This article provides practice tips for advising clients with debt incurred by an abusive partner through coercion and fraud. While this article focuses on coercion by abusive partners, similar advice may be appropriate for elder abuse, abuse suffered by persons with disabilities who rely on a caretaker for day-to-day needs, victimization involving human trafficking, and even abuse targeted at foster youth by family members or foster parents.

Financial abuse in the form of coerced debt occurs when an abusive partner utilizes the threat of physical, emotional, psychological, or financial harm to the victimized partner, their children, other family members, pets, or even to the abuser themselves to manipulate, intimidate, or force the victimized partner to incur debt or provide access to assets, such as a credit card, bank account, or other assets. Abusers can also coerce victims into taking out new credit or other financial obligations for the abuser’s sole use and benefit.

Coerced debt also occurs when an abusive partner can use a victim’s personal information to incur debt in the victim’s name for the abuser’s use without the victim knowing, such as opening credit card or cell phone accounts, taking out auto or home loans, and even filing fraudulent tax returns—all done online without the need of a physical signature.

Financial abuse limits the independence of victimized partners and impairs their ability to leave an abusive situation. Unpaid debt negatively impacts the victim’s credit rating, making it more difficult for the victim to obtain new housing, new employment, new cell phone accounts, and credit.

For individuals and families facing other forms of financial distress, Surviving Debt [1] is NCLC’s guide for dealing with consumer debt. Written for consumers and their counselors, the book contains practical strategies and legal rights. Bulk pricing is available for attorneys who wish to distribute the resource to clients.

**A Safety Plan as an Immediate Priority**

Because financial abuse is often linked to domestic violence, the first step in advising a client who is a victim of financial abuse is to ensure the safety of the client and other family members. Evaluate whether any of the advice given to a client will put them at risk of retaliation by their abusive partner. For example, will the abuser retaliate when the client submits an identity theft report to the police naming the abusive partner as the thief and where this report results in a criminal investigation of the abuser? If the client takes funds from a bank account or closes a credit card account, the abusive partner may also retaliate or threaten violence.

Safety should always be your highest priority and the client should first develop a safety plan. Help with that is available at the National Domestic Violence hotline at 1-800-799-7233 or 1-800-787-3224. Be careful that any steps taken to prevent coerced debt also do not reveal the client’s new location.

**Documenting Coerced Debt**

Documentation of financial abuse is critical when trying to resolve coerced debt with card issuers, other creditors, banks, credit bureaus, mortgage servicers, and others. The simplest step for a client is to file an identity theft report with the Federal Trade Commission (FTC) at www.idtheft.gov [2]. Also advisable (if it is safe to do so) is to make an identity theft report with the local police department or the police where the identity theft took place. The client should provide the police the FTC identity theft report, a copy of the client’s credit report, and any billing statements or other creditor information about the coerced debt.

Clients who find a visit to the police intimidating may be more comfortable if accompanied by a domestic violence advocate. Some police departments allow the client to file the report on their own without having to go into a police station or interact with police. Police stations may even allow representatives to help non-English speakers make the report over the phone. The client should request multiple copies of the police report that can be provided to credit bureaus and others.

Other useful documentation are letters from a sexual assault counselor, a domestic violence shelter, victim advocate, health care provider, mental health care provider, or law enforcement officer about the circumstances of abuse. Make sure the client pulls together any legal documents—a restraining order, proof of a criminal proceeding, a divorce decree, separation agreement, or other court orders. In California, for example, the client can ask a court that is issuing a restraining or protective order to declare that specific debts were incurred as a result of financial abuse. See Cal. Fam. Code § 6342.5 (West) (effective Jan. 1, 2022).
Email Addresses and Website Passwords

The client should immediately change passwords on any email and other web-based accounts, creating a new password that the abuser will not be able to guess. Often a good idea is creating a new email account and switching to that email address for all web accounts. Otherwise, the abuser may keep trying to guess the password and lock the client out of the account, requiring a reset. The abuser may also have access to and delete emails sent to the client.

The client should also change all PINs, security questions, and if possible phone numbers—again creating ones that the abuser will not be able to guess. The client may have trouble remembering all the new passwords, PINs, and security questions, and it might make sense to put them in a notebook kept in a lock box or someplace else the abuser cannot access.

At the same time, for all accounts, update contact information, including any new addresses, phone numbers, and email accounts. This will reduce the risk that an abuser can still access an account over the phone with the client’s Social Security number, date of birth and other information.

Protecting Bank Accounts

Abusive partners can take over exclusive use of a joint bank account or even one exclusively in the victim’s name where the victim’s wages and other income is deposited. The abuser can even coerce a victim into overdrawing a bank account for the abuser’s benefit.

Advise clients to set up a new bank account solely in their name. If the abuser has a good relationship with the previous bank, opening the account at a new bank is a good idea. Make sure any PIN for the new account—for debit or ATM card or for phone transactions, is one the abuser cannot guess. Make sure checks and statements are never sent to an address the abuser can access. Online banking should use an email address, username, and password unknown to the abuser. Have all direct deposits and fund transfers directed to the new account. The client should move any funds that belong to them out of the pre-existing bank account to the new one—if this does not jeopardize the client’s safety.

If the abuser is not a signatory on an existing client account, the client should review bank statements to check for any fraud or misuse—the client should not be liable for forged checks or unauthorized transfers, and the bank should refund that money to the client. The Electronic Funds Transfer Act limits consumer liability for unauthorized electronic fund transfers and provides private remedies where banks do not follow proper procedures. See NCLC’s Consumer Banking and Payments Law § 5.5 [3]. If the abuser controls the mail or has set up online access so that the client has no information about the bank account, the client can visit the bank in person to see if they will provide the information.

If the account is just in the client’s name, changing online passwords and the PIN on a debit or ATM card will slow down the abuser’s access to the bank account and force the abuser to forge any checks used to withdraw funds, which may be more easily shown as fraudulent. The client may even consider obtaining a new debit or ATM card whose number is unknown to the abuser.

Even if there are no funds in an existing bank account, it is a good idea to close the account if the account is solely in the client’s name. This will avoid overdrafts and fees for which the bank will seek payment from the client. The bank may not be willing to close an account if it is overdrawn. It may be more difficult to close a joint bank account or even remove the client’s name from the joint account. The client can provide the bank documentation as described above under “Documenting Coerced Debt.” For more information on closing a bank account, see NCLC’s Consumer Banking and Payment Law § 2.9 [4].

Dealing with Credit Card Abuse

Checking a credit report is a good way to identify all outstanding credit cards in the client’s name. Contact each card’s issuer and request a new card with a new number—at the same time report any charges that are not the client’s or those of an authorized user. Have the new card sent to a post office box or address to which the abuser does not have access. Make sure the client changes the password, email address, and even username of the card’s online account. Any authorized user cards should be sent to the same new address or cancelled. If the client did not authorize the opening of an account, simply close it, even without paying the outstanding balance.
The client is not liable for charges on cards the abuser took out in the client’s name and where the client never used the card—all charges are unauthorized. This may even be the case if the client did not voluntarily apply for the card but did so under duress. If the abuser is not an authorized user on a card, the client also is not liable for the abuser’s unauthorized charges. The same is the case if the abuser fraudulently added themselves as an authorized user or forced the client to do so.

Federal law limits a cardholder’s maximum liability for unauthorized use to $50, and usually there is zero liability. See NCLC’s Truth in Lending § 7.10 [5]. Rather than reporting unauthorized use of the card only over the phone, there are advantages to also sending a written billing error notice. See NCLC’s Truth in Lending § 7.9 [6]. If the abuser took out an account without the client’s knowledge, the client may not even know the card number or account number when communicating with a card issuer. However, usually the client’s name, date of birth, and Social Security number will be enough information for the card issuer to locate the account number. In communicating with the card issuer, provide applicable documentation listed at “Documenting Coerced Debt,” above.

Card issuers violating cardholder fair credit billing and unauthorized use requirements may be subject to actual damages, significant statutory damages, and attorney fees. There is a one-year statute of limitations for affirmative claims. See NCLC’s Truth in Lending §§ 7.9.9 [7], 7.10.8 [8].

**Preventing an Abuser from Opening New Credit Accounts in the Abused Partner’s Name**

Even after the client leaves an abusive relationship, the abuser may continue to commit fraud by opening new credit in the victim’s name and incurring large, unpaid debt on those new accounts. Although the client should not be liable on this debt, it will reflect negatively on the client’s credit report and may lead to debt collection and even collection lawsuits. The best tools to prevent unauthorized accounts being opened in the client’s name are security freezes on the client’s file at the three national credit bureaus—Experian, Equifax, and Trans Union. A fraud alert is another option but it is not as effective as a security freeze.

When a free security freeze is placed on the client’s file with each of the three national credit bureaus, the credit bureau will not give access to the client’s credit standing to any potential creditor, including a creditor contacted by the abuser in the client’s name. The creditor is therefore unlikely to provide credit to the abuser based on the frozen credit reporting file. Steps to initiate, remove or temporarily remove (thaw) a security freeze are set out in NCLC’s new 2022 Tenth Edition of Fair Credit Reporting § 9.2.3 [9]. The freeze prevents unauthorized opening of new accounts but does not prevent the abuser from use of existing accounts.

Clients initiating a freeze can still access their credit report to make sure there are no new accounts or fraudulent activity. A permanent or temporary lifting of the freeze is easy and fast, with use of a PIN or password supplied by each credit bureau. Make sure the client keeps the PIN or password in a safe place away from the abuser; a new PIN can be obtained from the bureau with proof of identity. Violations of the freeze provision can lead to private remedies under the Fair Credit Reporting Act. See 2022 Tenth Edition of NCLC’s Fair Credit Reporting § 9.2.6 [10].

Placing an initial or extended fraud alert on the client’s file with the credit bureaus is an alternative to a freeze but may not be as effective. A fraud alert warns any potential creditor using the client’s credit report that they need to verify that the applicant is indeed the client. The creditor should first call the client to verify the application, but only if the client has provided a phone number. Fraud alerts don’t always work, particularly if the abuser has access to that phone number or if no phone number is provided. Additionally, creditors do not need to verify your client’s identity if the application is for a new credit card account or for a credit increase on an existing account.

A *free initial fraud alert* lasts for twelve months and is renewable. Requesting it from any one of the three nationwide credit bureaus listed is supposed to be sufficient to notify all three, but it is safer to notify all three. An *extended fraud alert* lasts for seven years, but the abused partner must show identity theft based on the documentation described earlier. Fraud alerts entitle the consumer to additional free credit reports to make sure no unauthorized accounts are opened. More on fraud alerts is provided in NCLC’s Fair Credit Reporting § 9.2.2 [11].

**Addressing Coerced Debt on a Credit Report**

Financial abuse can negatively impact the client’s credit rating where the abuser uses the victim’s credit account or opens new...
accounts in the victim’s name and the debts remain unpaid. An identity theft block is a strong protection, requiring the three nationwide credit bureaus to block any information appearing on the client’s credit report that is a result of identity theft. A difficult issue is whether an abuser coercing a partner into opening an account or providing access to an account is identity theft. Is authorization that is coerced valid authorization? For example, Texas treats coerced debt as identity theft. See Tex. Penal Code § 32.51 (West) (effective Sept. 1, 2019).

A block should be requested separately for each of the three credit bureaus explaining what information is fraudulent due to identity theft and that the information “does not relate to any transaction” the client made. The client should provide the credit bureau with proof of identity, including the client’s Social Security number and a photo ID, and documentation of the identity theft, as described earlier under “Documenting the Coerced Debt.” More on identity theft blocks and credit bureau liability for failures to comply are discussed at NCLC’s Fair Credit Reporting § 9.2.5 [12].

Another approach to removing negative information caused by the abuser is to dispute the information and request the credit bureau investigate and remove inaccurate information in the client’s report, including unauthorized charges. Disputing a report is examined in detail at NCLC’s Fair Credit Reporting Chapter 4 [13]. The dispute request should include the types of documentation described earlier under “Documenting Coerced Debt.” The dispute should allege credit was unauthorized or coerced and that the client never benefited from the credit.

Even after the credit bureau indicates it will remove information, the client should make sure the information does not reappear on the client’s credit report by periodically requesting a free credit report to review. If the report shows that the information is still there, the client should send another dispute letter. The client may also have remedies against both the creditor and credit bureau for failure to properly investigate the dispute. See NCLC’s Fair Credit Reporting §§ 4.4 [14], 6.10 [15].

When Clients Need a Mortgage Loan Modification and the Abuser Is a Co-Borrower

Clients living in a home where the abuser is a co-borrower on the mortgage loan may need a mortgage loan modification to postpone or lower monthly payments. Such modifications are often available—see NCLC’s Mortgage Servicing and Loan Modifications [16]. A practical problem is raised though where the mortgage servicer requires the abuser’s signature and participation in the loan modification.

HUD’s Single Family Housing Policy Handbook, 4000.1 [17] (June 29, 2022) (effective Sept. 26, 2022), clarifies that for FHA mortgages an unavailable co-borrower is not required to execute FHA mortgage loan modification agreements where the co-borrower is unavailable, because of “divorce, legal separation, domestic violence,” among other reasons. If the mortgage servicer excuses the co-borrower’s participation, then the client need not submit an abusive co-borrower’s personal and financial information to be considered for a modification and the co-borrower does not need to sign a modification agreement.

Fannie Mae and Freddie Mac mortgage standards are less clear because they do not mention domestic violence as grounds for waiver of a co-borrower’s participation, but they do list a divorce or court-filed separation agreement. They also allow for an evaluation based on a case-by-case basis regarding whether a co-borrower must sign a modification agreement. Even if the client’s mortgage servicer would typically require the co-borrower’s participation, the client can explain that the abuser’s participation should be waived for the client’s safety and wellbeing as a victim of domestic violence. For more on the FHA and other waivers of the co-borrower’s participation, see NCLC’s HUD Removes Significant Obstacle to FHA Mortgage Loan Modifications [18].

Where the Client Is Not on the Mortgage Loan and Now Owns the Home

If the client was not on the mortgage or note for the loan, the loan servicer may not provide the client account information or allow the client to apply for a loan modification to save the home. If the client nevertheless acquired an ownership interest in the home through a family court order or a quitclaim deed, the client can provide this to the servicer and ask to be considered a “successor in interest.” The servicer must then provide the client with information on the loan and allow the client to apply for a modification or other options to save the home. See NCLC’s Mortgage Servicing and Loan Modifications §§ 3.10.4 [19], 4.8.4.4 [20].

When the Client Is Not Living in the Home and the Abuser Is Not Paying the Mortgage
If a client owns the home with an abusive partner, the client has moved out, and no one is paying the mortgage, the home may be foreclosed, resulting in a potential liability for any deficiency after the sale and a serious negative mark on the client’s credit rating. If the abusive partner is still living in the home, the client can consider a personal bankruptcy to discharge the mortgage debt, making it so they are not personally responsible for paying the loan or any deficiency.

If the abuser is not living in the home, the client can use a third party such as a realtor or attorney to convince the abuser it is in everyone’s best interest to sell the home. A private sale is best when the home is worth more than the outstanding mortgages. If there is no equity in the home, a “short sale” may be the best solution—asking the mortgage servicer for permission to sell the property at fair market value and to accept the sale proceeds to satisfy the mortgage in full, even if the proceeds are less than the amount owed.

Another option is to ask for a “deed in lieu of foreclosure” transaction, where the client and abuser voluntarily transfer title to the property to the servicer in exchange for a release from liability on the mortgage debt. Make sure any arrangement is clear that the client has no further liability on the mortgage. See NCLC’s Mortgage Servicing and Loan Modifications § 6.25 [21].

Responding to Debt Collection

Debt collectors may be contacting the client to collect a debt incurred by the abuser. Make sure the client saves the detailed information on the debt that is provided with the first collection contact. The client can also ask for verification and contact information for the original creditor after receiving that notice. If the debt was incurred through fraud, the client should dispute the debt. See NCLC’s Fair Debt Collection Chapter 9 [22].

Collection efforts are of concern because of the impact of the outstanding debt on the client’s credit rating—discussed earlier in this article—and for any eventual collection lawsuit, discussed below. Collection contacts should easily be stopped with a letter from the attorney or the client to the creditor asking for a cease of future contacts. Setting out in the letter the client’s defenses on the debt, including the information collected above under “Documenting Coerced Debt,” may reduce the chances that the creditor will eventually sue on the debt. See NCLC’s Fair Debt Collection § 5.8 [23].

Defending a Collection Lawsuit

Attorney representation for a client often is enough for a creditor to voluntarily dismiss a collection lawsuit, particularly where the attorney presents valid defenses. Evidence for these defenses includes the documentation already gathered and described above at “Documenting Coerced Debt.” Clients are not liable on accounts they did not open or use. A good argument can be made that they are not liable for accounts opened under duress and for which they did not benefit.

Check state law for special defenses. In California, when seeking a domestic violence restraining order, a victim can also ask the court to find that specific debts were obtained through domestic violence, whether it was through identity theft or intimidation. If the court agrees, this “finding” will be included in the restraining order that provides strong support for disputing the debt. See Cal. Fam. Code § 6342.5 (West) (effective Jan. 1, 2022).

In Texas, for debts incurred on or after September 1, 2019, it is considered identity theft when someone obtains credit through force, threat, or fraud. See Tex. Penal Code § 32.51 (West) (effective Sept. 1, 2019). The client can file a criminal complaint against an abusive partner for this conduct and can also ask for a court order declaring that specific debts were obtained through identity theft. See Tex. Bus. & Com. Code §§ 521.101–521.103 (West). The order or criminal complaint can then be used as proof that a debt is not owed.

In Maine, if the abused partner provides documentation showing that the debt or any portion of the debt is the result of “economic abuse” the debt is not collectible. Documentation can include a copy of a restraining order, police report, a criminal complaint for domestic violence, or a statement signed by a Maine-based sexual assault counselor, health care provider, mental health care provider, or law enforcement officer. Me. Rev. Stat. tit. 10, § 1310-H(2-A).

For other defenses to a collection lawsuit, reopening a default judgment, or dealing with garnishment or other post-judgment remedies, see NCLC’s Collection Actions [24].

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