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Your starting place

Legal 911's Videos and Tutorials are your starting place for getting the "high concept" about the most important topics which concern you today.

After viewing our video and reading the tutorial you can follow up with the Legal 911 Law Library for more detailed information. Remember that Legal 911 is a "work in progress" and our web site will contain more information about the topics covered in our tutorials- as well as new topics. To reach Legal 911 on the web visit:

www.cosmi.com

Living Wills, Health Care Powers of Attorney, Nursing Home Care

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Serious illness

We will review several of the most common issues which affect persons who are seriously ill and their loved ones. In many cases these issues are most important to the person's loved ones because they themselves cannot meaningfully participate in their own course of care.

A. Nursing home care

Unless long term health care insurance has been purchased by a person, one of the major issues facing them will be paying for nursing home care. Those who are indigent have their nursing home care paid for by the government. The problem arises when a person has savings or property. Nursing home care can drain a person's savings in a short period of time. As a result, one of the most critical health care issues of the day is trying to save as many assets as possible from the cost of nursing care. One way that that some people deal with this problem is by transferring assets to others. Unfortunately, AND EACH STATE HAS A DIFFERENT LAW, there are rules which disqualify a person from receiving government funds for nursing home care if they have transferred assets in the past two years. If you are faced with this problem, consult with legal counsel. Rules vary for each state, and change. States are required to implement the "Anti-Spousal Impoverishment" law passed by the federal government. This law limits the amount which must be paid from a person's assets for nursing home care. If possible- in your 50's consider obtaining health care coverage for nursing home are. The 911 Law Library also provides information concerning the selection of a nursing home.

B. There are two complimentary legal ways for a person, in advance of need, to plan for management of their own health care in the event that they are unable to make the decision themselves. The most familiar is a "living will." A "living will" is not a will in the way that the term "will" is normally used. Instead of dealing with property, a living will is a statement of desires in the event that you are terminally ill and unable to direct your own health care. State laws vary from requiring that living wills be carried out by hospitals to making carrying out living wills optional. In the real day to day world, hospitals are not likely to carry out living wills if the family of the patient is against ceasing care. However, in most cases living wills are carried out.

Getting the right lawyer for you

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Selecting an attorney

As our video discusses, the best way to find an attorney is through contact with others in your community. This is particularly vital when locating an attorney who understands the type of business which you are involved in. Attorneys, whether intentionally or unintentionally, either specialize due to their experience or training in certain types of cases.

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How to Hire the "Right Lawyer": Consumers' Rights in the Legal Marketplace: By Richard Alexander, Esq.

The Personal Injury Law Page: Articles:

How to Hire the "Right Lawyer:"

Consumers' Rights in the Legal Marketplace

By Richard Alexander, Esq.

San Jose, California attorney Richard Alexander, a National Honor Scholar at The Law School, University of Chicago, was certified as a civil trial advocate by the National Board of Trial Advocacy in 1980, has been specially recognized as a Trial Lawyer by the California Trial Lawyers Association, is a former member of the Board of Governors of The State Bar of California, currently serves as Vice President of Consumer Attorneys of California and is a founding member of the National Association of Consumer Advocates. He is the founder of The Alexander Law Firm [http://www.alexanderlaw.com], a medium size law firm specializing in individual and class action litigation arising from negligence, toxic chemical, defective product, mass accident, environmental and fraud cases on behalf of consumers and small businesses. The firm holds Martindale-Hubbell's highest rating and is recognized in the List of Preeminent Law Firms in the United States. The firm sponsors The Consumer Law Page [http://consumerlawpage.com] on the World Wide Web. Copyright Richard Alexander 1994-97.

The United States is both the most successful economy and the most complicated legal society in the history of the world. Open any newspaper on any day and more than half of all the news concerns the law. Full time legislatures, plus Congress and numerous federal agencies, produce volumes of rules. In short, there are laws, rules, and legal regulations that impact everyone's life on a daily basis. The legal and political system of the United States is heavily influenced by campaign contributors, those with real power over politicians, and the resulting special interest legislation is routinely added to unrelated legislative proposals as "riders."

More and more law is being generated which is only fully understood by those few lawyers who are specialists in specific areas. For example, despite the fact that tax law is a recognized specialty, there is no one in the United States who has read all of the U. S. tax code and all I.R. S. regulations. There are legions of subspecialists the area of taxation from personal taxation to leasing, estate planning and the perpetuation of

subchapter S corporations. Law, like medicine, has become a specialty of information providers. Finding the "right lawyer," a specialist with substantial knowledge and experience, is what you want when you need a lawyer.

Finding the "right lawyer" is a great challenge, even for lawyers themselves. When you have a medical problem, a doctor will help decide whether you need specialized care and assist in providing immediate and necessary care. On the other hand, when you are in need of legal assistance, you are on your own. Few states recognize a vast range of legal specialties and outside of the Yellow Pages there is little readily available information to help in the selection of an experienced lawyer. Unfortunately the advice offered by bar associations, such as The State Bar of California, is so general that it is of little value. After you have read this article and the specific advice provided here, open The State Bar of California's advice on how to hire a lawyer [http://www.calbar.org/2con/3conhowc.htm] and compare. It is a well intended piece but it is so general and lacks specific recommendations that it is not very helpful. The purpose of this article is to provide specific advice and to explain how lawyers find the "right" lawyer.

Often, people begin looking for a lawyer to represent them when they are confronted with a crisis. They may be dealing with a family death, serious injury, divorce, or criminal charge. Many times it is easiest to choose a lawyer who is friendly and supportive, without conducting research into his or her background and experience. Choosing a lawyer simply because he or she is understanding may lead to later dissatisfaction. While the Yellow Pages or a television advertisement may be a good place to start, keep in mind that such sources are merely that and only a starting place. Lawyers should be selected for their expertise and experience in specific categories of cases. The "right lawyer" is the person who has substantial experience handling a case very similar to yours, who can and will take action at once. She or he does not have to "look into it," "think about it and call you back" or "check the most recent court decisions." The "right lawyer" knows what to do immediately, acts effectively and with little wasted effort or wasted expenditures of your money.

Your search for the "right lawyer" should be expected to take several days. Although it is a challenging process, this commitment will yield important rewards. Begin as soon as possible because there may be statutes of limitations or other deadlines that may be critical. In some cases you have only a limited window of opportunity to take legal action. Think carefully about the legal services you require. You may need on-going, regular legal advice from someone who has experience advising individuals or businesses in your line of work. Other attorneys have particular experience in drafting contracts or wills, representing estates or working through land development or zoning-related issues. Many lawyers practice law for a lifetime and never set foot in a courtroom because their work is primarily consultative and oriented toward planning. Other attorneys focus on providing remedies that require litigation, and are experienced in appearing before juries and trying complex civil and criminal cases. The bottom line is that there are many, many lawyers. You just need one. The "right" one.

Finding Legal Specialists

If you were forced to bet your home on the outcome of an athletic event between two players in boxing, tennis or golf, you would do a substantial amount of homework. You

would do a literature search, call coaches, talk with players, call Las Vegas to learn what the professionals had to say, and find videotape on film of previous matches. The same approach applies when it comes to finding the "right lawyer."

Lawyers find the "right lawyer" by networking with the members of their profession who have experience in related areas. After making multiple calls they develop a "short list" of attorneys with special expertise. There are many ways that you can achieve the same goal. If you are reading this article on the Internet,

you have access to search engines, such as Netscape's Netsearch, Infoseek, Excite or Lycos that allow you to enter "class action,""defective products," toxic chemical" or the like to locate lawyers with special experience. Check the law lists on the World Wide Web. These lists are growing daily. You need URL capability through Mosaic or Netscape both of which are freely available. One of the best is The Seamless Web. Also see, Yahoo, Einet, P-Law and West's Law Directory, which has a website listing lawyers which is searchable. Check out the home page of The Alexander Law Firm. Look for a lawyer with the same dedication, commitment, experience and record of success in the types of case that you have that is shown there. In addition, America Online's Court TV provides a database of lawyers and if your local newspaper is online, a search of that database can provide information about lawyers with special background and experience. In using any of these sources look for qualifications and experience that are factual.

Every community has lawyers who are experts in specific areas of the law. Finding a specialist requires more than asking friends and relatives for their recommendations. Unless they have extensive experience with the legal community, their advice has to be considered in the context of their background in retaining lawyers. To rely merely upon advice from friends and relatives may greatly limit your prospects unless they are involved in a line of work that is related to your problem. Artists and decorators know who does the best job of picture framing in town. For example, if your brother or sister has been served with divorce papers and in looking for a lawyer you learn of two family law specialists and a "brilliant trial lawyer." Remember, the key is networking. Call the "brilliant trial lawyer" and ask him or her who they would hire if they were sued for divorce.

If you have a family or business attorney upon whom you rely, your work is all the easier, but watch out. If your lawyer refers you to someone in his/her firm, this person may not be your best choice. Consider that person as someone to be added to your short list but nonetheless follow the guideline and suggestions you will find here before you make a final decision.

The best place to start is your county law library. Here you will find a number of directories and source books which will help you develop your "short list." But since everyone starts with the Yellow Pages, understand what you can learn there. The Yellow Pages are paid advertising. The bigger the ad, the larger the volume of common cases handled by that lawyer. This may be what you need for a common or garden variety case, but no major corporation picks its lawyers out of the Yellow Pages. Ignore the hype and look for facts confirming experience you can call upon.

Your County law library and most main libraries contain a national listing of attorneys published by Martindale-Hubbell, one of the best all-around sources of information. The Martindale-Hubbell Law Directory lists lawyers in practice by state and city. You'll

be able to learn about attorneys' particular backgrounds, areas of practice, bar activities, honors, articles, and other aspects of their practices. But, more importantly, Martindale-Hubbell rates lawyers for their legal skills, ethics, and professionalism. While the rating system is not perfect, Martindale-Hubbell conducts confidential surveys of local judges and lawyers. Few very good lawyers are unrated.

Martindale-Hubbell also publishes the Bar Register of Preeminent Lawyers in the United States, which categorizes only those lawyers with the highest ratings, and organizes them into 34 specialized fields of practice. Here you may find some of the best informed attorneys in your community or state.

Nothing beats experience, and you can find expert trial attorneys in the Association of Trial Lawyers of America's Desk Reference. It contains a special section called "Life and Sustaining Members." This list is an outstanding resource of the top trial lawyers in the United States. ATLA awards Sustaining Membership to attorneys who have made significant contributions to further the goals of the association and who are recognized for their expertise in the practice of trial law. Sustaining members must have practiced for ten years or more, have experience trying ten or more jury cases, have served as an ATLA chapter officer, board member, section chair or state delegate, and have been an ATLA member for at least five years. Reach ATLA, located in Washington, D.C., by calling 202-298-6849 if the library does not carry their directory.

Many trial lawyer and consumer attorney organizations conduct peer review of studies of their members experience and recognized those with special experience. For example the author is recognized for his experience as a trial lawyer in the fields of products liability, professional negligence, insurance bad faith and public entity liability cases by the Consumer Attorneys of California. CAOC publishes a list of California lawyers with recognized experience in trial law, general personal injury, product liability, professional negligence, workers' compensation, criminal defense, family law, appellate, public entity liability and insurance bad faith. While this list does not make any evaluation of the competency of an individual lawyer and does not certify the expertise of the recognized lawyer in any specialty, it does make one important contribution to your search. It provides independent recognition of actual experience for you to consider, as opposed to accepting an attorney's self-proclamation. Once again, the key is experience and for that reason this list is invaluable. For a copy of the Recognition of Experience List try CAOC's website at http://seamless.com/consumer, write Consumer Attorneys of California, 980 9th Street, Sacramento, CA 95814-2721, 800.767.2852 916.442.6902 or fax 916.442.7734. Other state Trial Lawyer Associations are also opening websites which will be helpful. For more information on experienced trial attorneys, consult the membership directory of the National Board of Trial Advocacy, founded in 1980 and located in Boston. It is the only board of trial specialists approved by the American Bar Association, and the only national organization certifying civil trial lawyers, based upon substantial competency as a trial advocate. It is highly respected because everyone certified by the NBTA must meet objective criteria and no one was "grandfathered" into membership as a founder. Certification requirements include experience in at least 15 trials, evaluation by judges and opponents, peer review, and written examination. If your library does not have a copy of the NBTA directory, you can reach this organization for a list of NBTA members in your state by calling 617-720-2032.

To check an attorney's most recent record of courtroom successes, jury verdict reporting services are available. Every law library contains these commercial services subscribed to by lawyers, insurance companies, and others interested in what is taking place in courtrooms on a daily basis. A jury verdict reporter details the results of cases and provides information concerning lawyers, the particular facts of cases, testifying experts, and the result, usually on a regional, statewide and national basis. Some of the services provide annual compilations listing lawyers and experts who have appeared in jury trials over a given year. Because the reporting of trial results is unofficial and voluntary these reports are not perfect or complete.

For many people "cold calling" is not easy, but you may gain valuable information if you contact some of the local legal community's leaders. The local bar directory contains the names of current and former bar presidents, the heads of bar association committees, and editors of legal publications. It will also give the names of the directors of continuing legal education programs or CLE as it is commonly known. Attorneys must attend a specific number of hours of continuing legal education each year to keep current their license to practice under the rules of many state supreme courts or state bar associations. Those lawyers who organize these educational programs are excellent contacts who can refer you to attorneys who have expertise in your line of work. The best lawyers in fields unrelated to your problem know who they would hire. Birds of a feather not only flock together, but they read legal decisions, legal newspapers, know the current county scuttlebutt, and chat with their colleagues. When they need help, they know who to call. If you know a specialist in Chicago, but need a lawyer in Santa Barbara, call the Chicago expert. The best lawyers in any state know the best lawyers across the country. Many times lawyers from different states work together on cases. Your expert in Chicago may not know the right lawyer in Santa Barbara, but he/she can put you in contact with someone in San Jose or Los Angeles who will have worthwhile recommendations. As you are developing a "short list," do not hesitate to call either a current or former county bar president and to ask whether you would be making an error selecting any one of your nominees to represent you in a particular kind of case. It would be rare for you to receive a recommendation for any one particular individual, but you may learn whether an attorney has retired, suffered a major illness or limited her or his practice. In smaller communities, the same information may be obtained from the presiding judge of your local court. Keep in mind that while judges seek to be independent, they are also, in many states, elected. To be reelected requires popular support of the bar and the electorate. Do not be surprised if the local presiding judge declines to comment, but don't be afraid to ask. Experienced trial lawyers have used this technique from time to time. Keep in mind that you may learn more by what a judge does not say, than by what he or she says. As long as you're cordial, explain that you have a problem and ask for any guidance that can be provided, there are very few judges that will turn down your request. Ask for comments on your "short list." "Would I be making a mistake hiring either A, B or C? Or, "of A, B and C who has the most recent experience in defective products cases?"

If you have access to computerized data bases and your local newspaper is online, run a newspaper search of the people on your short list. Prominent lawyers who have taken on challenging and difficult cases are regularly mentioned in newspapers. More and more newspapers are on-line these days through Compuserve, Prodigy, America

On Line, or other services.
Numerous county bar associations provide low-cost referrals, which in large part provide advice on routine matters. For a fee of about thirty dollars, these services will arrange a consultation with an attorney. Many lawyers contribute their time to this endeavor, although a large percentage of the members of referral panels are younger attorneys. Large bar associations, usually found in major metropolitan areas, require lawyers have some minimum level of experience in a particular field of law before assigning them to a referral panel. "Minimum" means just that. You most probably will not find the county's leading expert offering referral panel services. Bar associations in small communities normally use a rotational method of assigning their lawyers to requests for assistance by the public.
Do not expect to find the "right lawyer" by calling a local bar association. These are voluntary organizations designed to serve the needs of attorneys and they do not wish to alienate any of their members.
Do use a referral service to meet with a lawyer to determine whether or not you should be making a claim and learning what steps are immediately necessary to protect your rights. It is also an excellent opportunity to gain experience talking with a lawyer and practicing your negotiating skills.
Interviewing the Specialist
There is no substitute for a face to face meeting when you are trying to select an attorney. You will not only learn whether a lawyer has the necessary expertise, but also whether you could form a comfortable working relationship with him or her. Call each attorney on your "short list" to see who would be available to be interviewed about taking on your case, and what the fee schedule would be for this meeting. Some law firms provide clients with a brochure, press clippings, or a curriculum vitae, which details a lawyer's education, achievements, and experience. Ask for any information available on the lawyer or your subject matter, and review it carefully. This is the time for comparison shopping. Read for substance and compare the background and work experience of one lawyer with another before you call for an appointment. When you call for the appointment, describe your problem in twenty words ["I need an estate plan; my wife and I have a net worth of $1,000,000." "My husband filed for divorce, he's an engineer, we have two children and we own two houses." "I work for the city maintenance department with strong chemicals and was just diagnosed with leukemia."]. At your meeting you should give a clear summary of your situation and the services you are seeking. It is helpful to bring a one page summary of all the relevant information, including dates, times, names and addresses and which provides basic "who, what, where, when, why and how" information. For an example of basic information a lawyer will need open How To Become A Client Of The Alexander Law Firm [http://seamless.com/talf/].. Come prepared with documents that help tell your story, such as correspondence, photographs, accident reports, police reports and medical records. By examining this information the lawyer can quickly determine if she or she has a conflict of interest, in which she or he represents someone whose legal interests are in opposition to your own. When talking with a lawyer pretend you are talking with your auto mechanic and ask the same questions:
How bad is it?
How soon do I have to do something?

Have you done this before?
Are there any options?
What are the odds of getting it fixed?
At what price?
When will it be done?
Who is going to do the work?
When can you get started?
If you or a family member have been injured, you may discover that your case requires prompt action. There are critical deadlines, called "statutes of limitations," that restrict the time you have to file a claim against the party responsible for your injury. In most states the rules adopted by the legislature requires all claims for personal, property or business injury be filed within two years. A few states, such as California, require all such cases be filed with the court within one year of the injury and if a governmental entity is a potentially responsible party, an administrative claim must first be served on a designated city or county official within six (6) months of the incident and you must file a claim before you can file suit. These rules vary from state to state and worse yet, how and when they come into play also varies. It can be unnecessarily complicated and has been made that way as a result of the influence of big business in passing legislation and in selecting cases to appeal. In most states if you file one day late, you lose. So, always move quickly to preserve your rights. Acting quickly also serves to preserve important evidence that may otherwise disappear. Every major insurance company and corporate defendant begins investigating potential claims immediately. So should you. Evidence should be preserved instanter [an old but wonderful legal word that best explains how important this advice is] and in some cases a professional engineer is required rather than an investigator. Discuss what kind of investigation would be appropriate and whom the lawyer recommends. An experienced lawyer's record should speak for itself. Check the results this attorney has obtained for clients who needed the same kind of services. Learn if he or she generally works with a certain category of individuals or businesses, since specialization is to your advantage. Ask a trial attorney how many cases like yours she or he has both tried, won, lost or settled. Do not be afraid to ask for a copy of a trial brief, settlement conference, or pre-trial statement that was filed with the court so better acquaint yourself with the type and quality of the attorney's work.
Many attorneys will work with other lawyers, their partners and employees who are called "associates" on your case It is important to know what their qualifications are, check what their level of involvement would be, and whether the person you are interviewing would be the lead attorney or decision-maker on your case. Find out who will be working on your case on a day-to-day basis. Ask to meet the legal staff, if they have not been introduced to you. Remember that when you are in a hospital you see the doctor usually once a day, but it is the nursing staff that provides hourly care. The same is true in the law office. Lawyers perform direct services, but they also give instructions and orders to others. Find out who those people are and what they do. You should ask what course of action the lawyer suggests in your case, and be wary of an answer that contains lots of assurances but lacks concrete steps and a range of time the tasks would require. Determine what procedures will be followed to make sure all time deadlines will be met in your case. Many cases require the testimony of an

expert, who is a specialist in a given field, many times a university professor, medical doctor, economist, accountant, or scientist. You should ask whether your case would be assisted by an expert, what kind of expert should be considered, which experts your attorney recommends, and when they should be retained. How much will they charge and who pays is discussed below. Keep in mind that if you are going to litigate, your attorney will have to tell your story to a judge and a jury. You should try to imagine what kind of impression the attorney would make on them, and how convincingly he or she would present the facts of your case. As a routine practice, determine how you and the attorney would resolve how your case should proceed. Does his attorney want to make all the decisions or does she or he enjoy shared decision-making? If there is a disagreement, are they open to second opinions and what happens if you do not get along. How would a change of counsel be accomplished? You should determine whether the attorney carries adequate professional liability insurance for a case like yours. In addition, ask if he or she has ever been sued for malpractice, how many times and more importantly the outcome. No professional should be offended if you explain that you are bringing up these unlikely possibilities as a matter of policy.

No interview would be complete without finding out what your own responsibilities would be. Ask if there are any tasks you would be involved in, and what your role in decision making would be. Most clients make the mistake of expecting the lawyer to initiate communication with them and most lawyers intend to do so and desire having a well informed client. But without a formal structure, it will not happen.

Understand that initiating communication is your responsibility and do not expect to be able to accomplish it by telephone. Many lawyers are frequently out of the office, appearing in court or taking depositions. Busy lawyers do not remain in their offices all day. Court appearances, arguing motions, interviewing witnesses, taking depositions into the dinner hour, traveling to meetings outside the office, attending continuing education programs and bar meetings are common. They will routinely not be there to accept a random call and may not be able to call you back when you will be available. Telephone tag does not
accomplish your goal of being informed.

Be sure that you talk about the best ways to keep each other updated. Telephones do not work nearly as well as regular face-to-face meetings or scheduled telephone conferences. Plan on follow-up meetings with your lawyer at agreed upon times, perhaps every 30 days at first and thereafter as needed. Ask for copies of correspondence and documents filed in court. If you do not understand what they mean, save those questions for your next meeting. You must stay informed, but you do not want to abuse your welcome, even though you may be very anxious about your case.

Consider your lawyer in the same manner as you do your doctor. After you see a physician it is common for him or her to order tests, prescribe medication or to take some other action, but always you are asked to come back in a certain period of time. The doctor does not make the appointment. You do. Follow the
same practice with your lawyer and arrange for follow-up meetings. One of the best ways to do this is by scheduling telephone conferences. Ask the lawyer, legal secretary or other person responsible for scheduling to set a meeting by phone when the lawyer expects to be in the office. This will help you avoid telephone tag and

increases the probability of a successful exchange of information.

Understanding the Fee Agreement

If you think you have found the "right lawyer," you will want a written fee agreement. Unless you sign a written fee agreement at the outset, the probability of your having an amicable conclusion to your relationship is zero. Ask for a copy of the attorney's fee agreement. As with all documents, make sure that you understand it fully before you sign it. No reputable attorney will pressure you to accept a fee agreement on the spot. Be sure to read Understanding the Legal Fee Agreement: Consumers' Rights in the Legal Marketplace.

Creating a Working Relationship

After your interview, take time to consider whether you would be comfortable in working with this person as your lawyer. Ask yourself whether or not she or he gave you clear and direct information. Will they be available in an emergency? Consider if the attorney spoke knowledgeably and with a minimum of legal terms. Think about whether this lawyer understood and shared your goals. As a client will you be a co-participant or will the lawyer be making all the decisions? Did the attorney give you his/her home phone number if you have an emergency?

The importance of creating a comfortable working relationship with your lawyer cannot be underestimated. The road to obtaining the legal services you are seeking may be long, and it will take a considerable amount of teamwork to get there. If you make the commitment to find an experienced lawyer with whom you can work jointly, you will be well on your way to the best possible result.

Last Updated January 1996

Understanding the Legal Fee Agreement: Consumers' Rights in the Legal Marketplace By Richard Alexander, Esq.

Finding the "right lawyer" to represent you is a challenging process describe in the companion to this article, How to Hire the "Right Lawyer": Consumers' Rights in the Legal Marketplace. Once you have found the "right lawyer," you will want a written fee agreement explaining what you want the lawyer to do, what the lawyer has promised to do for you, and what it is going to cost.

Unless you sign a written fee agreement at the outset, the probability of having an amicable conclusion to your case and to your relationship with your lawyer is very close to zero. If someone wants to do business on a handshake, expect the other hand will be in your pocket.

Only a fool hires a lawyer without a written fee agreement. Good lawyers know this and always explain your obligations and theirs in a document you can read and understand. Only after you understand the agreement will you be asked to sign and along with your lawyer confirm your understanding. So, always ask for a copy of the attorney's fee agreement at your first meeting. As with all documents, make sure that you understand it fully before you sign it. No reputable attorney will pressure you to accept a fee agreement on the spot. If he/she does, find another lawyer. And, do not fail to understand that every attorney's fee agreement is different. There is no such thing as a "standard agreement." You will be signing a document that binds you and the lawyer. Make sure you understand every word, what it says, and what it does not say. Before you sign any contract, make sure you understand the following general advice which is intended to provide you with a general background of what you can

expect when you hire a lawyer. The important operative words in this case are "you" and "hire." The lawyer is a professional,
but you are the boss and the fee agreement is the contract of employment explaining the duties of both sides. Remember, you are hiring the lawyer and the lawyer is deciding both what kind of work you need performed and what kind of boss you will be.

Hourly Fees

First, determine if your legal work is best accomplished by a fixed fee, hourly rate, or contingency fee. If the work is to be on an hourly basis ask for the attorney's hourly rate, and the rates of any other attorneys at the firm who are expected to participate. Ask for a copy of the firm's fee schedule. Check the fee agreement to confirm fees for the firm's support staff. Is time billed in minimums of one-quarter of an hour or in tenths? Be cautious about paying for the work of law clerks or new lawyers who are being trained at your expense.

Legal research may sometimes be called for, but you should not have to pay an attorney, or a new associate, to learn the basics about the law concerning a common legal issue. Ask whether there are any specific areas of the law that should be researched in your case and how long that would take. If the attorney explains they will "have to look into," "give the matter some thought," or "check the case law on a question" that is a red flag: watch out for being billed for research that another professional with more experience may not need to do. Obviously there is no hard and fast rule here, but nobody wants to pay for waiting time in a cab while the driver is trying to figure out how to read a map. In addition to controlling time devoted to research, if you expect litigation, insist that you not be charged for your attorney to make a motion for summary judgment without your permission. A motion for summary judgment asks the court to dismiss a lawsuit on the assertion that the opposition's case is unsupported by any facts. Only in the rarest of cases are these motions successful, because no matter how strongly you believe that the case brought against you is without merit, there is always some question of fact that must be determined by a jury.

A lawyer's hourly rate will give you only part of the total financial picture. Many cases require sizable expenditures in order to obtain the best recoveries. Always ask what kinds of expenses the attorney considers essential to prepare your case and maximize your recovery, as well as what costs could be
minimized. Get an estimate of what those costs will be and two budgets: 1) a rock bottom minimum and 2) the most probable. Determine exactly what will be chargeable to you as costs. Cases costs routinely include all out of pocket expenses paid for the purpose of carrying forward the client's case. Common expenses include charges for filing fees, process servers, facsimile charges, couriers, express mail, federal express, UPS; copying of medical, employment, court and other records; deposition reporters' fees and transcripts, experts' and consultants' fees, telephone toll charges, in-office copying, postage, attorneys'
travel by car, parking, overnight hotel and meals, focus groups, trial exhibits, computer research, mediation fees, jury fees, pro- judges, and investigators, among others. It is always expected that your attorney will do everything to minimize case expenditures, but do not minimize case costs at the expense of not hiring important experts or failing to take the deposition of a critical witness. It may be possible to arrange a flat fee for certain services, such as a will or a divorce. Many large corporations are negotiating

with law firms to undertake, for example, all the company's defective product litigation on a fixed fee basis. Fixed fees are becoming more and more popular with sophisticated purchasers of legal services. It is worthwhile asking about a fixed fee in your case. You might be able to arrange a sliding scale of attorney's fees, with separate rates for different tasks ranging from correspondence to court appearances. Some lawyers work on a sliding scale of fees that depends on when a case is resolved, such as prior to filing, at pre-trial, at the settlement conference, after trial begins, or after an appeal. If the attorney bills by the hour, she or he will request a retainer to secure payment. A retainer functions like a deposit. Clients are expected to keep a certain minimum level of funds in the attorneys trust account and to replenish as charges are made. The days of the non-refundable fee to assure the lawyer will always be available for a particular client's cases, or avoid working for the client's competitors, are gone. Do not agree to pay a totally non-refundable retained unless your last name is Rockefeller, Carnegie or Perot. Always require that you approve a bill before funds are withdrawn from a trust account. Give no one a free hand with your money.

Contingency Fees

Contingency fees, or percentage fees, are paid at the conclusion of a case, and only if there is a recovery. Lawyers who work on a contingency expect to be paid well for expending time and effort, paying for their office overhead during the pendency of their cases, and either advancing or paying the case costs normally paid by a client that have been explained above. The client has the benefit of securing the services of the "right lawyer" and in the event the case is without, or with less, merit than expected at the outset, the burden is carried by the lawyer and not by the client. The contingency fee is the average person's only way to hire a lawyer and for that reason major corporations and insurance companies have worked hard to limit contingency fees in order to limit the ability of the public to assert its legal rights. Under a contingency fee contract, the attorney's fee is a percentage of the recovery, generally between 33% and 40%, but there is nothing sacred about these numbers, although many people are so familiar with these percentages that they are accepted as gospel. In more complicated and difficult cases, the percentages will be higher. For any punitive damages awarded, this percentage may be as high as 50%. This type of fee agreement is used commonly, though not exclusively, by those who have suffered personal injury, property loss or serious damage to their business and by families who have suffered the death of a family member.

Establish and consider a sliding scale of percentages of compensation and tie the increased percentage to financial decisions that will impact you and your lawyer. For example:

25% to negotiate a final resolution before the defendant answers the complaint;
33% after service of the complaint but before retention of experts, and
40% after experts have been given work assignments or upon disclosure of experts for pre-trial depositions.

Normally an attorney will try to settle a case before serving a complaint and then having to deal with the defendants' lawyer in a litigation setting. Once the complaint is filed and served, a defendant has an interest in minimizing both the cost of settlement and the cost of defense. This is an excellent time for both sides to consider settlement. Once litigation is underway and witnesses deposed

[interviewed under oath by an attorney at a deposition before a court reporter] the factual picture should be clearer. In anticipation of trial both sides will have to have experts, provide them with factual information and pay for them to render opinions, conduct studies or the like. This is another excellent time to pursue settlement. Clearly the attorney's workload increases then and at the time when trial experts are disclosed and deposed. This is another logical point for both sides to "talk turkey." In all cases, you want to encourage your lawyer to invest the time needed to obtain the best result.
There are many types of contingency fee agreements available and there is no such thing as a standard contract. Many clients focus on the percentages to be charged without considering carefully how it is applied to the recovery and how the fees are calculated. Contingency fee agreements fall into three major categories which reflect the basic methods followed to calculate the attorney's fee.

How Fees Are Calculated

Under a gross fee contract, the agreed percentage is applied to the gross amount of the recovery, and the case costs incurred in prosecuting the case, if advanced by the lawyer, are repaid to the attorney our of the client's portion of the recovery. Under this type of agreement, there is no incentive for the lawyer to be economical in spending because the client bears the full brunt of such expenditures and the fees are unaffected.
Under a net fee agreement, the lawyer is reimbursed for case costs from the gross recovery. If the client has paid the costs of litigation then it is common to reimburse the client before calculating fees. The agreed percentage is applied to the net recovery or the final, total net sum recovered from the defendants after deducting any disbursements or case costs incurred in connection with prosecution or settlement of the claim. This approach provides some incentive for the lawyer to contain costs and spend effectively, since her or his fee grows smaller as the costs grow larger. If the agreed attorney's fee is one third, then every time the lawyer spends one hundred dollars in case costs he or she knows that the attorney's fee is reduced by $33.

Does The Attorney Advance Or Pay Case Costs?

As a result of a 1995 appellate decision, some lawyers are offering a single charge contingency contract under which the attorneys agree to pay all costs associated with the case. If the case is successful, out of any recovery the attorney receives as total compensation for all services an agreed upon percentage of the gross recovery. Because the payment of preparation and trial costs are the sole responsibility of attorneys, the client always receives a known percentage of the recovery and can readily calculate his/her share. This approach places the full burden of the costs of the case on the attorney who is spending his or her own money to prepare for trial.
Just as in selecting a percentage fee that provides incentives, both a net fee and single charge fee agreement contain hidden incentives. These are important to understand to make sure your lawyer has the incentive to maximize a recovery for you at the earliest possible moment.
When an attorney "advances" case costs the IRS treats these expenditures as non-interest loans from personal capital. A lawyer who advances case costs uses after tax dollars. For example, for a lawyer to advance $10,000 to pay an expert's bill requires gross income of $60,000. The lawyer's office overhead
expenses in operating a law firm can range from 60% to 80% of gross income. Assuming an overhead of 66% for salaries, rent, insurance, phones, etc., on an income

of $60,000 the lawyer has net earnings of $20,000. Subtract federal and state income taxes [38% federal 11% California] and the attorney has net after tax income of $10,200 to loan or advance to the client. The attorney's cash flow after paying the expert's bill is $200. Single charge fee agreements are growing in popularity because lawyers who agree to "pay" the cost of a contingency fee case are now entitled to deduct the cost as a business expense. If $10,000 is needed to pay an expert's bill, it is paid from the attorney's net pre-tax income, reducing $20,000 to $10,000 with resulting taxes of $4,900 and leaving a net income of $5,100.

In many states a single charge agreement is not available. In those states bar rules prohibit a lawyer from paying a client's business expenses or personal expenses and include in that definition the costs of litigation. States which allow single charge contracts draw a distinction between litigation expenses and business or personal expenses that a client would incur whether or not there was a lawsuit and which are the personal client's responsibility. In virtually all cases, a client is personally responsible for his or her medical bills or the payment of medical liens imposed by private insurance agreements, state health care insurance programs, Medicare, medical benefits paid by a worker's compensation carrier, county hospitals, self-insured employers, or liens by private physicians rendering direct care.

Who Pays the Costs If You Lose?

The best aspect of a contingency fee agreement is that in the event there is no recovery, the attorneys are not paid for their time, make sure this term is set forth in any contingency fee agreement your sign, but be careful about who is responsible for paying case costs in the event of a loss. In many states case costs are always the client's responsibility and even in states such as California, in which an attorney can agree to pay litigation costs without recourse to the client in the event of a loss, in a losing case the client could still be obligated to pay defense costs. Make sure the fee agreement you sign explains how any potential defense costs are going to be paid in the event your case turns sour. Defense costs usually are limited to specified categories of costs which include filing fees, court reporter fees and the like, as opposed to the full range of actual costs incurred by litigants in most cases. Exposure for defense case costs can occur if there is a dismissal of your case before trial or a defense verdict after trial. Some attorneys agree to pay defense costs if their advice to their clients turns out to be incorrect and others let the client make the call whether or not to reject a defense settlement offer and to take a case to trial. In the latter case, if the client chooses to try a case against the advice of attorneys, and it is won by the defendants, in that case the client agrees to pay the defendants' court costs.

A losing client could be responsible to pay defense costs, defense expert fees, and defense attorneys fees. The rules vary from state to state, but many states require that if a settlement offer made in writing prior to trial, is rejected, and the client does not do as well at trial, then the client must pay a penalty, which can range from paying the defendants' court costs, defendant's expert fees or defense attorneys fees. Find out what the rule is in your state and how it could be applied in your case. Include in your fee agreement an understanding how a defense verdict and defense case costs will be handled.

Common Terms in Contingency Fee Agreements

Occasionally a fee agreement will ask for a power of attorney. Be careful not to agree

that your lawyer has complete authority to settle your case. Demand that no settlement will be made without your authority and never approve settlement authority without obtain an understanding of the implications of a given settlement proposal and how your net recovery will be calculated.

A power of attorney to the lawyer to negotiate a final settlement check can be given, but it should only be effective only after a settlement has been approved by you, a release has been executed by you forever ending your case or a final judgment is issued in our favor of the client. Once that occurs it is appropriate to give your lawyer a power of attorney to execute settlement drafts or checks to be deposited into his/her trust account to facilitate the prompt clearing of the settlement drafts or checks.

Although no attorney can guarantee what the outcome of a given case will be, that does no prevent the lawyer from promising to use his/her best efforts on your behalf. A contract which merely agrees to represent you means the lawyer will provide the level of service common to your community. The "right lawyer" is never unwilling to make this commitment to his/her clients and to put it in writing.

Some health care providers, HMOs, or insurers will demand client sign a lien or reimbursement agreement which may grant the lienor rights greater than those allowed by law. Never sign legal documents giving anyone a lien unless your attorneys have approved the lien beforehand. Ask your potential lawyer if he/she charges separately to negotiate a reduction of medical liens for your benefit. Many lawyers provide this service at no extra charge. In case you were injured while "on the job" and will be or have been receiving workers' compensation benefits, the compensation insurance carrier will assert a lien against your recovery. The resolution of workers' compensation liens also results in granting the carrier a credit against further benefits and can end benefits depending upon the amount of the recovery in a third party case. These rules vary greatly from state to state. Include in the fee agreement an explanation of how the workers' compensation insurance lien will be repaid and how this will affect the calculation of the lawyers' fees and your share. In the event of a judgment lien imposed by a court of law against your case, attorneys fees are always based upon the full recovery and the benefit conferred by the full recovery before deducting the amount of any judgment that has been taken against you. If as a result of this new litigation you attorneys are ordered to pay outstanding bills from your portion of the recovery, understand that the final cash you may receive will be less than what you may have realized had you not had outstanding bills and that the attorney's fees will be calculated based on the gross recovery including the benefit of any reduced debt. In such cases, the compensation paid to your attorneys may exceed what you receive in cash, but it should be the stated percentage of the recovery and your portion may consist of cash and paid judgment liens that have been imposed upon your case.

Many times cases are settled by having a separate insurance company issue an annuity contract to make regular monthly or annual payments in the future. Should the payment of a settlement or judgment be carried out by periodic payments or on an annuity basis [often referred to as a structured settlement], your fee agreement should cover this possibility. In most cases, attorneys' fees are computed and collected as a percentage of the cost of an annuity and are paid from any initial cash payment made

as part of the settlement.

Today, fewer attorneys are recommending structured settlements and will only participate in such a financial investment as part of a settlement if you specifically make such a request. Structured settlements or annuities are sold by insurance companies such as Baldwin, First Executive, First Capital and Bankers' Mutual Life, all of which are bankrupt or have been under the control of the insurance commissioner and have not paid their agreed obligations. Only in the rarest of cases does a structured recovery make good sense.

Attorneys will often ask for written authority to associate as co-counsel other attorneys or firms necessary to successfully prosecute your claims. Many lawyers will agree that any such association will result in no additional expense to the client. But make sure you are not being charged an inflated percentage so that your lawyer can "refer" you to someone else who will do all the work in exchange for a "referral fee." Demand that you must know and approve beforehand what agreements are being made concerning your case. You want to know who is being paid and how much to make sure you are receiving the representation you deserve.

It is not unusual for attorneys to explain to clients in fee agreements that the lawyer may withdraw at any time if the client refuses to cooperate, does not follow attorneys' advice, or in the event the prosecution of this case is not economically feasible. If such terms are provided to you make sure that they are qualified to protect you from undue prejudice to your case and make sure that you will be given reasonable notice so you can hire other counsel. Require also in your contract that you can change attorneys at any time and that any sums due to your lawyer will not be paid until and unless there is a recovery. To avoid any doubts about who controls your case and to assure joint decision-making have your lawyer agree in writing to schedule regular office or telephone working sessions every 30 days, or as often as you agree, to meet with you to assure good attorney-client communication, joint case management and to participate in important decisions being made with regard to your claim. Remember, this is your case.

In the event of an emergency you will need to be able to contact your lawyer and speak with him/her, not merely leave a message on a message recording machine. Your expectation on this issue needs to be communicated from the outset. An emergency exists whenever you determine that you need immediate advice. Find out at the beginning who you will be able to contact and what service you can expect. Once a promise is made to you about emergency services, put it in writing.

Conclusion

Like anything else, "the devil is in the details." This article has not been intended to provide an exhaustive list of the terms and conditions that will fit all lawyers, all clients, and all cases, but it is a starting point to expand your understanding of what you can and should expect before you are asked to sign. If an explanation given to you "sounds different" from what you have read in a fee agreement, ask for the agreement to be amended and initialed before your sign.

Lastly, before you sign any fee agreement, take time to consider whether you would be comfortable in working with this person as your lawyer. Ask yourself whether or not she or he gave you clear and direct information. Will they be available in an emergency? Consider if the attorney spoke knowledgeably and with a minimum of

legal terms. Think about whether this lawyer understood and shared your goals. As a client will you be a co-participant or will the lawyer be making all the decisions? Did the attorney give you his/her home phone number if you have an emergency? The importance of creating a comfortable working relationship with your lawyer cannot be underestimated. The road to obtaining the legal services you are seeking may be long, and it will take a considerable amount of teamwork to get there. If you make the commitment to find an experienced lawyer with whom you can work jointly under a clearly understandable written fee agreement you will be well on your way to the best possible result.

December, 1995

Mr. Alexander's views are very interesting and controversial. One issue that has to be confronted is that obtaining "elite" counsel isn't always possible. The "elite" type of attorney described in Mr. Alexander's suggestions does not take small cases. A board certified trial lawyer of the caliber that mr. Alexander mentions is generally unwilling to take cases below $500,000 in value. As a result many persons will have to use lawyers who are in general practice or who work hard but are not superstars. Many automobile accidents, worker's compensation or injury cases involve significant damages, but not are not half million dollar cases. In this event, finding a sympathetic, industrious attorney is more than good enough.

In smaller cases, such as an automobile accident with relatively minor injuries, a young, inexperienced attorney may be the best bet, because they will devote the time and effort necessary to obtain a $20,000 settlement- which is all that a "superstar" could get on the case, if they had time to take it.

An excellent source of legal referrals for routine matters is the Campbell's list. This publication contains names of attorneys, usually in general practice, who are willing to take simple, routine matters. The attorneys on this list are investigated and in most cases have 20 years or more experience in practicing law. This list is particularly good for finding well regarded attorneys in smaller areas. Most large libraries have a copy of this list.

Silence is golden

{ewr d2htls32, AVI_Player, arrlast.avi}
As our video emphasizes, it is vital for a person who is under arrest to exercise their right to remain silent, and to obtain legal counsel prior to being interviewed by the police. This warning should be extended to include anyone who is under suspicion of a crime. If you feel that you are a target of an investigation, be sure to consult legal counsel.
Remember that in criminal matters wives have testified against husbands, and children against parents. Discuss the case with no one, particularly with anyone in a jail. Prosecutors regularly turn jail roommates against one another.
There are many questions related to "being in the system" as insiders call it. One is whether to have private counsel or court appointed counsel. Of course, sometimes there is no choice. Who "cannot afford legal counsel" is not limited to the poor. In a major case, such as a serious felony carrying a long potential prison term, there are few but the ultra rich who can afford private attorneys. Fees for defense of a case with a month or more trial, including expenses for experts and investigators, generally start at $150,000. A great deal of this money does not go to enrich the criminal defense attorney, but is spent in paying court reporters for transcripts or paying investigators and experts. In the "worst' cases of murder, drug offenses carrying mandatory prison terms of ten years or more, most defenses are handled by public defenders. In cases that can be tried in a day or so fees will generally top $3,000, and in large metropolitan areas, even more.
There are two different systems of appointment of private counsel. The first is the appointment of a salaried public defender. The public defender, sometimes called community defense organization or legal aid society, is an employee of the state who's job it is to defend those cannot afford legal counsel. A court appointed attorney is a private attorney who either volunteers, or is recruited, to represent indigents. Although these attorneys are paid for their work, they are usually paid at a rate much below that they would regularly get from other work. In the event that there are multiple defendants in a single case requiring legal counsel, the public defender can only handle one defendant within a case.
Will a full time public defender, or an appointed counsel do a good job? In most cases, definitely. Full time public defenders are working there because they want to, and since they only do criminal law and try many cases, they are as competent as private attorneys. The only significant difference between a paid private counsel and a public defender may be political clout. A very well politically connected private lawyer may have a favor or two coming in the very, very, rare case in which a matter is close.
Whether you are represented by a public defender or another attorney, you can assist your counsel, and yourself by having the following information:
a) information on any prior convictions;
b) names of witnesses;
c) summary of any statements made by the other party or police;
d) identification of any evidence which can be subpoenaed;
e) time line.
Item (e) deserves discussion. One of the most powerful tools of defense counsel is to prepare a detailed time line. Help yourself by starting the process. A time line should cover each critical event. Throughout a case errors in timing will occur, particularly if people are making up testimony.

Bankruptcy and cash crunches

{ewc d2htls32, AVI_Player, collagfi.avi}

Collection agencies

American law is replete with legal protections for consumers. However, legislation which put these protections into place also places the burden on the consumer to DO THINGS IN WRITING.

For example, the law states that a collection agency cannot contact a person at work upon request. However, for this protection to take effect the consumer must WRITE the collection agency. Bill collectors count on consumers' unwillingness to write letters to their advantage. We hope that you learn many insider's tips in the field of consumer and business law. One of these tips is more important than the others. This is to conduct as much of your business as possible IN WRITING. With almost every computer having the capability to send faxes, and word processing being simpler than ever, there is no reason not to write letters when you need to do so to protect yourself.

The Electronic Law Library contains detailed information on federal and state laws (for many states) on collection agency practices. Here is the answer to a question many of you may be asking- Can I make a debt collector stop contacting me? The answer is yes. The following is extracted from an official FTC publication (available in the Electronic Law Library) about debt collection:

> Can you stop a debt collector from contacting you?
> You may stop a collector from contacting you by writing a letter to the collection agency telling them to stop. Once the agency receives your letter, they may not contact you again except to say there will be no further contact. Another exception is that the agency may notify you if the debt collector or the creditor intends to take some specific action.
> May a debt collector contact any person other than you concerning your debt?
> If you have an attorney, the debt collector may not contact anyone other than your attorney. If you do not have an attorney, a collector may contact other people, but only to find out where you live and work. Collectors usually are prohibited from contacting such permissible third parties more than once. In most cases, the collector is not permitted to tell anyone other than you and your attorney that you owe money.

As we have noted, a collection agency cannot use the telephone to contact you if you have written them to stop contacting you as this constitutes an illegal, harassing telephone call. If you are truly being harassed by a collection agency, contact legal counsel. If the facts are egregious enough an attorney will be exquisitely interested in going after the bill collector.

The larger issue behind collection agencies is what to do if you cannot pay your bills. A national epidemic of bankruptcies has caused a fundamental change in how collection agencies work. In the past most creditors and their agencies took a "collect all of it" or "none of it" attitude to bad debts, and as a result, received nothing but bankruptcy discharges on millions of debts. Many persons could pay regular installments, or, could

pay a portion of all of their debts, but could not pay all of them. Before 1990 most creditors and collection agencies refused to negotiate or give ground.
In 1990, a major credit card company and its collection agencies began a systematic program of offering a carrot instead of a stick. The agencies offered to take 50% of a debt, and offered, as an additional inducement, to notify credit bureaus that the debt was settled. SO much money was made on this program that this approach became standard. Yes, there are creditors who still take a very hard line as to bill collecting, but, getting something from many people is much better than getting nothing from virtually all of the people.
If you cannot pay all of your bills, there are several options open to you. All of these will silence collection agencies. The first is non-profit consumer credit counseling. Non-profit consumer credit counseling is a FREE service which is paid for by the creditors which it serves. The service reviews your financial standing and then prepares a plan to pay off the debts. Not everyone can use this service since you must have enough income to make at least partial payments on your debts after you have covered your rent, transportation, clothing, food and other basic living expenses. If you do have sufficient income to make these payments, then non-profit consumer credit counseling can arrange for a plan for you to pay off your debts over time, and which will end calls from all major creditors. This is because almost all providers of consumer credit have agreed in advance that they will accept payments made under consumer credit counseling.
If you cannot pay your debts over a reasonable length of time, then you may have no alternative except for bankruptcy. The Electronic Law Library contains information from Connecticut's attorney general as well as other sources discussing bankruptcy.
Here is the Legal 911 FAQ on bankruptcy
1. How often can I file?
A: You can file whenever you want. You can only obtain a discharge (release from debts) every seven years, with one or two exceptions related to full repayment of debts. So the practical answer is once every seven years.
2. Are there different kinds of bankruptcy?
A: Yes. You can file Chapter 7, in which all of your assets, less exemptions, are liquidated, if any, and get a discharge. Also available is Chapter 12 for Family Farmers. Chapter 13 is a pay out plan and requires payments over 36-60 months that result in a meaningful repayment of debt. In cases involving significant debts and property, Chapter 11, traditionally used for corporations, is available.
3 What can I keep if I file bankruptcy?
A: This varies from state to state, and is subject to change. Although there are "federal exemptions" which are quite extensive, the states can "opt out" and use their own schedule. This is subject to constant adjustment and can be ascertained by visiting any law library (courthouses generally have at least state materials) and looking in the indexes under: EXEMPTIONS, CREDIT AND DEBTOR, DEBTOR'S RIGHTS or BANKRUPTCY.
4 What debts am I discharged (released) from?
A: All debts except for child support, alimony, criminal restitution, criminal fines and income tax arising from taxes that occurred in the past three years, if you filed on time. Older tax liabilities may be discharged. Some student loans, depending on the type, may not be discharged. If you file Chapter 13 (formerly called "Wage Earners Plan,"

now properly referred to as "Adjustment of Debts of Individuals with Regular Income") all debts are discharged, but, you must be able to pay your child support, restitution, etc. If you have secured debts, debts on which the credit has collateral, like a mortgage, trust deed, lien on an automobile, you must either pay for the goods (although there can be adjustments made in Chapter 13) or return them.

5. What will bankruptcy do to my credit?

A: Bankruptcy appears on credit bureau files for 10 years. Other derogatory information is listed for seven. As a practical matter few persons have their credit worsened by filing bankruptcy. This is because they are probably already behind on their debts. Indeed, as the number of bankruptcies grows to over 1 million annually it becomes harder and harder for companies to "red line" debtors. Most car, home and other lenders have special programs for recent debtors in bankruptcy which grant credit on a higher down payment. In the real world persons who have filed bankruptcy are good credit risks since they have virtually all of their cash flow available to service new obligations.

6. How do I decide if I should file bankruptcy?

A If you do not qualify for consumer credit counseling, or, if your income, after necessary expenses cannot pay down the principal of your debts (that is, there is enough money to pay all of the interest plus some part of the principal) then you are probably forced to do so. However, the best bankruptcy lawyers are also the most conservative and do not file unless there is no other choice.

7. Do I have to list all of my debts and property? I want to pay some of my debts off but not others.

A: You must list all debts and property. This is a requirement of federal law and if you file without listing all debts and assets, you have committed a crime, and if discovered, will also lose your discharge. However, you may still voluntarily repay any debt that you feel you should without any court process, as the bankruptcy code permits voluntary repayment of discharged debts. On the other hand, the Court may approve "reaffirmation" of debts, which are then legally binding obligations. Unless required by law, reaffirmation must be avoided. The purpose of bankruptcy is to get a fresh start, and you won't get a fresh start burdened down by any old debts.

8. If I am unemployed and cannot afford legal counsel, how can I obtain counsel?

A: The federal legal services corporation and must legal aid societies will provide counsel for unemployed persons requiring bankruptcy counsel. Although there may be a wait, it is possible to get legal assistance.

Speed saves

{ewc d2htls32, AVI_Player, forefin.avi}
Foreclosure
As our video notes, speed is the essential ingredient in insuring that you have the maximum options in dealing with a foreclosure. Here's why it is in the best interests of a person to contact the lender as soon as possible. If a loan is current, or at least in not in default, there are many more options for the lender. Normally when there is a default the lender must "charge off" the loan, and assign collection to another part of the lender's organization Once the loan is a loss, there is little flexibility left to the lender, except to insist on getting all of their money. Although lenders may not want to, federal regulators may limit a lender, especially a lender's ability to make any deals after a default. It may be uncomfortable to call your lender and tell them that there is a problem but it leaves many more options open than if there is a default. There is another reason to deal with the lender as early as possible. If you contact the lender immediately upon having a problem, you will learn whether or not the lender is interested in working with you to try to salvage whatever is possible or if the lender has already given up. You will certainly want to be much more concerned about your own problems than that of the lender if the lender is uninteresting in assisting you with the problem. If your inability to pay the mortgage is due to illness or unemployment, check with your lender to see if you have credit disability or unemployment insurance which could help you with the payments. In more than one case person's have had their problems solved, at least temporarily when they discovered that they had purchased insurance from the lender which could make the payments. Bottom line- you may be able to work out a deal if you call early, but it will be very tough later.
Foreclosures fall into two categories:
property with equity
property without equity
Let's begin by defining equity. Equity is the value of a piece of real estate after you have deducted real estate commissions and all other costs of closing, and any mortgages, deeds of trusts or other liens against the property. For example:
Property sells for $200,000
Real estate commission and closing costs $22,000
First mortgage $100,000
IRS Tax lien $50,000
In this example, the equity in the property is $28,000.
If we change the amount of the tax lien to $100,000, there is no equity, and instead the property owner is "under water" or has a "deficiency" of $22,000.
Let's consider a case in which the owner of the property has no equity in the property.
There are several issues in a foreclosure in which the property is worth less than the liens on the property. It may surprise you to find out what is the probably the largest problem- and that's taxes. If you and your lender agree that you can turn the property back over to them, you face potential income tax consequences.
The first tax problem is "forgiveness of indebtedness." If the property is worth $100,000, but the loan is $120,000, you probably face a tax liability of $20,000. This "non-cash" income is called "forgiveness of indebtedness." The Internal Revenue Code provides

that if you get the benefit of a loan but do not pay it back, you have income and must pay tax on the deficiency. This is the reason that you may want to consider going to a lender and executing a "side note" (which is discussed below).

The other potential tax problem is that a foreclosure is regarded as a "sale," even though it is involuntary. If there is gain, tax has to be paid. One of the first professionals to check with when working out a foreclosure problem is your tax advisor.

Since you wouldn't be facing a foreclosure if you had a great deal of cash, the prospect having to find cash to pay off the government is a problem usually of much greater impact than the lender seeking to force you to pay a deficiency. After all, it is relatively easy to file bankruptcy and discharge a deficiency owed to a mortgage lender. Bankrupting away taxes is a much more difficult matter. However, if you file bankruptcy before the amount of tax has been unpaid (generally during the same tax year as the foreclosure) there is no discharge of indebtedness recognized. Again, see your tax advisor.

You have many options when you have no equity in your property. The most important thing to do is to contact your lender as early as possible and inform them of the problem. Some, but not all lenders, will work with you to find a way to lessen the damage to all of the parties. In many cases, a lender will agree to negotiate the amount of deficiency to pay, or even to waive it altogether. There are many ways to for the borrower and lender to work together. One of the best bets for both parties is that the lender agrees to waive part of the deficiency, but the borrower signs a "side note" for part of the deficiency- if the note is paid the borrower protects his or her credit, and the lender can avoid absorbing the entire loss. Under this scenario you do not have discharge of indebtedness tax to pay, although you are paying off the deficiency.

A lender is better off if a property is sold in an orderly fashion and is kept occupied. Therefore, there is an incentive for the lender to work with a borrower, even if there will be a loss. This is because if the borrower leaves the home, and the property becomes abandoned, the market value will plummet. Vacant properties are difficult, if impossible to insure, so the lender may be completely unprotected. The plain truth is that the second a potential buyer for a property knows that the parcel is a "lender repo" the value of the property has gone down.

Another way for the parties to work together is for the property to be conveyed to the lender, but, for the borrower to agree to rent the property, and for a realistic purchase price to be set so that if the borrower can get back on his or her feet, they can purchase the property.

However, if the lender is hostile, then the best policy is to save as much money as possible and stay in the property for as long as possible. This "rent free" period of time can be used as a time to try to get your finances back in order. Be very wary and afraid of any service which promises to buy your property, even if there is no equity, save your credit and let you stay in the property. Don't pay anything to a service which promises to solve your problems so long as you make an advance payment. That sounds too good to be true- and is. A new class of scam has arisen from the fact that there are many persons desperate to walk away from bad deals. If there is no equity in a property, why would an investor want to walk into a losing deal? Please, save yourself money and heartaches. Don't fall for this type of scam.

If you are concerned about whether or not there is equity in your property, there is a simple, low cost way to get a "ball park" appraisal. Make appointment for two or three real estate companies to list your property. The agent will provide you with a no cost estimate of the value of the property. Be sure to get the agent to tell you the probable sales price of the property, NOT the listing price. It is customary to list property for about 10% above a price that the seller will live with. The average of the figures that you get from the agents is an excellent way to get a handle on the value of your property. You can then determine if you have equity by taking the estimated sales price, deducting the commissions and closing costs.

If there is equity in a property, then there are an entirely different set of strategies to follow. The most critical element is to get the property on the market and to try to get new financing. You are better off selling a property quickly, and perhaps at less than the best deal, if for whatever reason you can not afford to keep on making the payments. Every day that you delay you will find that the value of your property falls. If your property actually goes into a foreclosure, the value of the property drops at once. There is a nationwide industry in looking for parcels of real estate in foreclosure which are worth the amount of the liens, and who are looking to get the property for the amount that the banks have in the property, and no more. Because of time pressure there are few persons who can close a deal if there is indeed a foreclosure in the works. Why should they, since they may be able to get the property directly from the lender?

If the interest rate on your property is more than 2 per cent over the current mortgage rates, you may be able to save the property through re-financing IF the loans which are troublesome are still current and you can afford the new payment. The general rule of thumb is that you only save money refinancing if your loan is 2 per cent or more higher than the present rate. If you are having trouble making payments and your loan is more than 2% above the current rate, contact your lender and see if they will agree to cut the rate. Many lenders will do so rather than have a mortgage paid off in a market where interest rates are dropping. Like in all other cases regarding foreclosure, speed is mandatory.

There is another, but drastic way to handle a foreclosure, or a potential foreclosure when the property has equity. This is by filing either Chapter 13 or Chapter 11 bankruptcy. In either type of bankruptcy, you may force a lender to reinstate a mortgage or other lien against the property, although there are restrictions limiting what kind of work out which can be forced on a first lien on a person's residence. If you have equity in a property, and can make payments and payments towards any delinquency, you may be a candidate for Chapters 13 or 11. The typical case on a Chapter 13 is where a person couldn't pay for several months, but now can. In these instances Chapter 13 may be the best way out. Seek legal counsel as quickly as you can if you feel that you have equity in the property and have the ability to begin to make mortgage payments and payments on the delinquency, if any.

For those with VA and FHA financing there are other issues. Publications in the electronic legal database have information concerning government loans and special programs related to defaults.

Don't panic!

{ewr d2htls32, AVI_Player, irsfin.avi}
Few IRS audits are "complete" audits in which all entries are reviewed by the IRS. Almost all revolve around specific items. Of course, if the IRS begins an audit it may broaden the scope of the audit. However, most audits are solely to verify deductions, elections or other issues.
In addition to "audits" the IRS will automatically correct items which it deems to be wrong. See the "Official Publications" section for information on handling these types of corrections and correcting IRS errors.
There are many choices to be made if you receive an audit notice. However, the one choice that you should not make is to panic. Many audits are to verify unusually large deductions, and may be as simple as providing proof that you did have a large medical bill, or that you did donate an expensive item to charity. Once that item is covered, the audit is over. Audits can be an ordeal, but usually aren't.
A general piece of knowledge is that the IRS never keeps original documents. They will accept a copy, or, if you bring the item to an interview, the IRS will make copies and give you your originals. If possible, make your own copies of items which are requested to the interview. This will greatly speed the process of the conducting the interview and is a polite gesture.
A. Questions arising immediately after an audit notice is received
When receiving an audit notice the following primary questions will affect everyone.
1. Do I need to get representation before the audit?
2. Should I appear in person at the IRS, or let a field auditor come to my place of business or home?
3. What proof is acceptable on disputed items?
4. Who can handle the audit in the case of an impaired taxpayer (an elder) or a business.
5. How often can I be audited?
As to question 1, if your return was prepared by someone else, contact that person to discuss the audit notice. However, if you have any lack of confidence in the person who prepared the return, you may wish to bring your return and other information to a new advisor. Anyone can open up shop as a tax consultant, bookkeeper or tax preparer. However only Enrolled Agents (EA's), Certified Public Accountants (CPA's) and lawyers have certification that they are knowledgeable about tax issues.
Many people are familiar with what a CPA or lawyer is. The term enrolled agent may be new. An enrolled agent is a former IRS employee, or, a person who has passed an IRS examination, and is permitted to represent others before the IRS. There is a general perception that EA's tend to favor the IRS position and are not as aggressive as CPA's or lawyers. This argument goes, "after all EA's are usually former IRS agents." This legend is not true. An EA with their own shingle out practicing will try to secure the best deal possible for their client.
If you feel that you need a representative other than the person who prepared the return, we recommend that you consult with an EA or CPA. Lawyers are generally too expensive to use for the beginning stages of an audit. In fact, EA's and CPA's generally have greater experience in audits than lawyers.

Bottom line- if you are not comfortable dealing with an audit, get professional help. This help will include a cost/benefit analysis of the merits of
Regarding question 2, go to the IRS office rather than having an auditor visit your home or place of business. To be blunt, there is usually too much information gained by the IRS in a visit to your premises. Some separation of time between interviews and answering questions that you are not confident about off the top of your head is advisable, and at your offices you may raise further questions in the auditor's mind.
Regarding question 3, many persons think that the only item which is acceptable as proof of deductions are cancelled checks or receipts. This is not true. An auditor is required to examine affidavits or other proof, including an affidavit (or declaration under the penalties of perjury) which you make. We will discuss the audit process in further detail, but be assured that many deductions have been allowed over the years without air tight proof.
Turning now to question 4, if an elderly relative is audited, their immediate family such as children can handle the audit. A signed power of attorney, or, if the person being audited cannot sign papers due to illness an explanation as to why the cannot will suffice.
If a business is audited an officer or employee can represent the business.
Finally, as to question 5, the general rule is that the IRS can audit every year, unless three consecutive years have produced no changes after examination. This rule is not iron clad. In the event that you have been audited without changes for three years and then receive another audit notice, an objection can be made to the audit and the audit will usually be cancelled.
B. Questions arising during interviews.
When going to an interview, be on time and above all, be courteous. IRS auditors are human beings and are like any other person will react negatively if they are treated poorly. Listen very carefully to whatever questions they might ask, and answer the question and just answer the question. The shorter the answer, the better. Questions which can be answered by a "yes" or "no" are appropriately answered with a yes or no. Do not explain any answer unless requested to do so. If you can't remember, the auditor will agree to give you a reasonable amount of time to investigate. If you have to obtain detailed records or information you can request weeks or even months and send them in via mail.
One of the most frequently asked questions about IRS audits is whether you can tape the audit. You are allowed to tape an audit if you give the auditor advanced notice so that the auditor can also tape the interview. Unless you are positive that you will have a serious dispute with the service, this is not necessary. Taping is a sign of hostility and anticipation of adjustments and disputes.
C. When you receive an auditor's changes
A field auditor has to "go by the book" and will try to change your return so that it follows the "black letter" rules of the IRS. However, if you make a mistake and don't claim a deduction you should (as has really happened to the Legal 911 editorial staff) expect that they will point this out too. You cannot "horse trade" or compromise with a field auditor. An auditors report represents the IRS's toughest position. One of the most important points to remember is that if you do not agree with the findings in an audit, you have both IRS and court appeals. If you believe that there is an error, you WILL do

better in appeals. To repeat- if you feel that the field auditor's report is wrong, the case is not over and the IRS will not come to seize your property if you don't pay. You may go to IRS appeals and may go all the way into the Court system. You must not pay the tax until appeals and court proceedings instituted in the US Tax Court (if you go that route) are over. Be sure that you follow deadlines. If you have 90 days to take action, the 91st day is too late.

However, while the appeals are pending, if you are found to owe tax, you will be charged interest and penalties. If you receive any letters from the IRS with deadlines, be sure to follow the instructions.

Many audits in the initial stages can be handled by the taxpayer himself. However, after a field audit if there are disputes professional assistance is necessary. Appeals frequently involve issues of interpretation of the tax results of financial transactions, and may require the citation of law, regulations or court opinions. At the appeals level (most cases have at least two levels of appeals within the IRS before tax court) the appeals officer can "horse trade" and compromise in order to get a complete resolution of the case. In this type of environment, the advice of a professional is necessary.

D. Advanced guerilla tactics.

IRS auditors will follow the detailed procedures which are contained in the IRS audit manuals. You can almost always predict what an auditor is doing and why, the likely next step in the audit, by reviewing the audit manual. The IRS audit manual is available in law libraries. In the same way you can also predict the IRS' collection tactics on unpaid taxes by looking through the IRS collection manual.

If you feel that an auditor and you have a personality clash, you may request, through the auditor's supervisor that they be removed from the case. Usually these requests will be granted.

"Offers in compromise" are currently en vogue. There are two types of offers in compromise. The first is one when the amount of tax is known but the taxpayer doesn't have the money to pay all of the tax. These can be usually handled by the taxpayer himself. An offer in compromise can also be made to the IRS in connection with a tax before the amount is finally decided. These offers called "I don't owe the amount" offers require professional assistance in demonstrating that the position taken by the IRS has flaws and a lesser amount should be accepted.

E. Official IRS publications

We offer the following official IRS publications. In addition to discussing audits and corrections to returns, we have left in a few of other "most frequently asked questions as well.

FAQ Internal Revenue Service (IRS) Help Available
Taxpayer Help and Education
Frequently Asked Tax Questions And Answers

I received an IRS notice. I've contacted the IRS at least three times about it, but the problem still hasn't been fixed. What can I do?

Call your local IRS office and ask for Problem Resolution assistance. The number is listed in the IRS Assistance Map. Persons with impaired hearing who have access to TDD equipment may call 1-800-829-4059.

Is there any special assistance available on unresolved tax matters which are creating a hardship?

If you are suffering, or about to suffer a significant hardship because of the way Internal Revenue laws are being carried out, you may ask for special help from the IRS' Problem Resolution Office. Refer to Tax Topic 106, Hardship Assistance Applications, or for information on locations and telephone numbers for this IRS service, refer to the IRS Assistance Map.

If I don't agree with an audit assessment, do I have any appeal rights?
The IRS has an appeals system for people who do not agree with the results of an examination of their tax returns or with other adjustments to their tax liability. For further information on the appeals process, refer to Tax Topic 151, Your Appeal Rights.

I have not filed tax returns for several years. What should I do?
Call 1-800-829-1040 and request the nonfiler unit. The assistor will answer your tax questions and help you obtain blank prior year forms. For additional information, refer to Tax Topic 153, What to do if You Haven't Filed Your Tax Return.

The deadline for filing a return has passed and I did not file for an extension. What should I do?
You need to file the tax return as soon as possible. If any taxes are owed, pay them with your return. If you are unable to pay the amount in full, refer to Tax Topic 202, Installment Agreements.

I didn't get my W-2 by January 31, 1997, so I asked my employer for it, but I still don't have it. What should I do?
If you don't receive your W-2 by February 15, contact the IRS for assistance by calling the number listed on the IRS Assistance MAP. Please refer to Tax Topic 154, Form W-2 - What to do if not Received, for specific information the IRS will need in order to prepare Form 4852, Substitute for a Missing Form W-2.
How do I request a copy of my tax return for last year?
Form 4506 can be used to request copies of previously filed and processed tax returns; or Forms W-2 only. The IRS cannot provide copies of information returns such as Forms 1099.
There is a charge of $14.00 for each tax period requested. The IRS also provides tax return transcripts and copies of Forms W-2 only at no charge. For additional information, refer to Tax Topic 156, Copy of Your Tax Return - How to Get One.
FAQ Collection - IRS

I just completed my return and find that I owe the IRS money. What should I do?
You should file your return even if you can't pay all of the amount you owe. File by April 15, 1997, and pay as much as possible. By filing on time, you avoid the late filing penalty. By paying as much of the amount you owe as possible, you reduce the amount of interest and late payment penalty that you will owe. For more details on interest and penalties, refer to Tax Topic 201, The Collection Process, or Publication 594, Understanding the Collection Process.

Can I ask to make installment payments on the amount I owe?
Yes. If you cannot pay the full amount due with your return, you may ask to make monthly installment payments. However, you will be charged interest and a late payment penalty on the tax not paid by April 15, 1997, if your request to pay in installments is granted. Before requesting an installment agreement, you should consider less costly alternatives such as a bank loan. For more details on installment payments, refer to Tax Topic 202, What to do if You Can't Pay Your Tax, or Publication 594, Understanding the Collection Process.
Can my refund be used to pay other debts?
Under the law, state and federal agencies refer to the IRS the names of taxpayers who are behind in their support payments, taxes, and loans. Your tax refund may not be refunded to you if you are delinquent in child support payments or you have a past due federal debt (such as a student loan). Therefore, your refund may be used to pay other debts you owe. For additional information, refer to Tax Topic 203, Failure to Pay Child Support and Other Federal Obligations.

I am unable to pay my delinquent taxes. Will the IRS accept an "offer in compromise?"
An offer-in-compromise may be an alternative for resolving your tax delinquency. The IRS accepts an offer in compromise to settle unpaid accounts for less than the amount owed when doubt exists as to whether you owe the liability or when there is doubt that the liability can be collected in full and your offer reasonably reflects collection potential. Refer to Tax Topic 204, Offers-in Compromise, for additional information.

What criteria must be met to claim an individual as a dependent?
If you want to claim someone as your dependent, there are five tests which must be met:

Member of Household or Relationship Test
Citizenship Test
Joint Return Test
Gross Income Test
Support Test

Member of Household or Relationship Test: A person must live with you for the entire tax year as a member of your household or be related to you. A person is not considered a member of your household if, at any time during the tax year, your relationship with that person violates local law. The Form 1040 and 1040A instruction booklets contain a listing of all relatives who may qualify under the relationship test. Your spouse is never considered your dependent.
Citizenship Test: Your dependent must be a U.S. citizen or resident, or a resident of Canada or Mexico for some part of the tax year.
Joint Return Test: Generally, you are not allowed to claim a person as a dependent if he or she files a joint return.
However, you may claim a married dependent who is filing a joint return solely to claim a refund of tax withheld. This exception applies if neither the dependent nor the dependent's spouse is

required to file a return and no tax liability exists for either spouse on separate returns.

Gross Income Test: Generally, you may not claim as a dependent, a person who had gross income of $2,550 or more for 1996. There are two exceptions to the gross income test. If your child is under age 19 at the end of the tax year or a full-time student under the age of 24, the gross income test does not apply.

Support Test: To claim someone as your dependent, you must provide more than half of that person's total support during the year. A special rule applies to children of divorced or separated parents.

If you claim a dependent who was born before December 1, 1996, you must include that dependent's social security number on your tax return or you may be subject to a penalty. For more information on dependents, refer to Publication 501, Exemptions, Standard Deduction, and Filing Information, and Publication 929, Tax Rules for Children and Dependents.

I received a notice from IRS. What should I do?

The IRS sends a letter or notice to you to request payment for taxes, notify you of a change to your account, or request additional information. Please review the information on your entire tax return and compare it with the information on the notice. If the notice tells you that a correction was made to your account and you agree with the correction, a reply is not needed unless a payment is due. If you do not agree with the correction we made, it is important that you respond to the letter or notice as requested. Please call or write to us and tell us why you disagree so any necessary action can be taken. If you are due a refund as a result of our adjustment, it will be sent to you unless you owe other amounts the law requires us to collect (for example, related tax accounts, child support, student loans, etc.). Notices and refund checks are sent from different IRS locations. Any refund issued as a result of our change or correction, should be received within 6 weeks from the date of the notice. Refer to Tax Topic 651, Notices - What to do, for additional information.

I received a CP 2000 Notice from the IRS. Have these changes been made to my tax account?

This notice informs you of the proposed changes to income, payments, credits, or deductions, and the amount due to the IRS, or refund due to you. It is normally a five to six page letter. Refer to Tax Topic 652, Notice of Underreported Income - CP 2000, for additional information.

Can you explain IRS' penalty and interest charges?

Interest is charged on any unpaid tax from the due date of your tax return until the date of payment. The interest rate is determined every 3 months. If you file on time but don't pay on time, you will generally have to pay a penalty of 1/2 of 1% of the unpaid tax for each month or part of a month the tax remains unpaid. If you owe tax and don't file on time, the penalty is higher.

I just received an IRS notice indicating changes were made to my return, but it appears an attachment to my return which explained the entry changed by IRS, was not considered. What should I do?

If you believe the IRS made a mistake with the figures, or didn't

consider some important information, call the IRS at 1-800-829-8815 to discuss the matter. If possible, please have a copy of your tax return and the notice when you call. For additional information, refer to Tax Topic 654, Notice of Change to Return.

I received an IRS notice resulting from correspondence I sent regarding a change to my return. The notice includes additional penalty and interest charges. How are the penalties and interest figured?

Interest is charged on any unpaid tax from the due date of the return until the date of payment. The interest rate is determined every three months and is the federal short-term rate plus 3 percent. Interest is compounded daily. In addition, if you filed on time but didn't pay on time, you will generally have to pay a late payment penalty of one-half of one percent of the tax owed for each month, or part of a month, that the tax remains unpaid after the due date, up to 25 percent.

The one-half of one percent rate increases to one percent if the tax remains unpaid after several bills have been sent to you and IRS issues a notice of intent to levy. For additional information on IRS Notices and Bills/Penalty and Interest Charges, refer to Tax Topic 653.

The IRS sent me a letter that included an additional amount of tax due. I read the explanation on the letter, but I do not agree with the changes which were made. Should I file an amended return?

If you believe the IRS made a mistake in the figures, call 1-800-829-8815 to discuss the matter before filing an amended return. If possible, please have a copy of your tax return, and the notice when you call. For additional information, refer to Tax Topic 656, Notice of Change to Return - CP 11.

I received an IRS Notice titled, "We Corrected Your Return - Amount Due IRS." It appears I did not get credit for one of my federal tax deposits. What should I do?

If you account has not been credited with all of your deposits, call the toll-free number on your notice to discuss the matter. Please have the notice and a list of your deposits when you call. For additional information, refer to Tax Topic 657.

If you do not pay the full amount of the tax you owe, you will receive a tax bill. This bill begins the collection process. The length of the process depends on how soon you respond and pay the bill. Please have your records at hand when you call.

The first bill you receive will explain the reason for your balance due and demand payment in full. It will include the tax due plus penalties and interest that we have charged on your unpaid balance from the date your taxes were due.

If you believe your bill is wrong, please write the IRS office that sent you the bill, or call or visit your nearest IRS office. To help us correct the problem, please include a copy of the bill and copies of any records, the front and back of canceled checks or money orders, or other information that will help us understand what you believe is wrong. Do not send your original documents. You may also call the IRS to discuss why you disagree with the bill. See the IRS Assistance Map for information on locations and telephone numbers on these and other IRS services.

If the bill is correct, but you cannot pay it in full, you should pay as much as you can and immediately call the IRS to discuss when the remaining balance due can be paid. Since the balance is subject to interest and penalty and is added daily, it is strongly recommended that all measures are taken to pay in full. You may consider a bank loan, or cash advance on your credit card. For a fee, we may be able to offer an individual payment plan based on monthly installments. You may also complete and return Form 9465, Installment Agreement Request, with your bill, specifying the amount you can pay each month. Select Topic 202, What to Do if You Can't Pay your Tax, for more information.
If you do not take some action to pay your tax bill or contact us to make arrangements to settle the account, we may take enforced collection actions. By taking these actions, we are enforcing the notice and demand for tax.
Some of the actions we may take to collect taxes include:

filing a Notice of Federal Tax Lien,
serving a Notice of Levy, or
seizing and selling your property.

A lien attaches to all of your property, such as your house and car, and all your rights to property, such as your accounts receivable. By filing a Notice of Federal Tax Lien, the Government provides public notice to your creditors that the Government has a claim against your property, including property that was acquired after the lien was filed. Once a lien is filed, it may harm your credit rating. The IRS will issue a Release of Notice of Federal Tax Lien when the taxes, penalties, interest, and recording fees are paid in full.
A levy is another method the IRS may use to collect taxes that are not paid voluntarily. It means we can, by legal authority, take property to satisfy a tax debt. Levies can be made on property that you hold, such as your car, boat, or house, or on property that is yours but is held by third parties, such as wages or funds on deposit at a bank. At any time that you have an outstanding tax liability, any individual federal tax refund that you are due, will be offset by the amount you owe and applied to the liability. When doubt exists as to whether you owe the liability or whether you have the ability to make full payment on the amount owed, the IRS may be able to settle your unpaid tax balance for less than the amount owed. Select Topic 204, Offers in Compromise, for more information.
In all your dealings with the IRS, you have the right to be treated fairly, professionally, promptly, and courteously by IRS employees.
OFFERS-IN-COMPROMISE

An offer-in-compromise may be an alternative for resolving your tax delinquency. The IRS will accept an offer in compromise to settle unpaid accounts for less than the amount owed when doubt exists as to whether you owe the liability or when there is doubt that the liability can be collected in full and the amount you offer reasonably reflects collection potential.
If the basis of the offer is the doubt that you owe the liability, for example, a disputed assessment, you must provide a written statement of supporting evidence. The Service cannot

accept a compromise where the liability has already been decided by a court.
To submit an offer-in-compromise you must complete Form 656. Complete instructions are provided on the form. Also, you must submit Form 433-A, Collection Information Statement for Individuals, or Form 433-B, Collection Information Statement for Businesses, if the basis of the offer is doubt that the liability can be collected in full. The forms provide a statement of your income, expenses, assets, and liabilities.
The amount of the offer should at least equal or exceed your equity in all assets. When reviewing an offer, the IRS considers four factors:
The amount collectible from your assets; The amount collectible from present and future income; The amount that can be collectible from 3rd parties, for example, Trust Fund Recovery penalty and transferee; and Sources of funds that are available to you but not subject to the Service's collection action.

The ultimate goal of an offer-in-compromise is a settlement that is in the Government's best interest and the taxpayer's. It is your responsibility to show how acceptance of the offer would be in the best interest of the Government.
Generally, the IRS will not accept an offer unless it is clear that you have complied with all current filing and paying requirements. The acceptance of an offer creates a "fresh start"; therefore, the terms of the offer require future compliance with all tax filing and paying requirements for a period of 5 years. If you do not abide by all the terms of the offer, including the compliance requirement, the IRS may reinstate the entire tax liability.
Additional information about the Offer-in-Compromise can be found on Form 656, and in Publication 594, Understanding the Collection Process.

Serious personal injury

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Serious automobile collision

Even lawyers who have worked on hundreds of automobile collisions during their careers are badly shaken after even a relatively small accident. The human body reacts to an accident with both the fight/flight syndrome of adrenaline and shock- a muting of the body's senses. Having potentially been shaken up or even injured, making statements as to fault, liability or injuries ("I'm not hurt..") is a very poor idea. You are not in a proper frame of mind to be able to assess your own condition.

Generally, state laws require that you cooperate with the police at the scene of an accident. In fact, almost every state prevents statements which are made for the purpose of completing an accident report cannot be admitted in court. However, insurance companies and lawyers look to automobile accident reports FIRST when deciding how much a case is worth and who is at fault. As a result, being listed as having caused an accident on an accident report will be a significant factor in the future of your case.

Frequently asked questions

Q: How do the courts and insurance companies determine how much an injury case is worth?

A: The law is that you are entitled to receive two types of losses- economic and non-economic:

(a) reasonable past and future medical expenses;
(b) lost wages;
(c) the present value of future lost earning capacity;
(d) other losses, such as needing a maid since you can no longer do housework, that are paid to others or have a clear market value

Non-economic losses include:

(a) pain and suffering;
(b) pain and suffering of your spouse and minor children

There are subscription services which are available at larger law libraries which review court awards in personal injury cases. These awards are the basis of the settlement offers or arguments to juries on damages.

In a settlement posture, the insurance company or other responsible party will look at the degree of fault that their driver had in the collision, and in most states, reduce what they offer by "comparative" fault. That is, if they are 80% responsible, the owe you 80% of your losses.

The amount of a probable verdict is determined by taking the hard dollars that you have lost, your "economic" damages, and multiplying it by a factor taking into account your injury, life expectancy and any special factors. For example, a death case is always more serious than injury cases due to jury sympathy. The present value of future wage losses are added to reach a probable verdict. Good attorneys and insurance company claim's adjusters can estimate probable awards quite well.

The awards given by juries, depending on the injury, range from 2 to 15 or more times the economic losses.

Let's take a real case. A 50 year old woman has an accident in which the other party is

at fault entirely. The accident results in a 16% permanent disability to the body as a whole due to injuries to her bladder and back. Wage losses total $20,000 and medical expenses exceed $15,000. Future medical supplies and treatment will total $50,000 over her likely life time.

Based on where the case would be heard, jury research services and experience of the lawyers and insurance companies indicate that the average verdict would be 5 times economic losses.

Thus, the case has the following estimated verdict:

$35,000 in losses: 175,000 PLUS present value of $50,000 in future medical bills-Approximate worth of case $200,000-$225,000.

An insurance company, if they have adequate limits, would probably settle the case for $150,000 to $175,000 or all the way to $200,000.

Note that personal injury recoveries are not taxable to the injured party.

However, in this case, the spouse of the injured party would be entitled to an award for their "loss of consortium" of about 10% of the total.

This case was settled prior to trial for $165,000. This resulted in more net funds to the client that trying the case to get more since expert witnesses such as doctors and accident experts and trial costs would probably take $20,000 or more, which would be deducted from the recovery. An experienced attorney can estimate the worth of a case once doctors have reached a decision as to the extent of injuries and have assigned a disability rating. [We discuss this below.]

As you may have noticed we have stressed in the video that keeping receipts is important in injury matters. Since each dollar of losses is multiplied to get a probable verdict, saving even small receipts becomes important.

Q: If I have a case worth $165,000, but, the other side has no assets and $25,000 in insurance, what will I recover?

A: Your own insurance may provide "uninsured" or "underinsured" coverage. This coverage provides for payments in the event that the other, responsible party, cannot pay you the damages that you have suffered. The same defenses are available to the person who has caused the accident are available to your insurance company. In an uninsured motorist claim, your insurance company becomes adverse to you and suits or arbitration may be required to set the amount that you will be paid if the case cannot be settled.

Q: I have $50,000 in insurance limits. The other side is suing for $100,000. What are my risks?

A: Your insurance company must attempt to settle the case for your limits if it appears that the losses could exceed your policy limits. This means that your insurance company must make a good faith effort to protect you, and to obtain your release from liability for the amount of limits. If an insurance company does not attempt in good faith to protect you, they are liable for the excess loss. For example, if the other party offers to settle for your limits, your insurance company refuses, and you then have a verdict of $100,000 entered against you, your insurance company is legally liable to pay the $50,000 that it cost you. Unfortunately if the other side rejects an offer to settle for limits then you may be responsible for the loss above your limits. You should be aware that generally claimants do settle for limits if you do not have substantial assets. However, this fact should cause you to consider the amount of your limits very carefully.

Q: Do I need a lawyer to pursue a personal injury claim after an automobile accident?
A: If the case is minor, you may be able to settle the case yourself. However, this begs the question- is it a minor case? Generally insurance companies put cases where the person represents themselves on the bottom of the pile and take care of cases involving legal counsel first. All personal injury firms provide consultations to evaluate whether to take cases at no charge. Consider seeing multiple firms to get a handle on your case. Remember also that in many states there are very short time limits to file suit. See our video and tutorial on selecting legal counsel.
Q: If I am hurt while I am driving for my work, what are my rights?
A: If you are hurt while you are driving (but not to or from work in your normal commute) then you are entitled to benefits under worker's compensation AND to recovery from the third party. However, if you do recover from the third party, the recovery is shared with the worker's compensation carrier so that you do not have a double recovery. This type of case requires legal assistance.
Q: What are the most common mistakes made by automobile accident victims and their counsel?
A: There are many.
1.Party: Losing medical bills.
2. Party and their counsel: Accepting medical reports from treating doctors- if your treating physician assigns a rating which is too low you should have an IME [Independent Medical Examination]. There is no reason to settle a case based on an extremely conservative disability rating.
3.Counsel: Not bringing in other parties. Was the street light broken? Was the car designed correctly? Other parties can bring in deep pockets.
4. Counsel: Failing to bring in expert witnesses in enough areas. For example, bringing in an economist to put the professional imprimatur on future wage losses increases verdicts by 20%. (Of course, if the case isn't a big dollar one, the cost of the economist will reduce rather than increase recoveries.)
5. Party: Not buying enough uninsured motorist coverage. A solid citizen who pays her bills on time and is a good driver is exactly the person who is going to be hit by an un-insured motorist in a 22 year old car who has no assets.

Legal 911's major emphasis in this release

Divorce, once a subject of shame and intrigue has come into the open as a regrettable part of American life.
Most persons use attorneys for divorces , particularly if children are involved. Most courts provide simple "fill in the blank" divorce forms for those who agree to a divorce and who have agreed to the disposition of property, provided that they do not have children. Since "simplified" divorce does not apply to couples with children, most persons going through a divorce with children seek legal advice.
You can effect substantial savings in legal time if you can "jump start" your counsel by providing the information which they will need to proceed. A great deal of the billing related to divorce matters is getting information from clients! Be prepared to provide the following information to your divorce lawyer at the first visit:
(a) tax returns for the past 2-3 years;
(b) lists of bills due and balances on debts, and which spouse (or both) are on the account;
(c) list of assets including assets held solely by the other spouse;
(d) pay stubs or other information concerning income;
(e) real estate deeds, mortgage payment books;
(f) dates of birth, social security numbers, ages, schools attended of all children (if any children have medical needs recent diagnoses);
(g) if you have special medical needs, diagnoses or medical records related to them;
(h) marriage certificate;
(i) if your spouse has other minor children, their names, and if available decrees related to them;
(j) life insurance, health insurance policies;
(k) retirement or other savings plans.
The Legal 911 Law Library contains information from many jurisdictions concerning child support and child custody. This edition of legal 911 has placed a significant emphasis on this issue. Remember that Legal 911 is regularly updated with new information and regular topics. Visit us on the web!
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Divorce
Frequently asked questions about divorce:
Q: How is child support calculated?
A: Federal law (isn't it strange how federal law has crept into everything?) now requires that child support guidelines be used. These guidelines are available from local courthouses- and change often.
Q: How is child support changed to take into account for changes in the economy, like cost of living?
A: Federal law now requires that child support be re-calculated every three years. Old cases will be brought into the new system.
Q: How is child support changed to take into account changes in earnings of my ex-spouse?
A: As noted in the answer to the last question, federal law now requires that child support cases be reviewed every three years. However, general law still applies. If there

is a significant change in circumstances, such as a pay raise (or permanent drop) the pay of a spouse, the court may change support.
Q: If my ex-spouse doesn't pay support, can I withhold visitation?
A: No. Refusing to permit visitation is competent of court and is cause for a court, if so inclined, to change custody. The issues are unrelated. If a spouse refuses to pay support, contact the proper agency to begin enforcement proceedings.
Q: Can I buy items directly for my child rather than paying cash to my ex-spouse (who I don't think is doing the right thing with the money.)
A: Not unless this is approved by the court. It is probably galling to a spouse who wants to help their child if in fact the funds paid for support are not being spent properly. Child support laws will probably change to allow this. At the present time, many courts are willing to allow "in kind" payment of support. Without court permission, any items other than cash given for support will not credited to the support obligation if the other spouse disagrees. (And you got a divorce because you didn't agree… right?---That's something never to forget.)
Q: How long can back support be collected?
A: Forever. In some cases state agencies will not pursue support that it is more two years old AFTER the child reaches majority. In addition, Courts will not enter contempt citations for years and years of support- if the other parent did nothing to bring the failure to pay to the attention of the courts. (On the other hand, if a spouse has hidden for years the Courts will enforce all unpaid amounts.) However, the Court system will enter a judgment (which allows attaching of property or wages) for any amount of unpaid support.
Q: Can I get an order requiring my spouse to leave me alone prior to the divorce being final?
A: A Court will enter usually enter a MUTUAL restraining order directing that the parties not disturb one another while the divorce is in process upon request. However, courts are becoming reluctant to enter findings that spouse are "abusers" and entering totally one sided orders because injunctions due to vague complaints of "abuse" because of collateral consequences of these findings.
Q: How are multi-state divorces handled?
A: A book can be written about the subject. Basic rules:
a. Only one court has the right to hear child custody. This will be the court where the child has lived the most in the recent past (except if the child was moved in violation of another order). In most cases the last place where both parents resided with the child is the proper location if either parent still resides there.
B: Any state where one spouse meets residency requirements can enter a divorce. Property or other issues cannot be heard unless there is jurisdiction on both parties or their property.
C.
Q: My spouse has filed for divorce- I don't think that we should have one. What are my options?
A: In "no fault" states Courts will order psychological counseling. However, if this process does not result in a voluntary reconciliation, a divorce will be entered. If the few "fault" states refusing to go along with a divorce will just result in the spouse going to a neighboring state which is more tolerant. However, even in "fault states" a Court can

order a divorce despite any objections if the parties have lived apart long enough.
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Personal injury

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Defective Products
Personal injury due to a defective product, particularly if serious injuries occur is a life shattering experience. Everyone would like to give you back your life- but all that the legal system can offer is monetary recovery.
Although you hear what sound like absurd settlements being made in cases, few, if any victims of defective products, their counsel, or their families, are satisfied with the recovery made in their cases. Beware when you hear stories of million dollar verdicts in cases which sound like they aren't serious. The manufacturers and insurance lobbies would like people to scoff at any large award. If you hear a story about $2 million verdicts for "spilled hot coffee" remember that third degree burns can be life threatening, and in the right person, nearly fatal. Although not every verdict is just, there is usually a greater foundation to them than a "sound byte" can offer.
Please review the information on both hiring an attorney and automobile accidents for information concerning how personal injury cases are valued.
The Legal 911 Law Library contains information concerning reporting defective and dangerous products to the Consumer Product Safety Commission. This is a very important first step in getting manufacturers to recall poor products and settle with victims of faulty design.
Frequently asked questions
Q: At the time this is being written, there is talk of cigarette companies making vast payments to settle suits. What does this mean for a life long smoker?
A: At this time the settlement discussions are related to settling claims that states have made for reimbursement of indigent health care. However, it is likely that an award of some kind will be offered to every smoker in an effort for cigarette makers to avoid being bankrupted by the cost of individual and class action suits.
Q: What should I do if I am injured by a defective product?
A: Get medical help. Preserve any evidence and keep all bills. See the faq for automobile crashes for more information.