides permanent housing at the Spillane Lodging House in Dorchester, where 12 formerly homeless men and women share a kitchen, community room, storage, recreation room and laundry. A house manager lives on site and provides residents with additional support.

Project Genesis

Project Genesis provides care coordination and direct services to substance abusing and dually diagnosed homeless women, including:

- Outreach to women living on the street and in shelters

- Intensive case management
- Substance abuse and mental health referrals
- Housing, legal, and income assistance
- Access to a gender-specific post-detox treatment program
- Support, monitoring, and follow-up for six to nine months after completion of the treatment program

Case management

Project Genesis' case management includes care coordination, medical and mental health referrals, substance abuse referrals, assistance with housing and legal issues, help with applying for mainstream services and entitlements, and other individualized assistance. We can also refer clients to our new Women's Treatment Center, a 32-bed, 28-day, post-detox program at the Lemuel Shattuck Hospital. Integral to Project Genesis is six months of supportive follow-up after referrals, during which we monitor the women's progress, help them make and keep appointments, and connect them with supportive services.

Transition to Independent Living Program

Transition to Independent Living (TIL) is a residential program that assists homeless men through the development of employment, daily living skills, recovery from substance abuse, mental, and physical health conditions, and housing.

Info taken from hopeFound website- hpefnd.convio.net last visited 7/14/09

Cardinal Medeiros Center for Change – An Overview

<p>Medeiros Center 27 Isabella St. Boston, MA 02118 617-451-9331 Contact: Emily Berg</p>
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The Medeiros Center is the first and only shelter specifically for older adults in Boston. Established in 1984, it is in the basement of Our Lady of Victories Church, 27 Isabella St. in Boston's Bay Village. Since then, staff at CMC has placed more than 1,000 men and women in housing. The Medeiros Transitional Program also runs congregate housing in Massachusetts that specializes in housing elderly homeless men and women. Since the inception of these programs, 1,200 men have graduated from the programs and become members of society.

Shelter

Open Monday through Friday, the Medeiros Center for Change is a day center for homeless men and women ages 50 and older.

Programs

- Supportive services:
- Intensive Case Management
- Benefit Advocacy
- Connection to Mental Health Services

- Nurses Clinic
- Chiropractic Care
- Substance Abuse Counseling
- Housing information and referral to both private and subsidized housing options
- Social activities
- A variety of activities are offered to promote socialization and personal growth
- Mid-day meals served Monday through Friday

Taken from Kit Clark Senior Services Website <http://www.kitclark.org/Programs.cfm#Homeless> last visited 7/14/09

Supplemental Security Income (SSI) & Social Security Disability Insurance (SSDI)

Introduction:

- SSI and SSDI are federal programs that provide assistance to people with disabilities.
- SSI is a needs-based program while SSDI is an insurance program (applicant must have worked and paid into social security in order to be eligible).
- The factors establishing a disability are the same for both programs.
- Clients may be eligible for both SSI and SSDI if their work earnings were low; they would receive some SSI and some SSDI up to a maximum.

Supplemental Security Income (SSI)

Overview:

- SSI is a program designed to help aged, blind, and disabled people who have little or no income.
- SSI provides monthly benefit payments to meet basic needs for food, clothing, and shelter.
- The maximum monthly payment rate is \$545 for an individual and \$817 for a couple, but benefits rates vary according to living arrangements and income.
- SSI payments are not based on prior work or a family member's prior work.
- SSI recipients can also get Medicaid (MassHealth) to pay for hospital stays, doctor bills, prescription drugs, and other health costs.
- SSI recipients are also eligible for food stamps.
- Homeless individuals living in a public shelter for up to 6 months in any 9 month period can receive SSI benefits.

To Receive SSI, the Applicant Must:

- Be at least 65 years old, or blind, or disabled (unable to engage in any substantial gainful activity as a result of medically determinable physical or mental impairments which can be expected to result in death or last for a continuous period of at least one year).
- Have limited income (generally cannot earn more than \$740/month).
- Have limited resources (maximum of \$2,000 for an individual and \$3,000 for a couple) – resources include cash, stock, land, personal property, life insurance.
- Be a US citizen or qualified alien according to the INS.
- Be a US resident.
- Agree to apply for other benefits for which applicant is eligible (pensions, social security).
- Cannot be a fugitive felon, in prison/jail, or give away property in order to get under the SSI resource limit.

Process to Apply:

- Individual should call SSA, or have someone else call on his/her behalf, and make an appointment to apply for SSI.
- The appointment can take place either on the telephone or in person at the local SSA office.
- Individuals can visit an SSA office to apply without making an appointment, but they may have to wait awhile before being helped.

- Documents needed to apply include social security card or number, birth certificate, citizenship or alien status record, proof of income, proof of resources.
- A decision is usually reached about 3-4 months from the date of application.

Appeal Process:

1. Applicant may request reconsideration in writing within 60 days of receiving the decision.
If the decision resulted in disability cessation and reconsideration is requested within 10 days, payments will continue until a further decision is reached.
2. After an unfavorable reconsideration decision, applicant has 60 days to request a hearing before an administrative law judge. If applicant does not want a hearing before the judge, he/she may request the judge to make a decision based on evidence in the file. If applicant does want a hearing before the judge, the applicant or representative must appear in person at the hearing.
3. If there is an unfavorable hearing decision, the applicant has 60 days to request an Appeals Council review. New evidence may be submitted to the Appeals Council.
4. If there is an unfavorable decision by the Appeals Council, a civil action may be filed with the US District Court.

Social Security Disability Insurance (SSDI)

Overview:

- SSDI pays benefits to individuals and certain members of their families if the applicant is "insured" (they have worked long enough and paid social security taxes).
- Individuals deemed disabled receive monthly cash benefits if unable to work for a year or more because of the disability. Benefits usually continue until the person is able to work again on a regular basis.
- Disability benefits automatically convert to retirement benefits when the recipient reaches age 65, but the amount dispensed remains the same.

To Receive SSDI, the Applicant Must:

- Have worked in jobs covered by Social Security.
- Have worked long enough, and recently enough, to earn the requisite amount of work credits needed to qualify.
 - Social Security work credits are based on total yearly wages/self-employment income.
 - A person can earn up to four credits each year. In 2003, one credit is earned for \$890.
 - The number of work credits you need to qualify for disability benefits depends on the age of the person when he/she becomes disabled. Generally, 40 credits are needed, 20 of which need to be earned in the 10 years before the disability occurred.
- Have a medical condition that meets Social Security's definition of disability.

Test the SSA Uses to Determine Whether Person is Disabled (same for SSI from #2 to 5)

- Applicant cannot be working and earning more than \$800/month.
- Condition must interfere with basic work-related activities.
- For each of the major body systems, there is a list of medical conditions that are so severe they automatically mean that the person is disabled. If the applicant's

condition is not on the list, a decision is made if the condition is of equal severity to a medical condition that is on the list. If the condition is of equal severity, the applicant will be deemed "disabled." If not, go onto #4.

- If condition is severe but at the same or equal level of severity as a medical condition on the list, then a determination is made if the condition interferes with applicant's ability to do the work he/she was doing previously. If it does not, claim will be denied. If it does, go to #5.
- If applicant cannot do the work done in the past, a determination is made whether the person can adjust to other work. If applicant cannot adjust to other work, claim will be approved. A grid is used that takes into consideration the age, education and work experience of the claimant.
- Special exceptions to the 5 Step Test include people who are blind and children, widows and widowers who are disabled.

Process to Apply:

1. Individual should apply at any Social Security office as soon as the disability occurs. Filing may be done by phone, mail or by visiting the nearest office.
2. There is an office at 10 Causeway Street, Room 148, Boston, MA 02222.
3. To apply by phone call 1-800-772-1213.

Process to Appeal:

- Initial claim will take between 60 and 90 days to process.
- Appeals process for SSDI is the same as the appeals process for SSI.

Taken from SSA website- www.ssa.gov last visited 7/14/09

How To Cope With Social Security Overpayments

Taken from the website of
Pine Tree Legal
Assistance

www.ptla.org

last visited 7/14/09

Options:

Ask for **Reconsideration**. This means you want SSA to look at your case again, either by looking at your file or by meeting with you in a conference. Ask for reconsideration if you think the amount of the overpayment is wrong or the reason SSA gives for the overpayment is wrong.

- Ask for reconsideration **in writing** at your local Social Security office.
- File your request **within 60 days** of getting the Notice of Overpayment.
- Ask for one of the following types of review:

1. Case Review. An SSA worker will review the papers in your file and make a new decision based on this file review.

2. Informal Conference. You meet with the person who will decide your case to go over your file, to give new information, and to tell your side of the story.

3. Formal Conference. You can bring witnesses to help present your case to the SSA worker.

If your reconsideration is turned down, you can ask for an **Administrative Hearing**. Ask for the hearing **in writing within 60 days** after your reconsideration was turned down. This hearing is held by an Administrative Law Judge. At the hearing, you will have a chance to tell the judge your side of the story. You can have an attorney, paralegal or other representative to help you at the hearing.

If you lose your hearing, you can ask to have your case reviewed by the **Appeals Council**. Tell the local SSA office that you want to appeal the Administrative Law Judge's decision.

The Appeals Council is outside Washington, D.C. You do not have to go the Appeals Council to have your case reviewed. They will look over the records in your case to see if the judge at your hearing made a mistake.

Ask for a **Waiver**. If you agree that you were overpaid, you can still ask SSA to waive it so that you don't have to pay it back. Ask for a waiver if you think that the overpayment was not your fault and you can't afford to pay the money back.

- **Automatic Waivers for Small Overpayments**
- SSA must automatically waive your overpayment if:
 - the amount is less than \$500
 - you did not cause the overpayment by making a false statement to SSA, and
 - you request a waiver

Steps in Applying for a Waiver of Overpayment

Step One

Get a form called **Overpayment Recovery Questionnaire** from your local Social Security office. This form asks you questions about whether you reported the change and whether you knew you should report the change. It will also ask questions about your income. Remember, you must show both that the overpayment was not your fault and that you do not have enough money to pay back the overpayment.

Some of the reasons that may show that the overpayment was not your fault are:

- You have trouble reading. You did not know what you had to report to SSA.
- You have trouble remembering or understanding directions.
- You believed that you reported every change that might have caused an overpayment.
- You were not told the reporting requirement
- You applied for SSI a long time ago and do not remember the reporting rules.

Next, if you do **not** get SSI, list all your income and expenses on the part of the form that asks for financial information. **If you are getting SSI, you do not need to give financial information.** The rules assume that you cannot afford to repay. Just write on that section: "I am currently receiving SSI. It would be a financial hardship for me to pay the money back."

- Ask for a **Payment Arrangement**. Do this if you think that the overpayment was your fault or you can afford to pay it back. You can tell SSA that you want to pay the money back a little at a time. Otherwise, SSA may automatically take your whole Social Security disability check or 10% of your SSI check.

Prepared by Pine Tree Legal Assistance
from material provided by Legal Services of Central New York Web Page
April 2000

Checked against information at
http://www.masslegalservices.org/page/201144;cat_id=988
1 June 2009

Introduction:

The Boston Housing Authority is a public agency that provides subsidized housing to low and moderate income individuals and families. The BHA is the largest landlord in Boston, providing public housing to approximately 10% of Boston residents. Both conventional public housing and affordable housing are made available by the BHA through rental assistance programs such as the Section 8 Voucher Program, which allows low-income tenants to rent from private landlords with a rent subsidy.

Public Housing:

The BHA manages 63 public housing developments that house about 27,000 people. Of the 63 developments, 37 are designated as elderly/disabled developments and 26 are designated as family developments.

Rental Assistance (Section 8 Vouchers):

The BHA administers approximately 11,000 rental assistance vouchers that allow families to rent in the private market and apply a subsidy to their rent. The subsidy allows residents to pay approximately 30-40% of their income toward rent, with the BHA paying the remainder.

How to Apply:

1. Determine which type of housing the applicant is eligible for:

Eligibility Requirements:

A. Family Public Housing:

- o *Income Limits* -- Household income must fall below set income standards. Different limits are set for state and federally funded housing and vary with household size, and a unique calculation of income. (Almost all of the clients you will see through one of our legal clinics will fall under the income limits, as the lowest limit is \$46,300.)
- o *Priority Categories* -- The BHA uses a system of priority categories to determine an applicant's place on the waiting list. Applicants will receive priority if they are victims of homelessness, domestic violence, disaster displacement, condemned housing, hate crimes, no fault eviction, or displacement due to disability.
- o *US Citizenship* -- Applicant must have proof of US citizenship or eligible immigration status.
- o *Prior Applicants* --
 - Those who falsified information on a BHA application cannot reapply for 3 years.
 - Those who owe money to another subsidized housing program cannot apply for BHA public housing until the debt is paid.
 - Those who claimed Priority Status, but refused housing when offered, cannot reapply for housing using the same priority for 1 year.
 - Those found ineligible for housing cannot re-apply for 18 months.
- o *Lease Compliance* -- All applicants must be willing to abide by the BHA Public Housing Lease.

B. Elderly/Disabled Public Housing:

- *Aged/Disabled* -- Applicants for federally-funded housing must be at least 62 years old and/or disabled. Applicants for state-funded housing must be at least 60 years old and/or disabled.
- *Household Size* -- This program only consists of studio, 1 and 2 bedroom apartments. Those who need more than 2 bedrooms cannot apply.
- *Priority Categories* -- Priority categories are used to determine placement on the waiting list.
- *US Citizenship* -- Applicant must be a US citizen or eligible resident.
- *Lease Compliance* -- Applicant must be willing to abide by the BHA lease.

C. Rental Assistance (Section 8): (NOTE: CURRENTLY CLOSED TO NEW APPLICANTS)

- *Priority One Categories* -- Applicants must qualify for Priority One categories. (Homelessness is included.)
- *Income Limits* -- These limits vary with household size and depend on whether the housing sought is federal or state funded. (State-funded housing: 1 person family - \$40,800; 2 person family - \$46,650; 3 person family - \$52,500; etc. Federal-funded housing: 1 person family - \$29,450; 2 person family - \$33,650; 3 person family - \$37,850; etc.)
- *US Citizenship* -- Applicant must have proof of US citizenship or eligible immigration status.
- *Other Requirements* -- BHA will deny a rental assistance voucher if any household member has been evicted from a federally funded housing development or had federal rental assistance terminated within the last 3 years.

2. Complete the preliminary application and all forms necessary to claim priorities.
(Form 1e: Certificate of Homelessness)
3. Complete optional documents as needed.
(Authorization to discuss, inspect, and/or copy; Unit size waiver)
4. Mail application to the BHA or drop it off at the John F. Murphy Housing Service Center or at
one of the assigned BHA developments.

Post-Application:

1. *Notice of Preliminary Eligibility* -- Applicant will be mailed a "Notice of Preliminary Eligibility" from the BHA within 8-10 weeks, certifying that the application has been processed and confirming placement on the waiting list. This notice will contain a client control number, which should be used for all future correspondence with the BHA.
2. *Status* -- Applicant may check the status of his/her application by phone at (617) 988 4200, online, or in person at the John F. Murphy Housing Service Center.

3. *Screening* -- As an applicant nears the top of the waiting list, he/she will receive written notification of a personal interview. When the applicant goes to the personal interview, he/she will need to bring the completed Final Application Form, Birth certificate or adoption documents (original copy for all household members), Social Security card or documentation that a card has not been issued (original copy for all household members), Picture identification of head of household and co-head if applicable (original copy), Appropriate documentation of United States citizenship or eligible non-citizenship status (original copy for all household members), Documentation of guardianship, if applicable (original copy), Proof of annual income for all household members, Proof of assets for all household members, Proof of income exclusions and deductions for all household members, if applicable, Verification of veteran status, if applicable (original copy), Verification of Boston residency, if applicable, Names, addresses and phone numbers of landlords and/or housing providers for the last three years for all household members, Documentation of the need for any specialized housing accommodations.
4. *Section 8 Voucher Extensions* -- Section 8 vouchers expire in 120 days unless the initial term is extended for specific reasons. It is up to the recipient to apply for an extension.
5. *Appeal Process* -- An applicant who believes he/she has been wrongly denied public housing has the right to an informal hearing before BHA staff members. The applicant must request a hearing in writing within 20 days after the decision. The request for a hearing should state the reasons for which the applicant believes the finding to be unjustified. The BHA Office of Civil Rights will schedule the hearing, which will take place within 30 days of the receipt of the request. The request for a hearing should be sent to Boston Housing Authority, Department of Civil Rights, 52 Chauncy Street, 9th Floor, Boston, MA 02111.

Eviction Procedures:

Pre-Hearing:

- o When a tenant is being evicted from BHA housing, the management will present the tenant with a written statement that sets forth the specific reasons for the termination, the date for a private conference between resident and the housing manager, and a statement that resident has the right to request a hearing under the grievance procedure.
- o At the private conference, management and tenant will discuss the proposed termination. If the grievance is not resolved at the private conference, a summary of the conference and procedures to request a hearing will be given to the resident.
- o A resident is not entitled to a grievance hearing if there is reason to believe that the resident, member of the resident's household, or guest of the resident has:
 - Unlawfully caused harm to another BHA resident or employee;

- Threatened to seriously physically harm another BHA resident or BHA employee;
 - Destroyed, vandalized or stolen property of a resident or employee;
 - Unlawfully possessed a weapon or explosive device on or adjacent to BHA property;
 - Unlawfully possessed or sold a controlled substance on or adjacent to BHA property;
 - Engaged in other criminal conduct which seriously endangered the safety of a resident, employee, or any other person lawfully on the premises of the BHA.
- o A resident that is eligible for a grievance hearing must file a hearing request within: 5 working days in the case of a threat to another BHA resident, employee, or anyone else lawfully on the premises; 14 days in the case of nonpayment of rent; and 30 days in all other cases.
 - o To request a grievance hearing, resident must file a written request with the local housing manager or the BHA Hearing Panel Coordinator. Hearings will be held within 30 days from the time the request is filed.

Hearing:

- o If a resident fails to appear at a scheduled hearing, the hearing panel may determine that the party has waived his or her right to a hearing. The hearing panel will reschedule the hearing if it determines that there was good cause for the failure to appear.
- o If a resident attends the hearing, the BHA must show that it is justified in proceeding with the eviction action on the grounds stated. Resident will be given the opportunity to present defenses.
- o Within 15 days after the hearing, the Hearing Panel shall prepare a written decision, which shall include a statement of its findings of fact and specific reasons for the results.

Appeals:

- o Resident must appeal to the BHA Administrator within 10 days after the receipt of an unfavorable decision.
- o The BHA Administrator will hold a hearing within 30 days of the request and the resident will be notified of the decision within 15 days after the hearing.
- o If the BHA brought the appeal and the Administrator reversed a decision that was favorable to the resident in a state-funded development, the resident may file an appeal with the Executive Office of Communities and Development within 15 working days of receipt of the Administrator's decision. The appeal must be in writing and must set forth the reasons why the decision of the hearing panel should be affirmed.

Source: www.bostonhousing.org
 Accessed 9 August, 2006

BHA: GETTING IN!

FOR THE PUBLIC HOUSING PROGRAMS

The Waiting Lists

- One for each public housing developments
- maintained by apartment size
 - Applicants' Priority and/or
 - Preference points and the date such points are granted and then chronologically according to original application date.
- Order of rankings differs in the BHA's State and Federal PHPs

BHA PRIORITY CATEGORIES

Federal Housing Programs

Emergency Transfers

Priority One:

Displaced Due to Disaster
Displaced Due to Domestic Violence
Victim of Hate Crime
Avoidance of Reprisal/Witness Protection
Court Ordered no Fault Eviction
Condemnation
Urban Renewal
Other Government Action
Inaccessibility of Dwelling Unit
Homelessness

Priority Two:

(Elderly/Disabled

Program Only)

Excessive Rent Burden
Imminent Landlord Displacement

On-Site Under or Over Housed Transfers

Standard Applicants

State Housing Programs

Emergency Transfers

Priority One:

Displaced Due to Natural Disaster

Priority Two:

Urban Renewal
Condemnation

Priority Three:

- Displaced Due to Domestic Violence
- Victim of Hate Crime
- Avoidance of Reprisal/Witness Protection
- Court Ordered No Fault Eviction
- Inaccessibility of Dwelling Unit
- Homelessness
- BHA Resident in Federal Program "Termination of Assistance" due to Lack any household member with eligible immigration status.

Priority Five:

AHVP (Alternative Housing Voucher Program)

Priority Six:

(Elderly/Disabled Program Only)

- Excessive Rent Burden
- Imminent Landlord Displacement

On-Site Under or Over Housed Transfers

Standard Applicants

A. *Displacement due to a disaster*

Verification must include:

1. a copy of the incident report from the local Fire Department, and
2. a copy of his/her lease, or a statement from the property owner, verifying that he is/was the tenant of record at the affected address, and
3. verification from the Fire Department, the Inspectional Services Department, the Health Department or other appropriate agency that the dwelling unit is now uninhabitable.
4. the cause of the disaster if known. If the Applicant or a Household Member or guest was the cause of the disaster, approval for Priority status will be denied unless Mitigating Circumstances are established to the satisfaction of Occupancy Department Staff.

B. Displacement due to domestic violence/Dating Violence

or Stalking, which is defined as displacement from an address where the Applicant is/was the tenant of record due to continuing actual or threatened physical violence (including sexual abuse) directed against one or more of the household members

Verification must include submission of a fully completed "Certificate of Involuntary Displacement Due to Domestic Violence/Dating Violence/or Stalking" or a third-party, written verification from the local police department, a social service agency, a court of competent jurisdiction, a clergy member, a physician, or a public or private facility that provides shelter or counseling to the victims of domestic violence. Such verification will not be considered valid unless it:

a. Supplies the name of the abuser

b. Describes how the situation came to verifier's attention;

and

c. Indicates that the threats and/or violence are of a recent (within the past six-(6) months) or continuing nature if the Applicant is still residing in the dwelling where the violence has occurred or is occurring.

d. Indicates that the Applicant has been displaced because of the threats and/or violence or that the Applicant is in imminent danger where he/she now resides.

The Applicant must supply the name and address of the abuser

AND

Provide documentation that the Applicant is/was a tenant of record.

C. Victim of hate crime: A member of the Household has been a victim of one or more hate crimes AND the Household has vacated a dwelling unit because of this crime OR the fear associated with the crime has destroyed the peaceful enjoyment of the dwelling unit;

• "Hate crime", is defined as any criminal act coupled with overt actions motivated by bigotry and bias including, but not limited to, a threatened, attempted or completed overt act motivated at least in part by racial, religious, ethnic, handicap, gender or sexual orientation, prejudice, or which otherwise deprives another person of his/her constitutional rights by threats, intimidation or coercion, or which seeks to interfere with or disrupt a person's exercise of constitutional rights through harassment or intimidation.

Verification must include submission of a fully completed "Certificate of Involuntary Displacement by Hate Crimes" or documentation from a law enforcement agency that the Household Member(s) was a victim of such crime(s); **and**

a. has vacated the dwelling because of such crime(s); **or**

b. has experienced fear associated with such crime(s) and the fear has destroyed the peaceful enjoyment of their current dwelling unit.

D. Avoidance of reprisal/witness protection: Relocation is required because:

(A) a Household Member provided information or testimony on criminal activities to a law enforcement agency; and

(B) based upon a threat assessment, a law enforcement agency recommends the relocation of the Household to avoid or minimize risk of violence against Household Members as reprisal for providing such information.

Verification requirements:

a) Submission of a fully completed "Certificate of Involuntary Displacement to Avoid Reprisal" or documentation from a law enforcement agency that the Applicant and/or a Household Member provided information on criminal activity; **AND**

b) Documentation that, following a threat assessment conducted by the agency, the agency recommends the relocation/rehousing of the household to avoid or minimize the threat of violence or reprisal to or against the Household Member(s) for providing such information. This includes situations in which the Applicant and/or Household Member(s) are themselves the victims of such crimes and have provided information (testimony) to a law enforcement agency.

E. Court-ordered no-fault eviction: eviction pursuant to an Order for Judgment (or Agreement for Judgment) issued by a court because of:

(a) Landlord action beyond the applicant's ability to control or prevent, and the action occurred despite the applicant's having met all previously imposed conditions of occupancy and displacement was not the result of failure to comply with HUD and State policies in its housing programs with respect to occupancy of under-occupied and overcrowded units or failure to accept a transfer to another unit in accordance with a court order or policies or procedures under a HUD-approved desegregation plan.

Verification Requirements (ALL documents are required):

a) submission of a fully completed "Certificate of Involuntary Displacement by Landlord Action"; **and**
b) a copy of the Notice to Quit issued by the landlord or property manager; **and**
c) a copy of the Summons and Complaint available from the court; **and**
d) a copy of the Answer or other response(s) filed by the Applicant in court in response to the Complaint, if any; **and**

e) a copy of the Judgment of the Court (Agreement for Judgment, Order for Judgment and Findings of Fact, or Default Judgment); **and**

f) if applicable, a copy of the execution issued by the court. The information contained in the above-referenced documents must clearly establish to the satisfaction of the BHA that:

1. the action taken by the landlord or property manager was beyond the Applicant's ability to control or prevent;

2. the action by the landlord or property manager occurred despite the Applicant Household having met all previously imposed conditions of occupancy;

3. displacement was not the result of failure to comply with HUD and State policies in its housing programs with respect to occupancy of under-occupied and over-crowded Apartments or failure to accept a Transfer to another Apartment in accordance

with a court order or policies or procedures under a HUD approved desegregation plan.

Failure to establish any one of the above referenced elements will result in denial of Priority status.

F. Condemnation of house/apartment:

Verification Requirements:

a) third-party, written verification from the appropriate unit or agency of government certifying that the Applicant has been displaced or will be displaced in the next ninety days, as a result of action by that agency; **and**

b) the precise reason(s) for such displacement

G. Displacement by any low-rent housing project or by a public slum clearance or urban renewal project

Verification Requirements:

a) third-party, written verification from the appropriate unit or agency of government certifying that the Applicant has been displaced or will be displaced within the next ninety days, as a result of action by that agency, **and**

b) the precise reason(s) for such displacement

H. Other Government action (Federal Only): A Household is required to permanently move from their residence by a Federal, State or local governmental action such as code enforcement, public improvements or a development program.

Verification Requirements:

a) third-party, written verification from the appropriate unit or agency of government certifying that the Applicant has been displaced or will be displaced in the next ninety days, as a result of action by that agency; **and**

b) the precise reason(s) for such displacement

I. For disabled individuals only, inaccessibility of a critical element of their current dwelling unit:

A member of the Household has a mobility or other impairment that makes the person unable to use a critical element of the current apartment or development AND the owner is not legally obligated under laws pertaining to reasonable accommodation to make changes to the apartment or dwelling unit that would make these critical elements accessible to the Household Member with the disability.

Verification Requirements:

- a) The name of the household member who is unable to use the critical element;
- b) a written statement from a Qualified Healthcare Provider verifying that the household member has a Disability (but not necessarily the nature of the Disability) and identifying the critical element of the dwelling which is not accessible and the reasons why it is not accessible; and
- c) a statement from the landlord or official of a government or other agency providing service to such Disabled Persons explaining the reason(s) that the landlord is not required to make changes which would render the dwelling accessible to the individual as a reasonable accommodation.

J. Homelessness: A Household lacks a fixed, regular and adequate nighttime place of habitation and the primary nighttime dwelling is one of the following:

- A supervised public or private shelter designed to provide temporary living accommodations (includes welfare hotels, congregate shelters and transitional housing); or
- A public or private place not designed for human habitation.

Persons living with existing BHA residents or other subsidized housing, or living with residents in private housing even if only temporarily DO NOT qualify as homeless.

Persons who temporarily move to a shelter for the sole purpose of qualifying for this priority shall be determined ineligible.

Verification Requirements:

1. Submission of a "Certificate of Homelessness" fully completed by an appropriate source or the Applicant's signed statement that he/she lacks a fixed, regular and adequate nighttime residence; or his/her primary nighttime residence is:
 - a. a supervised public or private shelter designed to provide temporary housing accommodations (i.e., welfare hotels, congregate shelters and transitional housing);
 - b. a public or private place not designed for human habitation.
2. A third-party written verification from a public or private facility that provides shelter for homeless individuals, the local police department, or a social services agency, certifying the Applicant's homeless status in accordance with the definition in this policy.

K. AHVP – Alternative Housing Voucher Program (STATE ONLY)

L. EXCESSIVE RENT BURDEN (ELDERLY/DISABLED PROGRAM ONLY): The household pays more than 50% of its total monthly income for rent and utilities (excluding telephone, Internet and cable TV)

Verification Requirements:

1. Submission of a fully completed "certificate of excessive Shelter Costs" form ; and
2. Verification of the gross income for ALL household members; and
3. Copies of bills and proof of payment for all utilities listed in the Applicant's name for which s/he actually pays.

M. BHA Resident in Federal Program "Termination of Assistance" due to Lack any household member with eligible immigration status.

Verification requirements:

1. Notice of Termination of Assistance
2. Notice of Private Conference or Notice to Quit.

N. IMMINENT LANDLORD DISPLACEMENT (ELDERLY/DISABLED PROGRAM ONLY) You have not yet been evicted by Court-order BUT your landlord has notified you that you must vacate your dwelling unit through no fault of your own, unrelated to a rent increase, and you have actually vacated the dwelling unit or you will vacate the dwelling unit within the next six (6) months.

Verification requirements:

1. Submission of "Certificate of Involuntary Displacement by Landlord Action" form; and
2. Copies of any notices from the landlord to the Applicant regarding the termination of the tenancy.

The information contained in the above referenced documents must clearly establish to the satisfaction of the BHA that:

1. the action taken by the landlord or property manager was beyond the Applicant's ability to control or prevent;
2. the action of the landlord or property manager occurred despite the Applicant Household having met all previously imposed conditions of occupancy;
3. displacement was not the result of failure to comply with HUD or DHCD policies in its housing programs with respect to occupancy of under-occupied and overcrowded Apartments or failure to accept a Transfer to another Apartment in accordance with a court order or policies or procedures under a HUD/DHCD-approved desegregation plan.

Failure to establish any one of the above referenced elements will result in denial of Priority Status.

Standard (no Priority) Applicants

Standard Applicants who qualify for no priority.

Point System

Within Priority categories, and within the standard "no Priority" category (i.e., standard applicants), Applicants may also receive Preference points.

1. The **Priority point system** used by BHA to process new admissions and transfers for the citywide waiting list for Family Developments is as follows:

Federal Housing Programs:

- Administrative transfers **175 points**
- Emergency transfers **67 points**
- Priority One Applicants **30 points**
- Priority Two Applicants **15 points**
- **Priority Three Applicants 10 points**
- On-Site Under or Over Housed Transfers and Standard Applicants **0 points**

State Housing Programs:

- Emergency Transfers **70 points**
- Priority One Applicants **60 points**
- Priority Two Applicants **50 points**
- Priority Three Applicants **30 points**
- Priority Four Applicants **20 points**
- Priority Five Applicants **10 points**
- **Priority Six Applicants 9 points**
- Under or Over Housed and Standard Applicants **0 points**

2. **Preference points** will be added to Priority points as follows for Applicants for admission only:

- Veterans Preference
 - Families of non-elderly disabled veterans **4 points**
 - Families of deceased veterans **3 points**
 - All other veterans **2 points**
 - ◆ Local Veterans Preference **4 points**
(State Elderly/Disabled Only)
- Non-Elderly Disabled Household **6 points**
(Family Developments only)
- BHA resident in Federal Housing Pro- Rated rent burden (State only) **3 points**
- Designated Housing (Federal Elderly/Disabled Program only)
Elderly 100 points
- Elderly Preference(State Elderly/Disabled Program only) **24 points**
Residency Preference **1 point**

BHA LEASED HOUSING DIVISION ADMINISTRATIVE PLAN

Point System

- (a) The Priority point system used by BHA to process new Admissions on all waiting lists is as follows:
 - Super Priority Applicants 75 points
 - VISIONS / St. Joseph's Priority 50 points
 - Priority One Applicants 30 points
 - Standard Applicants 0 points
- (b) Preference points will be added to Priority points as follows for Applicants for Admission only:
 - Chronically Homeless Preference (single, non-elderly) 6 points
 - Single, Elderly or Disabled 5 Points
 - Disabled Veterans Preference 4 points
 - Families of Deceased Veterans Preference 3 points

All Other Veterans Preference 2 points

Displaced Boston Tenant Preference 2 points

Working Families Preference 1 points

Be advised that the single disable will get only the 6 points if Chronically Homeless or only the 5 points if Disabled and NOT Chronically Homeless AND any other preferences that may be applicable.

Source: www.bostonhousing.org
Accessed 1 June, 2009

Bankruptcy

1. Introduction:

Bankruptcy debtors most commonly choose relief from debt under Chapter 7 of the code.¹ This summary will focus on Chapter 7 relief because it is often most useful for low-income individuals who are seeking to simply and inexpensively free themselves of unmanageable debt. And the majority of our clients are in this group.

Despite enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), which commentators agree prevents certain individuals from filing, bankruptcy is still available as an attractive option for many low-income individuals.² Because our clients are low income and often face unmanageable consume debt loads they will not be prohibited from filing by the provisions of the new law designed to reduce bankruptcy abuse. This summary will describe seven features of bankruptcy for low-income individuals: pre-filing credit counseling; petitions and schedules; automatic stay; debtor's income and means testing; the §341 meeting of the creditors; discharge; and life after bankruptcy, in hopes of making the reader aware of this new law's requirements.

2. Credit Counseling Before Filing:

Under BAPCAP, debtors must take a credit counseling and financial management course before completion of their Chapter 7 (or Chapter 13) bankruptcy.³ The United States Trustee maintains a list of approved credit counselors at <http://www.usdoj.gov/ust/>. A review of the list shows that a \$50.00 credit counseling fee is reasonable and the counseling can be completed by phone, over the internet, or in person. A sample of the national counseling programs is available at <http://www.acc.net/index.html>; or <http://www.moneymanagement.org/OurProgram/bankruptcy-counseling.asp?CMP=OTC-PBCPRAD>.

3. Petition/Schedules – Payment of Fees:

After explaining the counseling obligation to the client, the attorney should begin preparing the petition and appropriate schedules to file with the bankruptcy court serving the area where the individual lives.⁴ A basic filing will include: (1) the petition; (2) schedules of assets and liabilities; (3) a schedule of current income and expenditures; (4) a statement of financial affairs; and (5) a schedule of executory contracts and unexpired leases.⁵ Low-income debtors with primarily consumer debt must also file: a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of any payment from employers received 60 days before filing; a statement of monthly income and any anticipated post-filing change in income or expenses; and a description of debtor's interest in any

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¹ Internal Revenue Service, *Internal Revenue Manual*, Pt. 5 Ch. 9 Sect. 6 (2007), available at <http://apps.irs.gov/irm/part5/ch09s06.html>.

² Northwest Justice Project, *Changes in the Bankruptcy Law That Affect Low-Income People*, pg. 1 (2006), available at <http://www.lawhelp.org/documents/2502810103EN.pdf?stateabbrev=/WA/>.

³ Thomas Adcock, *Pro Bono Bankruptcy Push Trying to Beat the Clock*, *New York Lawyer*, Oct. 7, 2005, available at <http://www.nylawyer.com/display.php/file=/probono/news/05/100705a>.

⁴ Administrative Officers of the United States Courts, *Bankruptcy Basics*, Chapter 7 (3d ed. Apr. 2006), available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html>

⁵ Fed. R. Bankr. P. 1007(b).

qualified education or tuition accounts.⁶ Additionally, the debtor must provide the trustee any unfilled tax returns, their tax return for the most recent year, and all returns that they file while the case is active.⁷ Accordingly, BAPCPA requires debtors to file any overdue tax returns within weeks of filing a Chapter 7 bankruptcy.⁸ If the IRS is a creditor, the debtor must give the service notice of the filing. For married individuals, a husband and wife may choose to file a joint petition or individual petitions, and if the couple files jointly they are only required to pay a single filing fee.⁹

For easy access, the petition and other forms are available on the internet at www.uscourts.gov/bkforms/index.html, not directly from the court. In order to complete the petition and schedules the debtor must provide the following information: (1) a list of all creditors and the amount and nature of their claims; (2) the source, amount, and frequency of the debtor's income; (3) a list of all of the debtor's property; and (4) a detailed list of the debtor's monthly living expenses, *i.e.*, food, clothing, shelter, utilities, taxes, transportation, medicine, etc.¹⁰ Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing because the court so that the court can evaluate the household's financial position.¹¹

At the time of filing, the courts will charge a \$245 case filing fee, a \$39 miscellaneous administrative fee, and a \$15 trustee surcharge. The fees must be paid to the clerk upon filing unless the debtor seeks the court's permission to pay in four installments.¹² If debtor cannot pay an installment, the court may extend the time of any installment, provided that the last installment is paid not later than 180 days after filing the petition.¹³ If the debtor's income is less than 150% of the poverty level (as defined in the Bankruptcy Code) and the debtor is unable to pay the chapter 7 fees even in installments, the court may waive the fees.¹⁴

Under a new provision, attorneys are required to "investigate" debtors' financial claims and are personally responsible for their truthfulness. Pro bono attorneys need not worry, however, because the law exempts 501(c)(3) organizations and their attorneys from this requirement.¹⁵ Recently the Boston Bar Association reduced the problem of conflicts of interest by ensuring that bank clients can grant pro bono attorneys waivers under two conditions: bank debt is \$25,000 or less, secured or unsecured; and the volunteer attorney has not and will not represent the bank with respect to the bankruptcy client.¹⁶

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⁶ Bankruptcy Abuse Prevention and Consumer Protection Act, 11 U.S.C. § 521 (2005).

⁷ *Id.*

⁸ Martindale-Hubbell, *Bankruptcy in Massachusetts* (2007) available at <http://research.lawyers.com/Massachusetts/Bankruptcy-in-Massachusetts.html>

⁹ 11 U.S.C. § 302(a).

¹⁰ Administrative Officers of the United States Courts, *Bankruptcy Basics*, Chapter 7 (3d ed. Apr. 2006), available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html>

¹¹ *Id.*

¹² Deficit Reduction Act, 28 U.S.C. § 1930(a) (2005); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8.

¹³ Fed. R. Bankr. P. 1006.

¹⁴ 28 U.S.C. § 1930(f).

¹⁵ Thomas Adcock, *Pro Bono Bankruptcy Push Trying to Beat the Clock*, New York Lawyer, Oct. 7, 2005, available at <http://www.nylawyer.com/display.php/file=/probono/news/05/100705a>.

¹⁶ *Id.*

4. **Automatic Stay:**

Traditionally, a debtor is protected against most collection actions for the duration of his or her bankruptcy case by an automatic stay of such proceedings.¹⁷ The automatic stay protects most debtors against possible foreclosure or collections actions that his or her creditors might otherwise bring during the bankruptcy case.¹⁸ The BAPCPA includes an exception to the automatic stay, however, for debtors who filed a bankruptcy within the twelve months prior of the current action.¹⁹ Because our clients lack the resources to pay multiple filing fees and have limited access to legal services, they are unlikely to have filed multiple bankruptcies.

5. **Income of Debtor – Means Test needed?:**

Claims filed under BAPCPA must satisfy a means test before a discharge can be granted.²⁰ Under this test, if the debtor's income is below the median income for families in Massachusetts, based on Census Bureau statistics, he or she satisfies the means test.²¹ The "current monthly income" received by the debtor is defined in the Bankruptcy Code as the average monthly income received over the six calendar months before commencement of the bankruptcy case, including regular contributions to household expenses from nondebtors and including income from the debtor's spouse if the petition is a joint petition, but not including social security income or certain payments made because the debtor is the victim of certain crimes.²² For Massachusetts, the median income for a single wage earner is \$54,842; for a family of two, it is \$66,437; for three, \$83,104; and for four, \$100,280, then add \$6,900 for each individual in excess of 4.²³

The great majority of our clients will satisfy the means test by showing their income is below the median for Massachusetts residents. If the debtor makes more than the median income for families in Massachusetts, however, the court will consider the debtor's income over the past six months, along with mortgage and car payments, back taxes and child support due, and school expenses up to \$1,500 per year.²⁴ The debtor fails the means test if, after deducting these amounts, and an IRS-determined living expense standard, the debtor can still pay at least \$6,000 (\$100/month) to unsecured creditors over five years.²⁵ To simplify this determination one may use a Means Test Calculator such as this <http://www.legalconsumer.com/bankruptcy/means-test/index.php>.

Once a debtor demonstrates that he or she satisfies the means test, the attorney should help that person choose one of two "exemption schemes", whichever best suits

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¹⁷ Financial Netting Improvements Act, 11 U.S.C. § 362 (2006).

¹⁸ *Id.*

¹⁹ Internal Revenue Service, *Internal Revenue Manual*, Pt. 5 Ch. 9 Sect. 6 (2007), available at <http://apps.irs.gov/irm/part5/ch09s06.html>.

²⁰ Administrative Officers of the United States Courts, *Bankruptcy Basics*, Chapter 7 (3d ed. Apr. 2006), available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html>

²¹ Martindale-Hubbell, *Bankruptcy in Massachusetts* (2007) available at <http://research.lawyers.com/Massachusetts/Bankruptcy-in-Massachusetts.html>

²² 11 U.S.C. § 101(10A) (2007).

²³ Martindale-Hubbell, *Bankruptcy in Massachusetts* (2007) available at <http://research.lawyers.com/Massachusetts/Bankruptcy-in-Massachusetts.html>

²⁴ *Id.*

²⁵ *Id.*

the debtor's circumstances. Under the first exemption scheme, from federal bankruptcy laws, the debtor can keep:

- His or her home, including co-op or mobile home, to \$20,200
- Life insurance payments for person the debtor depended on or needed for support
- Life insurance policy with loan value, in accrued dividends or interest to \$10,775
- Unmatured life insurance contract, except credit insurance policy
- Alimony, child support needed for support
- Pensions and Retirement Benefits, ERISA - qualified benefits needed for support
- \$525 per item in any household goods up to a total of \$10,775
- Health Aids
- Jewelry to \$1,350
- Lost earnings payments
- His or her motor vehicle to \$3,225
- Personal injury compensation payments to \$20,200, wrongful death payments, crime victims' compensation, public assistance, social security, unemployment compensation, and veterans' benefits
- Tools of trade up to \$20,200 in value
- Wild Card - \$1,075 of any property plus up to \$10,125 of any amount of unused homestead exemption

Married couples may double the amount of these federal exemptions.

If the debtor chooses the second exemption scheme, under Massachusetts bankruptcy laws, he or she can keep:

- His or her home, if equity value in the house is not more than \$500,000 (today's value less costs of sale less payoff balances on all liens and mortgages)
- His or her car, if the equity value in the vehicle is not more than \$750 (today's value less costs of sale less payoff balances on all liens and mortgages)
- Necessary clothing, beds and bedding, one heating unit for warming your home and \$75 per month to pay utility bills
- Household furniture, up to \$3,000 in value
- Bibles, school books and family library, up to \$200 in value
- Two cows, 12 sheep, two swine and four tons of hay
- Tools of trade up to \$500 in value
- Materials and stock of trade, up to \$500 in value
- Food, other necessary consumables or cash for such provisions, up to \$300 in value
- Burial plots, tombs and one church pew
- Boats, fishing tackle and nets of a fisherman if they are actually used in his or her business, up to \$500 in value
- Uniform of an officer or soldier in the militia and the arms and accoutrements required by law to be kept by him or her
- One sewing machine, up to \$200 in value
- Share in cooperative associations, up to \$100 in total value
- \$200 per month for rent, if he or she does not claim a homestead exemption
- Cash, bank accounts and wages for each pay period, up to \$125 total
- Trust company, bank or credit union deposits to \$500
- ERISA-qualified pension benefits
- Private retirement benefits
- Public employees' and savings bank employees' pensions
- Disability benefits, up to \$400 per week

- Fraternal benefit society benefits
- Group annuity policy or proceeds
- Medical malpractice self-insurance
- Group life insurance policy
- Life or endowment policy, proceeds or cash value
- Exempt life insurance annuity contracts
- Life insurance proceeds if a clause in the policy prohibits the proceeds from being used to pay the beneficiary's creditors
- AFDC, aid to the aged and/or disabled, workers' compensation, unemployment compensation and veterans' benefits
- Property of a business partnership²⁶

A Chapter 7 liquidation is administered by a trustee who collects the debtor's assets, reduces those assets to cash, and distributes the funds to creditors in the priority set forth in 11 USC § 726.²⁷ The case trustee is appointed by the US Trustee's Office or elected by creditors.²⁸ The trustee is then accountable to the court for all actions taken on the case.²⁹

6. Meeting of Creditors (§ 341):

The trustee will notify the debtor and all creditors of a meeting of creditors he or she will schedule 20 to 40 days after the petition is filed.³⁰ During this meeting, the debtor will be put under oath and available for questioning by both the trustee and creditors. It is not uncommon, however, for creditors to forego a meeting regarding a low-income debtor with primarily consumer debt and no assets. Alternatively, it is crucial that the debtor attend the meeting and answer all questions about his or her financial affairs and property.³¹ During the meeting "the trustee will [sometimes] ask for additional verification to document the petition (e.g. pay stubs, bank statements and pension documents), which the debtor must provide."³² The debtor should be aware that a discharge through bankruptcy is a privilege that can be withheld if he or she does not cooperate.

Within 10 days after the meeting, the trustee must report to the court whether the case should be presumed to be an abuse under the means test described in 11 U.S.C. § 704(b).³³ If all the debtor's assets are exempt or subject to valid liens, however, the trustee will file a "no asset" report with the court and there will be no distribution to unsecured creditors.³⁴

7. Discharge:

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²⁶ Martindale-Hubbell, *Bankruptcy in Massachusetts* (2007) available at <http://research.lawyers.com/Massachusetts/Bankruptcy-in-Massachusetts.html>

²⁷ Internal Revenue Service, *Internal Revenue Manual*, Pt. 5 Ch. 9 Sect. 6 (2007), available at <http://apps.irs.gov/irm/part5/ch09s06.html>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Administrative Officers of the United States Courts, *Bankruptcy Basics*, Chapter 7 (3d ed. Apr. 2006), available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html>

³¹ 11 U.S.C. § 343 (1986).

³² Administrative Officers of the United States Courts, *Bankruptcy Basics*, Chapter 7 (3d ed. Apr. 2006), available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html>

³³ *Id.*

³⁴ *Id.*

A Chapter 7 bankruptcy will usually cause the client's debts to be discharged. The right to a discharge, however, is not absolute. Accordingly, the court may deny a discharge if it finds that the debtor:

- (1) Failed to keep or produce adequate books or financial records;
- (2) Failed to explain satisfactorily any loss of assets;
- (3) Committed a bankruptcy crime such as perjury;
- (4) Failed to obey a lawful order of the bankruptcy court;
- (5) Fraudulently transferred, concealed, or destroyed property that would have become property of the estate; or
- (6) Failed to complete an approved instructional course concerning financial management.³⁵

Moreover, a bankruptcy discharge will not extinguish a lien on debtor's property.

After a discharge, the debtor may be able to keep certain secured property (such as an automobile) if he or she "reaffirms" the debt.³⁶ By reaffirming, the debtor agrees to remain liable and pay all or a portion of the money owed to the creditor, even though the debt would have been discharged.³⁷ In return, the creditor agrees to allow the debtor to retain possession of the property as long as he or she continues to pay the debt. For a reaffirmation to be valid, the debtor must sign a written reaffirmation agreement and file it with the court.³⁸ If an attorney assisted the debtor's reaffirmation, the attorney must certify in writing the debtor was made aware of the consequences of the agreement, including the effect of a default under the agreement.³⁹

Debts not discharged include debts for:

- (1) Alimony and child support;
- (2) Certain taxes;
- (3) Most student loans;
- (4) Loans made or guaranteed by a governmental unit;
- (5) Willful and malicious injury by the debtor to another entity;
- (6) Death or personal injury caused by the debtor's intoxicated operation of a motor vehicle;
- (7) Certain criminal restitution orders;
- (8) Fraudulent debts;
- (9) Fines or penalties of government agencies;
- (10) Cash advances of \$825 within 70 days of filing; or
- (11) More than \$550 for luxury goods bought within 90 days of filing.⁴⁰

The debtor will continue to be liable for these types of debts to the extent that the debt has not been paid in the chapter 7 case.

If debtor has secured a portion of his or her debt with property, the debtor's petition must include a statement of intention indicating what the debtor proposes to do with

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³⁵ Bankruptcy Abuse Prevention and Consumer Protection Act, 11 U.S.C. § 727 (2005); *See* Fed. R. Bankr. P. 4005.

³⁶ Administrative Officers of the United States Courts, *Bankruptcy Basics*, Chapter 7 (3d ed. Apr. 2006), available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html>

³⁷ *Id.*

³⁸ Bankruptcy Abuse Prevention and Consumer Protection Act, 11 U.S.C. § 524(c) (2005).

³⁹ Administrative Officers of the United States Courts, *Bankruptcy Basics*, Chapter 7 (3d ed. Apr. 2006), available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html>

⁴⁰ Bankruptcy Abuse Prevention and Consumer Protection Act, 11 U.S.C. § 523(a) (2005).

the property.⁴¹ The lien on the property will be "avoided" if the property's value can be exempted under. Avoidance discharges the debt and leaves the debtor in possession of the property.⁴² If the property is only partially exempt (for example a house worth \$25,000 where only \$7,500 can be exempted) the court will not avoid the lien. For example, if a house worth \$7,500 is totally exempt, using the \$7,500 exemption for houses, all liens on the house of any amount may be avoided. Additionally, if a house is worth \$10,000 and there is a \$6,000 lien on it, the court will exempt \$7,500 and avoid all but \$2,500 of the lien.

More complicated issues arise where the debtor has some non-exempt assets, the code provides rules for how those assets are to be turned over to the trustee and distributed to the various creditors.⁴³ To avoid distribution, debtors can often keep the assets by paying the trustee the value of the non-exempt assets. The rules of non-exempt assets are beyond the scope of this summary. Though in the example above where the \$2,500 of the value of debtor's house is non-exempt, that debtor can avoid having to sell the house by arranging to pay to the trustee \$2,500 for distribution to the creditors.

Finally, after the meeting of the creditors and after the trustee has considered objections from the creditors the trustee will report to the creditors and the Bankruptcy Court.⁴⁴ For most low-income debtors, the trustee will find no non-exempt assets and will report the case to the creditors as a "no asset" case.⁴⁵ Assuming no objections are filed, the Bankruptcy Court will grant the debtor's discharge.

8. **Post-Discharge:**

Debtors considering filing for bankruptcy often worry how a discharge of their debts will affect their credit and reputation. If successful, a bankruptcy will become part of the debtor's credit history for 10 years.⁴⁶ Though the bankruptcy is included a debtor's credit history, it will not likely prevent the debtor from obtaining future grants of credit depending on the debtor's current financial situation.⁴⁷ In fact, it is illegal in many situations to discriminate against someone for having filed for bankruptcy. For example:

- (1) Governmental units may not discriminate based upon a previously discharged debt;
- (2) Housing authorities and student loan agencies cannot deny benefits to a client based on a previously discharged debt;
- (3) Utilities may not deny service based upon a bankruptcy or discharged debts; and

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⁴¹ Administrative Officers of the United States Courts, *Bankruptcy Basics*, Chapter 7 (3d ed. Apr. 2006), available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html>

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Employee Assistance Program, *The Bankruptcy Process* (Oct. 2005), available at http://www.eap.partners.org/WorkLife/Legal/Bankruptcy/Bankruptcy_Process.asp.

⁴⁵ *Id.*

⁴⁶ Administrative Officers of the United States Courts, *Bankruptcy Basics*, Chapter 7 (3d ed. Apr. 2006), available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html>

⁴⁷ *Id.*

(4) Private employers cannot discriminate with respect to employment or terminate employment based upon bankruptcy or debts discharged in bankruptcy.⁴⁸

Accordingly, debtors are often surprised to discover that a credit card application is often the first pieces of mail he or she receives after a successful discharge.⁴⁹ It is crucial, however, for the debtor to be aware that while credit will still be available to them he or she cannot receive another bankruptcy discharge for 10 years. Therefore, it often falls to the debtor's attorney to ensure that his or her client understands the serious problems that unmanageable post-discharge debt could create.

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⁴⁸ Employee Assistance Program, *The Bankruptcy Process* (Oct. 2005), available at http://www.eap.partners.org/WorkLife/Legal/Bankruptcy/Bankruptcy_Process.asp.

⁴⁹ *Id.*

Student Loans

Payment Options

- **Level Repayment Schedule**
 - The monthly installment amount remains the same throughout repayment, although small changes in the monthly installment amount may occur for loans with a variable interest rate if the annual interest rate increases.
- **Graduated Repayment Schedule**
 - This repayment schedule is designed knowing that borrowers should make more money as they progress in their careers. Payments are initially lower and then increase later in the repayment schedule.
- **Income Sensitive Repayment**
 - This is the most flexible plan, but it can be the most expensive in the long run, and you must reapply annually. The monthly payment amount will be established based on your gross monthly income and student loan debt.
 - You provide your lender/servicer with information about your total gross monthly income received from all sources. Your income information cannot be more than 90 days old. If married, do not include your spouse's income.
 - If the student loan repayment options above do not fit into your budget, contact your lender or servicer to see if you qualify for the 25 Year Extended Repayment Plan.
- **Change Your Due Date**
 - If you fall behind because your student loan is due the same week as the mortgage, car payment and other big bills, contact your lender or servicer to see if you can change the due date.
- **Consolidation**
 - School loan consolidation results in lowered debt and payments if the average interest after consolidation is lower than it is before.
 - Keep federal and private loans separate when consolidating
 - Each lender has different qualification requirements for refinancing. Most lenders require that none of your loans be in "in-school" status - that is, you cannot be currently paying for education using an active student loan. Some lenders have a minimum balance requirement, and that balance is arbitrary. To find out what each lender requires, visit the lenders
- When you refinance your student loans, you can reduce your monthly payments either by getting a lower interest rate, or by extending the duration of your loan. Of the two methods, getting a lower interest rate is preferable since you are also reducing your long-term student loan debt.
- **Deferment**
 - A **deferment** is when the lender/servicer grants a temporary suspension of monthly payments.
 - **Qualifications for Deferment:**
 - Unemployed or working less than 30 hours a week
 - Enrolled in school full-time or half-time
 - Temporarily disabled
 - In graduate school
 - In an internship/residency program
 - Having an economic hardship (a deferment for borrowers who earn less than minimum wage or exceed a federally defined debt-to-income ratio. A borrower may also be eligible if he or she is receiving state or federal aid or is a Peace Corps volunteer)
 - In the military or providing a public service
 - Teaching in a teacher-shortage area
 - In a rehabilitation training program
 - Pregnant or caring for a newborn
 - Monthly student loan payments equal to or exceed 20% of your gross monthly income
- **Forbearance**

- **Forbearance** is a temporary suspension of monthly payments that is granted under certain circumstances by your lender/servicer. You'll still be responsible for paying the interest that's accrued, so it's always smarter to try to get a deferment first
- **Qualifications for Forbearance:**
 - Qualified under the Student Loan Repayment Program administered by the U.S. Department of Defense
 - A mobilized member of the National Guard or Reserves experiencing temporary and unexpected financial hardship
 - Currently serves in a National and Community Service position (AmeriCorps)
 - Internship or Residency
 - Temporary Hardship

Consequences of Defaulting on Student Loans:

- No more financial aid.
- The entire student loan is due in full.
- Collection costs up to 19.5 % could be added to your student loan.
- The defaulted loan will appear on your credit report for up to seven years.
- Your employer could be served a legal garnishment notice requiring them to forward 15% of your pay towards repayment of your loan.
- Your income tax refunds could be withheld and applied toward your loan repayment.

Bankruptcy Hardship Rules for Student Loans

- In the normal course of bankruptcy, student loans will not be discharged or forgiven. However, after the proceedings are over, an adversary proceeding can take place in bankruptcy court to decide if you meet all three of the hardship rules or tests.
- In this adversary proceeding, the student loan creditors will be present to challenge your hardship request. You must be able to satisfy all three of the following tests in the eyes of the court:
 - If you were forced to repay the student loan, then you will not be able to maintain a minimal standard of living.
 - You are able to present evidence that this financial hardship will continue for a significant period of time over the remaining term of the student loan.
 - A good faith effort was made to repay your student loan before you filed for bankruptcy. Effectively this means you have been faithfully repaying your college loan for a minimum of five years.
- If your loan is discharged, you will not have to repay the remainder of the money owed these creditors. However, you may have trouble getting a student loan of any kind in the future.

Source: <http://www.studentdoc.com/student-loan-debt.html>

Visited 1 June, 2009

Sealing/Expunging Criminal Records

What is on CORI?:

Criminal Offender Record Information (CORI) is a database of records of Massachusetts criminal history. The CORI database contains information generated by courts, including any incidents when an individual was arraigned on a criminal charge, but does not include records of arrests, jail, or probation.

Who Can See CORI?:

CORI information is general not publicly accessible, but exceptions have been made for the following parties:

1. *Criminal justice agencies*, including police, prosecutors, judges, probation and parole officers, and prison officials, have direct access to CORI through a Probation Central File (PCF) terminal. The CORI available to these agencies includes all criminal charges and convictions, as well as an indication of sealed records, which the agent can then petition a court temporarily to unseal the record.
2. *Agencies & individuals required by statute to have access*. The statutory grant of access will specify the information given to the agent. A typical grant of access by statute is the one given to local liquor control commissions, who do not receive an indication that a sealed record exists.
3. *Anyone who can show the public interest in disclosing CORI outweighs the CORI subject's privacy interest in non-disclosure*. Currently, about 10,000 organizations have been certified to access CORI, and submit 1.4 to 1.5 million requests per year. Access by these organizations is usually limited to cases that either end in conviction or are currently pending.
4. *Legislatively Authorized Agencies*, many certified organizations have since been given statutory access including:
 - Housing authorities; that are allowed to see cases ending in conviction or that are still pending, in order to screen applicants for public or subsidized private housing.
 - Nursing homes; that can use CORI information to screen all applicants who will directly give personal care to residents. The additional CORI information made available, includes convictions, exonerations, and cases that were dismissed or resolved *Nolle Prosequi*.
 - Massachusetts Departments of Social Services and Youth Services; (DSS and DYS) that can use CORI to evaluate adoptive or foster parent applications, but not necessarily applicants for employment. These agencies are given information on all conviction, arrest, juvenile, and sealed record data.
 - Department of Early Education and Care; (DEEC) that is allowed to access CORI for evaluating private or public child care facilities or non-relative in-home child care providers currently receiving government funding. DEEC is given the same CORI information as are DSS and DYS.
 - Child Support Enforcement Division; has access to CORI to establish paternity, enforce child support obligations, and protect children. For that purpose, Child Support Enforcement can access the DEEC reports, get information on incarceration and rehabilitation, and access the interstate systems. This report also includes psychological and behavioral assessment information.
 - Child-Serving Organizations; that are required to perform CORI checks on employees and volunteers. Organizations running children's camps and other programs for children have access to conviction and non-conviction data as well as an indication of sealed records in CORI. Schools have access to data on convictions and non-convictions but not juvenile or sealed records, in order to screen its employees, volunteers, and contracted taxi-cab drivers.

Effective May 16, 2008 agencies processing CORI requests must verify the identity of the subject of the request with a government issued photo id or birth certificate or social security card. If the subject of the inquiry is not available to appear in person for verification, the agency may accept legible copies of identification prior to verification. Agency's must now provide the subject of the CORI request with a copy of the results of the CORI (unless it is a "no record" response). The agency must also provide the subject with copies of CHSB's Information Concerning the Process for Correcting a Criminal Record.

5. A crime victim, witness, or family member of a homicide victim can seek CHSB certification that allows them to view the perpetrator's CORI. Additionally, evaluative information is divulged if it is deemed reasonably necessary to the security of the applicant.
6. A member of the general public, while the "CORI curtain is up." The general public can access CORI for an individual who has been convicted of a crime with a potential sentence of five years or more from the point of conviction until: (1) one year after the end of incarceration or supervision for misdemeanors; (2) two years after the end of incarceration or supervision for felonies; or (3) three years after the end of incarceration or supervision for felonies if the individual was denied parole.
7. The CORI subject can request a CORI report that describes his or her convictions, non-convictions, and indications of sealed records. The requester must include a \$25 fee payment or an affidavit of indigency.

The CHSB have recently tightened their practices for scrubbing records. Today, scrubbing of records should ensure that the requesting parties are not given more information (e.g. indications of sealed records) than he or she is entitled to.

How Does CORI Affect Employment?:

Massachusetts employers are not permitted to ask about non-convictions, sealed records, certain types of simple misdemeanors, or misdemeanors if the incarceration and supervision ended more than 5 years ago. To verify the applicant's answer to such a question the employer can obtain the CORI record with the applicant's permission. The employer, however, cannot ask an applicant to get a copy of his or her own CORI and give it to the employer. If an applicant is rejected, he or she has a right to know which portion of the CORI caused an employer to terminate or reject the application and to review the employer's CORI copy for accuracy. Ultimately, the employee should have an opportunity to explain why the CORI is not relevant.

How to Seal a Record:

For cases ending in a conviction:⁵⁰

1. For a misdemeanor, 10 years must have passed since the termination of a court supervision, probation, or sentence.
For a felony, 15 years must have passed since the termination of court supervision, probation, or sentence. (Some judges will consider a petition after 12 years.)
2. Applicant must not have been found guilty of any criminal offense in Massachusetts or any other state in the 10 years before the request (except motor vehicle offenses not exceeding a fine of \$50).
3. Applicant's offense does not relate to:
 - a) Improper sale/use of firearms and ammunition; improper acquisition of firearm, license/firearm identification card; or
 - b) Perjury, bribery, intimidating witnesses, escape from jail, delivering substance to prisoners, furnishing false information to law enforcement officer or official; or
 - c) Illegal conduct by a public official and government employee.

For cases ending favorably (i.e. not with a conviction):

1. Applicants are required to complete the triplicate form available from the court or OCP.
2. The nature of the disposition then determines the process:
 - a) If a grand jury failed to indict the petitioner, the Commissioner will automatically seal the record.
 - b) If the factfinder finds the petitioner not guilty, the petitioner must show a "compelling state interest" in sealing that overcomes the public's First Amendment interest in an open public record. Usually a showing that the petitioner is likely to lose employment or housing opportunities is interpreted as a sufficient state interest to permit sealing.
 - c) If the case is *not proessed* by the prosecutor or dismissed by the court, the petitioner must meet the same compelling state interest standard. Sealing, in these circumstances, requires two hearings: first, a hearing where the petitioner must establish a compelling state interest; and second, a hearing at which the prosecutor, probation office, or victim can contest the petition.

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⁵⁰ As of April 6, 2009 the below standards for sealing a record remain in effect. However, on Jan. 11 2008, House Bill No. 4476 was submitted to the Senate and House. The original bill proposed reducing the time individuals must wait to seal their criminal records to ten years in the case of felonies and five years in the case of misdemeanors. The bill also proposes that sex offenses would not be eligible for sealing. This bill has not yet come into law.

What is the Sealing Process?:

When records of criminal appearances and criminal dispositions are sealed by the commissioner, he/she will notify the clerk and the probation officer of the courts in which the convictions or dispositions have occurred, or other entries have been made of such sealing. The clerks and probation officers will also seal records of the same proceeding in their files.

What are the Consequences of Sealing a Record?:

Sealing a record protects an individual with autonomy and statutory mechanisms. For example, though employers can ask whether an individual has a criminal record, a person with a sealed record can answer "no record." Additionally, sealed records have no effect on the examination, appointment, or application of any person for public office in Massachusetts. The records are not admissible in evidence or use in any court proceeding or hearing before any board or commission, except in imposing sentence in subsequent criminal proceedings.

Source: The CORI Reader By Ernest Winsor, Esq.
Mass. Law Reform Institute
3d Ed.-2d Rev., 7/14/2006

Sealing Records and the FBI

When attempting to seal a record of a client pursuant to Mass. Gen. Laws Ann. Ch. 276 Section 100A or 100C, please note that, if there is a fingerprint record as a result of an arrest, this action does not seal the record in the FBI files.

However, while the FBI does not seal records, they recognize and accept state court orders to remove fingerprint information from their records. At the time you are attempting to have the state record sealed, you should also request a court order directed to the Massachusetts State Police State Identification Section and the FBI to remove the fingerprint information from their records.

If you have already gotten a case sealed, you could go back into court where the initial arraignment and subsequent sealing took place and request court orders doing the same as stated above.

The court order should contain sufficient identifying information of this individual and the underlying sealed charge/s so the correct record is removed.

Please note that this procedure is not codified by statute or regulation and thus, is in the discretion of the judge who is presented with the motion. However, the FBI recognizes these court orders to remove the information.

Outstanding Warrants

- Gives police permission to arrest you on the spot.
- Best handled immediately, by an experienced criminal defense lawyer.
- If a bench warrant for a missed court appearance, a lawyer can help avoid penalties.

Change of probation location

- Tell the probation officer

Identity theft

What Should I Do If I've Become A Victim Of Identity Theft?

- Contact the Federal Trade Commission (FTC) to report the situation, whether Online, By telephone toll-free at 1-877-ID THEFT (877-438-4338) or TDD at 202-326-2502, or By mail to Consumer Response Center, FTC, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.
- You can also call your local office of the FBI or the U.S. Secret Service to report crimes relating to identity theft and fraud.

- You may also need to contact other agencies for other types of identity theft:
 - Your local office of the Postal Inspection Service if you suspect that an identity thief has submitted a change-of-address form with the Post Office to redirect your mail, or has used the mail to commit frauds involving your identity;
 - The Social Security Administration if you suspect that your Social Security number is being fraudulently used (call 800-269-0271 to report the fraud);
 - The Internal Revenue Service if you suspect the improper use of identification information in connection with tax violations (call 1-800-829-0433 to report the violations).

Call the fraud units of the three principal credit reporting companies:

❖ Equifax:

- To report fraud, call (800) 525-6285 or write to P.O. Box 740250, Atlanta, GA 30374-0250.
- To order a copy of your credit report (\$8 in most states), write to P.O. Box 740241, Atlanta, GA 30374-0241, or call (800) 685-1111.
- To dispute information in your report, call the phone number provided on your credit report.
- To opt out of pre-approved offers of credit, call (888) 567-8688 or write to Equifax Options, P.O. Box 740123, Atlanta GA 30374-0123.

❖ Experian (formerly TRW)

- To report fraud, call (888) EXPERIAN or (888) 397-3742, fax to (800) 301-7196, or write to P.O. Box 1017, Allen, TX 75013.
- To order a copy of your credit report (\$8 in most states): P.O. Box 2104, Allen TX 75013, or call (888) EXPERIAN.
- To dispute information in your report, call the phone number provided on your credit report.
- To opt out of pre-approved offers of credit and marketing lists, call (800) 353-0809 or (888) 5OPTOUT or write to P.O. Box 919, Allen, TX 75013.

❖ Trans Union

- To report fraud, call (800) 680-7289 or write to P.O. Box 6790, Fullerton, CA 92634.
- To order a copy of your credit report (\$8 in most states), write to P.O. Box 390, Springfield, PA 19064 or call: (800) 888-4213.
- To dispute information in your report, call the phone number provided on your credit report.
- To opt out of pre-approved offers of credit and marketing lists, call (800) 680-7293 or (888) 5OPTOUT or write to P.O. Box 97328, Jackson, MS 39238.

- Contact all creditors with whom your name or identifying data have been fraudulently used. For example, you may need to contact your long-distance telephone company if your long-distance calling card has been stolen or you find fraudulent charges on your bill.
- Contact all financial institutions where you have accounts that an identity thief has taken over or that have been created in your name but without your knowledge. You may need to cancel those accounts, place stop-payment

orders on any outstanding checks that may not have cleared, and change your Automated Teller Machine (ATM) card, account, and Personal Identification Number (PIN).

- Contact the major check verification companies (listed in the CalPIRG-Privacy Rights Clearinghouse checklist) if you have had checks stolen or bank accounts set up by an identity thief. In particular, if you know that a particular merchant has received a check stolen from you, contact the verification company that the merchant uses:
 - CheckRite -- (800) 766-2748
 - ChexSystems -- (800) 428-9623 (closed checking accounts)
 - CrossCheck -- (800) 552-1900
 - Equifax -- (800) 437-5120
 - National Processing Co. (NPC) -- (800) 526-5380
 - SCAN -- (800) 262-7771
 - TeleCheck -- (800) 710-9898

How do I prove that I'm an identity theft victim?

- Applications or other transaction records related to the theft of your identity may help you prove that you are a victim.

Should I apply for a new Social Security number?

- Under certain circumstances, the Social Security Administration may issue you a new Social Security number - at your request - if, after trying to resolve the problems brought on by identity theft, you continue to experience problems.
 - Consider this option carefully. A new Social Security number may not resolve your identity theft problems, and may actually create new problems. For example, a new Social Security number does not necessarily ensure a new credit record because credit bureaus may combine the credit records from your old Social Security number with those from your new Social Security number. Even when the old credit information is not associated with your new Social Security number, the absence of any credit history under your new Social Security number may make it more difficult for you to get credit. And finally, there's no guarantee that a new Social Security number wouldn't also be misused by an identity thief.

Why Create an Identity Theft Report

- An Identity Theft Report is a police report with more than the usual amount of detail.
- Normal police reports often don't have many details about the accounts that were opened or misused by identity thieves.
- When you file your Identity Theft Report, the credit reporting companies will permanently block fraudulent information from appearing on your credit report.
- The printed FTC ID Theft Complaint, in conjunction with the police report, can constitute an Identity Theft Report and entitle you to certain protections. This Identity Theft Report can be used to (1) permanently block fraudulent information from appearing on your credit report; (2) ensure that debts do not reappear on your credit report; (3) prevent a company from continuing to

collect debts that result from identity theft; and (4) place an extended fraud alert on your credit report.

Creating an Identity Theft Report

- 1) Go to <https://www.ftccomplaintassistant.gov/> and fill it out, then print it out.
- 2) File a report with your local police or the police in the community where the identity theft took place.

If the police are reluctant to take your report, ask to file a "Miscellaneous Incident" report, or try another jurisdiction, like your state police. You also can check with your state Attorney General's office to find out if state law requires the police to take reports for identity theft.

- When you go to your local police department to file your report, bring a printed copy of your FTC ID Theft Complaint form, your cover letter, and your supporting documentation. The cover letter explains why a police report and an ID Theft Complaint are so important to victims.
- Ask the officer to attach or incorporate the ID Theft Complaint into their police report. Tell them that you need a copy of the Identity Theft Report (the police report with your ID Theft Complaint attached or incorporated) to dispute the fraudulent accounts and debts created by the identity thief. (In some jurisdictions the officer will not be able to give you a copy of the official police report, but should be able to sign your Complaint and write the police report number in the "Law Enforcement Report" section.)

Source: <http://www.ftc.gov/bcp/edu/microsites/idtheft/>
Accessed 1 June, 2009

CORI FORM - INTERPRETING DISPOSITION CODE

APP	Appeal	MT (or MIS)	Mistrial
APP WD	Appeal Withdrawn	NOB	No Bill
B	Bail	NF	No Finding
			Nolle Prosequi (or Not
BO	Bound Over	NP	Prossed)
CJ	City Jail (or Common Jail)	NOLO	Nolo Contendere
CMTD	(or		
COM)		NOPL	No Plea
	Committed		
	Community Alcohol Safety		
CASP	Program	NPC	No Probable Cause
CMNTY SRV	Community Service	NDEL	Not Delinquent
CONC	Concurrent	NG	Not Guilty
CONS	Consectutive	NOS	Notice of Surrender
C	Continued	PD (or \$PD)	Paid
CWF	Continued with a Finding	PARD	Pardoned
CWOF	Continued without a Finding	PARD	Parole
CC	Court Costs	PAR REV	Parole Revoked
DY	Day(s)	PROB	Probation
DD	Day to Day	PROB EXTEN	Probation Extended
DF	Default	PROG	Program
D/R	Default Removed	RED	Reduced Charge
DEL	Delinquent	REL	Released
DYS	Department of Youth Services	ROR	Released on Recognizance
		RMT	(or
DISCH	Discharged	REMIT)	
DISM	Dismissed	REM	Removed
	Dismissed at Leave of		
DLP	Prosecution	REST	Restitution
	Dismissed at Request of		
DRC	Complaintant	RVSD	Revised
	Dismissed at Request of		Revised and Revoke
DRP	Prosecution	R/R	Sentence
DWOP	Dismissed Without Prejudice	RVK	Revoked
EXTN	Extended/Extention	SENT	Sentence
			Sexually Dangerous
FEE	Fee	SDP	Person
FILE	Case Filed	SPS	Split Sentence
FINE	Fine First Instance Jury Trial	STAY	Stay of Order or Sentence
FJ	First Instance Jury Trial	SUP (or SUPP)	Support
FRTH	Forthwith	SF	Surfine
F&A	From & After (not concurrent)	SURR	Surrendered
FROM/AFT	From & After	SURR DEF	Surrendered on a Default
G	Guilty	SS	Suspended Sentence
			Suspended Sentence
GJ	Grand Jury	SS RVK	Revoked
HC	House of Corrections	TERM	Terminated
INDF	Indefinitely	VAC	Vacated
			Violation of Probation
INDT	Indeterminate	VN	Notice
			Violation of Probation
IND	Indictment	VOP	Finding
INDICT	Referred to a Grand Jury	VWF	Victim Witness Fund
JT	Jury Trial	WAR	Warrant

LIFE

Life

WAR/WD

Warrant Withdrawn

Interpreting Status Codes

C Case Closed
O Open or Pending Case
W Outstanding Warrant
VPH Violation or Probation Hearing

WPD

If a warrant was issued to a particular police department, that police department name should follow that "WPD." If none appears, disregard the entry.

MEMORANDUM

To: Law Enforcement Officer
From: Division of Privacy and Identity Protection
The Federal Trade Commission
Re: Importance of Identity Theft Report

The purpose of this memorandum is to explain what an "Identity Theft Report" is, and its importance to identity theft victims in helping them to recover. A police report that contains specific details of an identity theft is considered an "Identity Theft Report" under section 605B of the Fair Credit Reporting Act (FCRA), and it entitles an identity theft victim to certain important protections that can help him or her recover more quickly from identity theft.

Specifically, under sections 605B, 615(f) and 623(a)(6) of the FCRA, an Identity Theft Report can be used to permanently block fraudulent information that results from identity theft, such as accounts or addresses, from appearing on a victim's credit report. It will also make sure these debts do not reappear on the credit reports. Identity Theft Reports can prevent a company from continuing to collect debts that result from identity theft, or selling them to others for collection. An Identity Theft Report is also needed to allow an identity theft victim to place an extended fraud alert on his or her credit report. A copy of these sections of the FCRA is enclosed.

In order for a police report to be considered an Identity Theft Report, and therefore entitle an identity theft victim to the protections discussed above, the police report must contain details about the accounts and inaccurate information that resulted from the identity theft. We advise victims to bring a printed copy of their ID Theft Complaint filed with the FTC with them to the police station in order to better assist you in creating a detailed police report so that these victims can access the important protections available to them if they have an Identity Theft Report. The victim should sign the ID Theft Complaint in your presence. If possible, you should attach or incorporate the ID Theft Complaint into the police report, and sign the "Law Enforcement Report Information" section of the FTC's ID Theft Complaint. In addition, please provide the identity theft victim with a copy of the Identity Theft Report (the police report with the victim's ID Theft Complaint attached or incorporated) to permit the victim to dispute the fraudulent accounts and debts created by the identity thief.

For additional information on Identity Theft Reports or identity theft, please visit our website at <http://www.ftc.gov/bcp/edu/microsites/idtheft/>.

Enclosures: FCRA Sections 605B, 615(f), 623(a)(6)

ENCLOSURE:

FCRA 605B (15 U.S.C. § 1681c-2) Block of Information Resulting from Identity Theft

(a) Block

Except as otherwise provided in this section, a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, not later than 4 business days after the date of receipt by such agency of--

- (1) appropriate proof of the identity of the consumer;
- (2) a copy of an identity theft report;
- (3) the identification of such information by the consumer; and
- (4) a statement by the consumer that the information is not information relating to any transaction by the consumer.

(b) Notification

A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under subsection (a) of this section--

- (1) that the information may be a result of identity theft;
- (2) that an identity theft report has been filed;
- (3) that a block has been requested under this section; and
- (4) of the effective dates of the block.

(c) Authority to decline or rescind

(1) In general

A consumer reporting agency may decline to block, or may rescind any block, of information relating to a consumer under this section, if the consumer reporting agency reasonably determines that--

- (A) the information was blocked in error or a block was requested by the consumer in error;
- (B) the information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request to block; or
- (C) the consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.

(2) Notification to consumer

If a block of information is declined or rescinded under this subsection, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under section 1681i(a)(5)(B) of this title.

(3) Significance of block

For purposes of this subsection, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block.

(d) Exception for resellers

(1) No reseller file

This section shall not apply to a consumer reporting agency, if the consumer reporting agency--

- (A) is a reseller;
- (B) is not, at the time of the request of the consumer under subsection (a) of this section, otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and
- (C) informs the consumer, by any means, that the consumer may report the identity theft to the Commission to obtain consumer information regarding identity theft.

(2) Reseller with file

The sole obligation of the consumer reporting agency under this section, with regard to any request of a consumer under this section, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use, if--

- (A) the consumer, in accordance with the provisions of subsection (a) of this section, identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and
- (B) the consumer reporting agency is a reseller of the identified information.

(3) Notice

In carrying out its obligation under paragraph (2), the reseller shall promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and

telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

(e) Exception for verification companies

The provisions of this section do not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments; except that, beginning 4 business days after receipt of information described in paragraphs (1) through (3) of subsection (a) of this section, a check services company shall not report to a national consumer reporting agency described in section 1681a(p) of this title, any information identified in the subject identity theft report as resulting from identity theft.

(f) Access to blocked information by law enforcement agencies

No provision of this section shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this title.

ENCLOSURE:

FCRA 615(f) (15 U.S.C. § 1681m(f)) Requirements on Users of Consumer Reports – Prohibition on Sale or Transfer of Debt Caused by Identity Theft

(f) Prohibition on sale or transfer of debt caused by identity theft

(1) In general

No person shall sell, transfer for consideration, or place for collection a debt that such person has been notified under section 1681c-2 of this title has resulted from identity theft.

(2) Applicability

The prohibitions of this subsection shall apply to all persons collecting a debt described in paragraph (1) after the date of a notification under paragraph (1).

(3) Rule of construction

Nothing in this subsection shall be construed to prohibit--

(A) the repurchase of a debt in any case in which the assignee of the debt requires such repurchase because the debt has resulted from identity theft;

(B) the securitization of a debt or the pledging of a portfolio of debt as collateral in connection with a borrowing; or

(C) the transfer of debt as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the assets of an entity.

ENCLOSURE:

FCRA 623(a)(6) (15 U.S.C. § 1681s-2(a)(6)) Responsibilities of Furnishers of Information to Consumer Reporting Agencies – Duties of Furnishers upon Notice of Identity Theft-Related Information

(6) Duties of furnishers upon notice of identity theft-related information

(A) Reasonable procedures

A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 1681c-2 of this title relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information.

(B) Information alleged to result from identity theft

If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

Sex Offender Registration and Classification: Procedures for Challenging

A sex offender⁵¹ in the Commonwealth of Massachusetts⁵² who has been convicted or adjudicated for a sex offense⁵³ must register with the Sex Offender Registry Board (the "Board"), an administrative agency of the Commonwealth. See 803 C.M.R. § 1.37C(1).

Upon registration, the Board makes a recommendation regarding, first, the offender's duty to register, and second – if the offender has a duty to register – his classification level. See 803 C.M.R. § 1.01.

If the Board determines that the offender has a duty to register, there are three levels of classification that it may recommend, each resulting in progressively greater public notification requirements.⁵⁴ M.G.L. c. 6, § 178K(2) ; 803 C.M.R. § 1.01. **Level 1** is the designation given to a sex offender when it has been determined that the individual's risk of reoffense is low and the degree of dangerousness posed to the public is not such that a public safety interest is served by public access to information pertaining to the offender. Id. **Level 2** is the designation given to a sex offender when it has been determined that the individual's risk of reoffense is moderate and the degree of dangerousness posed to the public is such that a public safety interest is served by public access to sex offender registry information. Id. **Level 3** is the designation given to a sex offender when it has been determined that the individual's risk of reoffense is high and the degree of dangerousness posed to the public is such that a substantial public safety interest is served by active dissemination (community notification) of sex offender registry information. Id.

A sex offender has the opportunity to challenge either his duty to register or his classification level at many stages. A sex offender may:

- *Contest his duty to register prior to registration.*
- *Contest the Board's initial recommendation before it becomes final.* Offender may request, within 20 days of receipt of the recommended classification, a *de novo* hearing to challenge the recommendation.

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⁵¹ A "sex offender" is a person who resides, works or attends an institution of higher learning in the commonwealth and who has been convicted of a sex offense or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense or a person released from incarceration or parole or probation supervision or custody with the department of youth services for such a conviction or adjudication or a person who has been adjudicated a sexually dangerous person under section 14 of chapter 123A, as in force at the time of adjudication, or a person released from civil commitment pursuant to section 9 of said chapter 123A, whichever last occurs, on or after August 1, 1981. M.G.L. c. 6, § 178C. In addition, the Sex Offender Registry Board will consider any person a sex offender who commits two or more separate incidents of open and gross lewdness and lascivious behavior on two or more separate occasions resulting in two separate convictions or adjudications of open and gross lewdness and lascivious behavior pursuant to M.G.L. c. 272, § 16. See 803 C.M.R. §§ 1.04(1).

⁵² A sex offender who moves into the Commonwealth from another jurisdiction must, within two days of moving into the commonwealth, register with the Board. M.G.L. c. 6, § 178E.

⁵³ The crimes that amount of "sex offenses" are listed in M.G.L. c. 6, § 178C.

⁵⁴ Sex offenders' classification are described fully in 803 C.M.R. §§ 1.28-30.