



MEMBERS ONLY LEGAL PLAN



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FEDERAL STUDENT LOANS

As almost anyone with a child who has recently exited from a school of higher education can attest, student loan debt can be a crushing burden. Many parents decide to co-sign a child's federal student loan, making the parent legally obligated to pay the student loan debt. To put this obligation in perspective, two-thirds of seniors who graduated in 2011 had an average student loan debt of \$26,600. Meanwhile, the unemployment rate hovers just under 8%. These factors can easily combine to make a recipe for financial disaster. Anyone who is considering co-signing for a child's federal student loan should think carefully before making this important decision.

Payment is a Must

The most important thing is to make sure loan payments are paid timely. If a parent co-signed for a loan, the parent may want to pay the loan directly and have the child reimburse the parent. This way, the parent is able to keep tabs on the payments while the child remains responsible for paying the debt. Remember, missing a payment can quickly lead to trouble. If someone has multiple federal student loans, it is sometimes a good idea to consolidate them into one loan. This results in a single monthly payment instead of multiple payments. In addition, it can allow a person to switch from a variable interest rate to a fixed interest rate. With interest rates incredibly low right now, this can help save money. Beware, however, that consolidating loans generally means extending the time you have to repay the loan to 30 years. If you increase the length of your repayment period, you will make more payments and thus pay more in interest. Before deciding to consolidate, you should compare your current monthly payments to what your monthly payments would be if you consolidate the loans. You should also talk to your lender about any current benefits, such as rate discounts, principal rebates, or loan forgiveness,

which you may forfeit by consolidating. Weigh your options carefully because once you consolidate your loans, there is no way to undo the consolidation.

Delinquency and Default

A loan becomes *delinquent* the first day after a payment is missed and continues to be delinquent until it is brought current. If an account remains delinquent for ninety days, it will likely have a negative impact on the obligor's credit. Defaulting on a loan occurs when no monthly payment has been made for 270 days. The consequences of defaulting on student loan debt can be severe. Some possible consequences include:

- **Payment Due Immediately** - The entire unpaid balance of the loan, including interest, becomes due immediately.
- **Credit Rating** - The loan is reported as delinquent to credit bureaus.
- **Tax Refund** - Federal and state tax refunds are withheld to offset the debt.
- **Wage Garnishment** - A portion of the obligor's wages are withheld and applied towards the debt.

Stay Ahead of any Potential Problems

If it appears likely that a payment will be missed, or a loan is already delinquent or in default, it is important not to ignore the problem. Do what you can to stay ahead of the problem. Contact the agency that holds the loan and explain the situation. Ask what options are available and request that the loan holder work with you to resolve the problem. The sooner the problem is addressed, the more likely a solution can be reached.

Technically, it is possible to discharge student loan debt through the bankruptcy process. However, the

legal threshold for allowing this to happen can be very difficult to meet. The obligor must show that repaying the student loan debt would cause an "undue hardship." This means that the obligor would have to prove the following:

- The obligor would not be able to maintain a minimal standard of living if forced to repay the loan;
- This hardship would continue for a significant portion of the loan repayment period; and,
- The obligor has made good-faith efforts to repay the loan before filing for bankruptcy. (Usually, this means payments have been made for five years.)

Filing for bankruptcy for the sole purpose of trying to discharge student loan debt is rarely a good strategy and should only be considered in the rarest of circumstances.

Further Research

For more information about student loans and the responsibilities of those who are obligated to pay them, visit, the U.S. Department of Education's website:

<http://www.studentaid.ed.gov/repay-loans>

Another excellent site is run by the Project on Student Debt at:

<http://projectonstudentdebt.org>

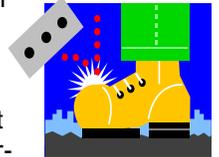
WHAT TO KNOW IF YOU GET HURT AT WORK

If you suffer an injury, as a result of an accident or repetitive activity at work, you should **immediately** give notice to your supervisor. You should report an injury even if you do not anticipate missing time from work. When you report your injury to your supervisor, you must give specific information that your condition was caused by your work activities. It is not enough to say you are hurt.

Sometimes, an injury does not become significant for a few days or weeks later, you can still report your injury. Under the law, you have 120 days to report your injury. However, you receive the best protection if you report your injury within 21 days.

Workers' compensation benefits are paid by private insurance companies that have insurance policies with your employer. While the Bureau of Workers' Compensation (a state agency) administers the system, it does not make the initial determination as to whether you are entitled to receive workers' compensation benefits.

Under the law, the workers' compensation insurance company has 21 days to decide whether they agree you suffered a work injury. Even if your claim is accepted by the insurance company, there are a number of ways the insurance company can limit its responsibility to you, such as, describing your injury improperly or calculating the amount of your benefits incorrectly. To ensure that you are not being taken advantage of by the insurance company, it is advisable to contact an AFSCME Legal Services Plan lawyer to review your paperwork.



If you suffer a work injury, you are required to treat with a doctor who is listed on the Workers' Compensation Panel for 90 days from the date of first treatment. Once the 90 days is up, you can treat with whichever doctor you believe will provide the best care for your injury. Workers' Compensation should pay 100% of the medical expenses associated with your injury.

If your injury was the result of the actions of a third party, you have the right to sue the responsible party while you collect workers' compensation. In addition, if you received improper treatment from a doctor who treated your work injury, you may be able to sue the physician for malpractice. AFSCME Legal Services plan attorneys' works with experienced trial lawyers to pursue claims for personal injury. If you have a workers' compensation case, we can coordinate your compensation case with the lawyers for your lawsuit. If you have questions contact the AFSCME Legal Services Workers' Compensation Attorneys at 1-866-413-COMP (2677)

Some Workers' Compensation Facts:

- When calculating your entitlement benefits, your employer must include overtime earnings, as well as base pay.
- Benefits should be paid at the same frequency as you received your paycheck.
- Workers' Compensation benefits never increase, even if you would have received a raise.

THE IMPORTANCE OF THE SELLER'S DISCLOSURE FORM IN PENNSYLVANIA RESIDENTIAL REAL ESTATE TRANSACTIONS

For those of you who are in the process of purchasing a home, or who have contemplated purchasing a home, one of your main goals will be to purchase a home that is structurally sound and free from material defects. Everyone should be aware that there are a myriad of problems that can occur after you have finally settled into

your new home. For example, a house may appear at first glance to be in good condition, but as soon as the first rain storm hits, you may be stuck with a flooded basement, or a leaking roof. In order to be protected from these potential problems, there are certain precautionary measures that should be taken. In addition to having a thorough home inspection by a licensed home inspector, you should demand or receive a completed "Seller's Disclosure" form.

In order to protect buyers from problems that occur after the settlement of a property, Pennsylvania lawmakers created a law that requires a seller of a Pennsylvania residential property to disclose any material defects on the property in a written form. According to this law, "Any seller who intends to transfer any interest in real property shall disclose to the buyer any material defects with the property known to the seller by completing all applicable items in a property disclosure statement which satisfies the requirements of section 7304 (relating to disclosure form). A signed and dated copy of the property disclosure statement shall be delivered to the buyer... prior to the signing of an agreement of transfer by the seller and buyer with respect to the property". 68 Pa.C.S. § 7303.



Pursuant to this law, the seller shall disclose information with respect to all of the following subjects:

1. Seller's expertise in contracting, engineering, architecture or other areas related to the construction and conditions of the property and its improvements
2. When the property was last occupied by the Seller
3. Roof
4. Basements and crawl spaces
5. Termites/wood destroying insects, dry rot and pests
6. Structural problems
7. Additions, remodeling and structural changes to the property
8. Water and sewage systems or service
9. Plumbing system.
10. Heating and air conditioning
11. Electrical System
12. Other equipment and appliances included in the sale.
13. Soils, drainage and boundaries.
14. Presence of hazardous substances
15. Condominiums and other homeowners associations
16. Legal Issues affecting title or that would interfere with use and enjoyment of property 68 Pa.C.S. § 7304. If at the time of the disclosure, an item of information required to be disclosed is unknown or not available to

the Seller, the Seller may make the disclosure based on the best information available to the Seller.

The Seller's Disclosure is an important protective measure that has been put in place in order to protect homebuyers from defects that may not be revealed from a home inspection. It makes sense that a Seller who has occupied the property would in many instances have better knowledge of problems with the property than would a home inspector who only sees the property for a limited time and under specific conditions.

It is also important to note that the Seller's Disclosure can be a help not only to the buyer of a home, but also to a seller of a home. If the Seller has been honest and forthcoming in the Seller's Disclosure, and is thereafter sued by the buyer for problems with the property that were previously disclosed, the seller can use the Seller's Disclosure as a defense in any such lawsuits. If the Buyer was previously made aware of this problem through the Seller's Disclosure, but the buyer chose not to adequately address the problem prior to closing, then the seller may usually be off the hook for any future repairs necessary on the property. This type of protection encourages the seller to be forthcoming about any defects in the property, and encourages the buyer to pay attention to every detail listed in the Seller's Disclosure.

HOW TO HURT AND HELP YOURSELF IN A CUSTODY CASE

For a parent or guardian, one of the worst situations imaginable is to be involved in a contested custody case regarding your child. Unfortunately, for many families, going to court for custody is unavoidable. If that happens, the first issue for many parents and guardians is what, if anything, to say to the child about the case. Here are some suggestions to keep in mind:

1. Don't discuss the case with the child. This is perhaps the easiest rule to understand and the most difficult to keep. There are many situations that come up and seem to require that you or another family member discuss custody with a child. Most often, one parent will become aware that the other parent (or family member) has been speaking to the child; asking the child who they want to live with, questioning them about things happening in the other parent's household, telling the child that he/she will have to speak to a judge, or, in the more extreme cases, promising the child something if they will say they want to live with that person.

The natural response is to counteract what the other person has said to the child, to explain "your" position to the child. This is wrong for a couple of reasons.

First, and most importantly, is the effect that these conversations have on the child. This must be your priority, and not "setting the record straight". The second reason not to respond in kind when you discover someone has been speaking to (or coaching) the child, is the impression this behavior will have on the court. Custody judges are very experienced, and most can tell right away if a child has been coached in any way. If both parties are discussing the case with the child, the court will form a negative impression of both sides. However, if you go in to a hearing with "clean hands", you will be a step ahead with the court.

2. If you discover that the other side is speaking with the child about the custody case, the best response is something general. Don't tell the child that the other parent is bad to speak to them. Better to say something like, "I'm sorry Mom/Dad/Grandmom spoke to you about this. You don't need to worry about this. This is grown-up stuff." This naturally leads into what to do if the child persists, or asks you whether or not he/she will have to speak to the judge, or seems to be nervous or worried about what will happen in court. Again, the best answer is a general one: "I don't know. The judge is going to help the grown-ups figure all this out. They may want to meet you to say hello because they've heard so much about you."



If the child asks what they should say to the judge, the best answer is to tell the child to tell the truth. These days, judges rarely ask a child directly who they want to live with. Instead, the judge may ask the child if anyone has talked to them about coming to court, or whether or not either party has told the child what to say to the judge. The only thing you want the child to say to the judge about you is, "My Mom/Dad told me to tell you the truth."

3. Remember that the way in which a child hears and understands a statement is not the same as an adult. Children are very literal in answering questions. For example, if you are represented by an attorney in your custody case, the attorney will meet the child, at the very least on the day of the hearing. The attorney may simply say "hello" to the child. When the child speaks to the judge, the judge may ask the child if either of the attorneys has spoken to the child. The judge means to ask whether either attorney has discussed the case with the child, but this is not what the child hears. The literal answer is "yes", the attorney has spoken with the child. And, again, this creates a negative impression with the court.

In dealing with children and custody matters, parents and guardians also have to take care in speaking to other adults about the case in the presence of the child.

Just because you do not speak directly to the child does not mean that the child is not listening to your conversation. Remember again that children interpret things differently than adults. A child will repeat what they think they heard, and this may not be accurate.

The first concern of every adult in a custody matter is and should be the best interests of the child. Parties in a custody case need to remember that this standard applies in their every day interactions with the child and not just in the courtroom.

POWER OF ATTORNEY

A "Power of Attorney" is a written document in which an individual, referred to as the "Principal", designates an individual, referred to as the "Agent", to exercise enumerated powers and perform covered acts for the sole benefit of the Principal. The Principal must be eighteen years of age or older to execute a Power of Attorney and also possess the mental capacity to understand the purpose of the document and appoint Agent(s).

Once a Power of Attorney is in effect, the designated Agent acts for the benefit of the Principal. It is important for the Principal to select an Agent who is trustworthy and competent to handle the Principal's affairs. A Power of Attorney is in effect only during the Principal's lifetime. Upon the Principal's death, the designated Agent no longer has authority to act under the document.

In Pennsylvania, the Power of Attorney document must contain a special "Notice" that is found on page 1 of the document. The Notice details the broad powers that the Principal is giving to the Agent under the document, such as make decisions regarding property, finances, management, banking, business and various other matters on behalf of the Principal. In addition, the Agent must sign a special form acknowledging certain responsibilities. This Acknowledgment is intended to keep the Agent from abusing his or her authority under the document. The Power of Attorney must be signed by the Principal in the presence of a notary and two independent witnesses, who are eighteen (18) years of age or older.

There are different types of Powers of Attorney. A "Springing" Financial Power of Attorney takes effect in the event the Principal is incapacitated and as a result of the incapacity the Principal is unable to handle his or her financial affairs. Incapacity is a medical determination to be made by the Principal's physician. An affidavit must be signed by the Principal's physician and attached to the Power of Attorney, in order for the designated Agent to act. It is common for a spouse to serve as the Principal's financial Agent and then to name an adult child or children

in the event that the spouse dies or is unable to act.

A “Durable” Power of Attorney serves the same purpose as a “Springing” Power of Attorney. However, in a Durable Power of Attorney, the Principal/Agent relationship remains in effect even after the Principal becomes disabled or incapacitated. If incapacity should strike the Principal, the Agent can maintain the Principal’s financial affairs, without any need for court involvement.



A Healthcare Power of Attorney acts as a waiver of the HIPPA medical privacy regulations enabling the Principal’s designated Agent to have access to his or her doctors and medical records. In the event that the Principal is unable to give an informed consent for treatment as the result of illness, incapacity or unconsciousness, his or her medical Agent is authorized to make such important medical treatment decisions for the Principal.

There are also Powers of Attorney for the sale and purchase of real estate. In such documents, the Principal selects an Agent to act on his or her behalf to complete a real estate transaction.

A Power of Attorney can be broad or limited. Since the Power of Attorney document is tailored for specific purposes, the Agent cannot act beyond the scope designated in the document.

While we cannot predict whether we will have diminished mental capacity or become physically disabled as we age, it is important to prepare for these events and appoint Agents to handle your financial and medical affairs.

HIRING A CONTRACTOR

Although hiring a reputable contractor to perform work at your residence should be easy, many consumers find it to be a difficult process. With that in mind, there is one Pennsylvania Law, The Home Improvement Consumer Protection Act, 73 P.S. § 517.1 *et seq.*, that was established to help consumers in their dealings with contractors. By knowing your rights, you can help ensure that your next contractor will treat you fairly.

The Home Improvement Consumer Protection Act (HICPA) was established to help defend people from the unscrupulous practices of certain contractors and scam artists. HICPA establishes a mandatory registration program for contractors who offer or perform home improvements, requires contractors to provide their registration number on their contracts, establishes required

contract terms for home improvement contracts, and prohibits unfair business practices. This means that before signing a contract, you should make sure that your prospective contractor is properly registered with the Bureau of Consumer Protection of the Pennsylvania Attorney General’s Office.

You can check online at:

<http://hicsearch.attorneygeneral.gov>

Moreover, under HICPA, every contract for home improvement needs to be written, legible, and signed by the consumer and the contractor. Contracts must also include important provisions, including the total price of the project, estimated start and completion dates, and a description of the work and the materials to be used. A copy of the contract must be provided to the consumer at the time it is signed, and if any change in the project is made, a written change order must be signed by both parties. Further, the law limits down payments on a home improvement job to no more than one-third of the total contract price. You can view the entire law, which contains other important provisions, at:

<http://www.attorneygeneral.gov/hic.aspx>

and clicking on the Home Improvement Law link.

Here are some simple steps to follow when hiring a contractor:

- Get three written estimates from licensed contractors before deciding who to hire in order to get the best price;
- Make sure the contract is signed by the contractor and you and keep it in a safe place.
- Once you decide on a contractor, make sure you understand the contract before signing and keep a copy of the contract in a safe place;
- Remember that down payments on home improvement jobs are limited to no more than one-third of the total contract price;
- Make sure that the work completed is done in a satisfactory and workmanlike manner before paying the contractor the next installment of money due;
- If the contractor does poor work and refuses or is unable to fix problems, find a new contractor to fix the problems and finish the job.

Lastly, if a deal appears too good to be true, it probably is. No person wants to go through the hassle of trying to get money back from a contractor for a job done poorly. By knowing your rights, you can hopefully avoid the pitfalls that can come with home improvement work and hire the right contractor for your needs

DIVIDING MARITAL PROPERTY IN DIVORCE

In Pennsylvania the Courts have been granted the power to equitably distribute upon divorce, all property acquired by a husband and wife during their marriage. It is important to note that the State of Pennsylvania does not recognize title to property in equitable distribution, meaning that it does not matter if the property is in the names of husband and wife jointly, or in either of their names individually. As long as the property was acquired during the time that the parties were married and living together, it is "marital property" and subject to distribution (as always, there are exceptions to this rule, but for purposes of this article, we will limit ourselves to a discussion of the general principles).

"Equitable Distribution" means that the property must be divided "fairly" but not necessarily "equally". There are several relevant factors that must be considered by the court in determining a just distribution. They are the length of the marriage; any prior marriage of either party; the age, health, amount and source of income, vocation skill, employability and needs of each of the parties; the contributions by one party to the education, training or increase earning power of the other party; the opportunity of each party for future acquisition of assets and income; the sources of income of both parties, including but not limited to medical, retirement, insurance or other benefits; the contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker; the value of the property set apart to each party; the standard of living of the parties established during the marriage; the Federal, State and local tax ramifications of the division of property; and whether the party will be serving as the custodian of any dependant minor children.



It is easy to see there is much more to equitable distribution than the commonly held notion of "a 50/50 split of everything". Often times, after considering all, or some of the factors noted above, it is determined that "what is fair" might be a 70/30 split, a 60/40 split, or some other combination based on the individual circumstances of each case. Marital debts are determined the same way as marital assets, that is generally speaking, all debt incurred by the parties during the time they are married and living together constitutes marital debt. The "marital pot" is made up of all of the accumulated marital debts and assets, and it is the "marital pot" that must be divided between the parties. Examples of marital assets in-

clude, but are not limited to, houses, cars, bank accounts, IRAs, CDs, stocks, bonds, whole life insurance and pensions. Likewise, marital debt include, but are not limited to, mortgages, home equity loans, credit card debt, school loans, utility bills, tax debt, etc. In future articles we will discuss how we determine the value of these various assets and debts.

For information regarding benefits provided under the Council 13 Members Only Benefit Program please visit the web at www.afscme13.org

For legal service, contact



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