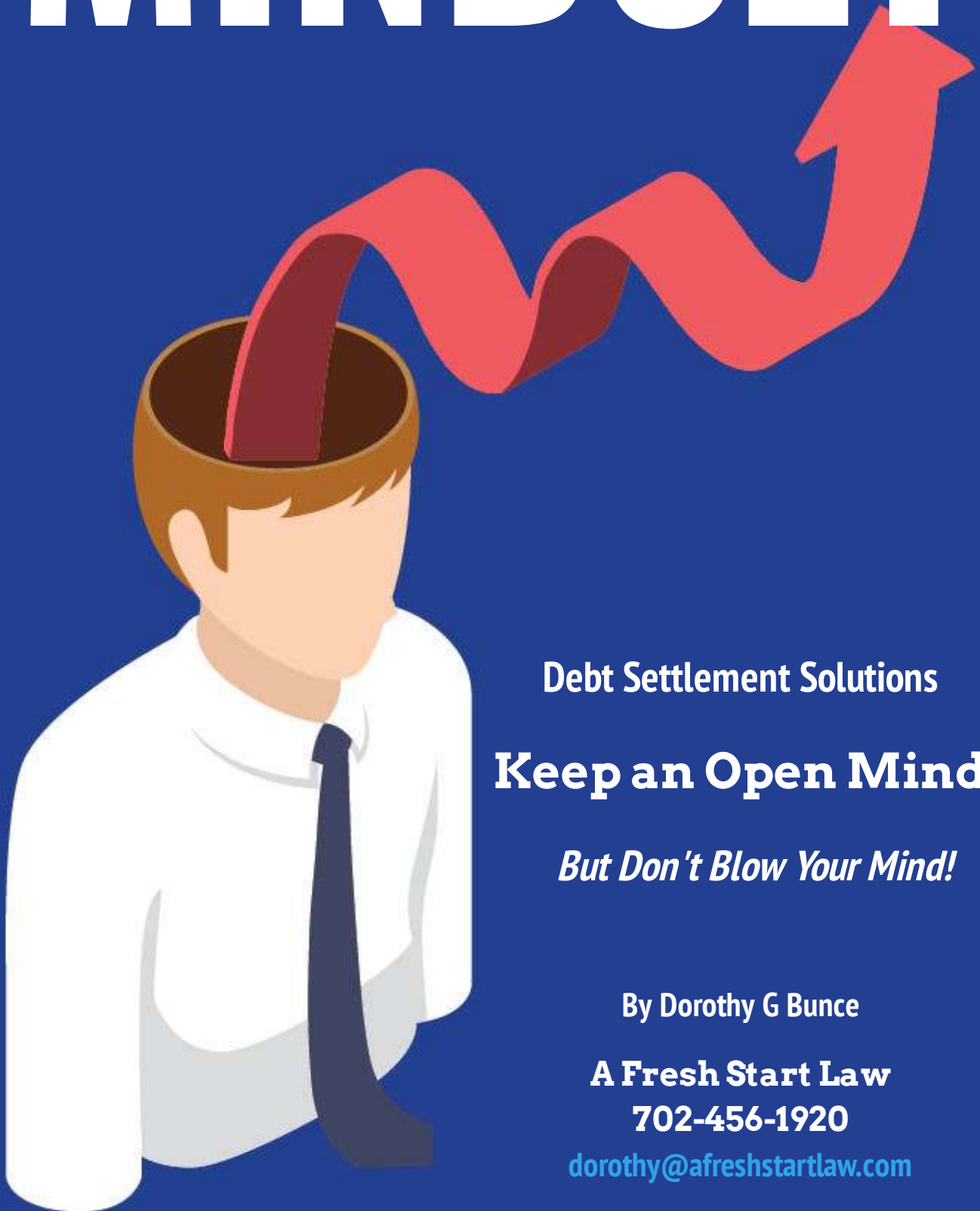


# MINDSET



**Debt Settlement Solutions**

**Keep an Open Mind**

*But Don't Blow Your Mind!*

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# Introduction.

Failing to pay a debt can be like breaking an arm. There might be a long story explaining how or why it happened. But in the end, all that matters is fixing it. However, understanding the difference between the remedies can be far more confusing for delinquent debt than a broken bone. So here is a breakdown of the ins and outs of the ways to resolve your debts.

## The Four Ways to Deal with Debts.

### 1. Full Payment

Paying the creditor everything they say you owe will guarantee that the creditor will be satisfied. As a result, paying in full will protect your credit score, leaving it undamaged. However, paying in full will not fix any report of past delinquent payments. Although full payment offers you a guaranteed result, it is an all-or-nothing option. There is no opportunity to debate what the balance owed is. For obvious reasons, this is not a realistic solution for someone struggling to repay debt.

### 2. Debt Consolidation

In Debt Consolidation, you obtain a new loan to repay existing debts. To get the new loan, you must demonstrate that you have enough income to pay it. Many people who look at this option seek to simplify their obligations because managing the logistics of repaying many accounts at once can be time-consuming and stressful. The thought is that making a single payment each month is a lot easier and affordable than paying 5, 10, or more accounts.

Debt Consolidation does not let you claim any defenses to repaying the debt, resulting in you paying a debt you don't legally owe. These defenses include the running of the Statute of Limitations (a positive defense that you are legally no longer obligated to repay the loan).

Many companies that market debt consolidation services aren't licensed lenders, so they can't provide you with a consolidation loan. But by promising consolidation, these organizations trick you by only providing debt settlement. In this scam, they charge you as if you paid in full along with a fee to consolidate. Then, these companies pocket all of the money saved by settling. As a result, their fees, taken without your knowledge, can be substantial. So again, be aware that if a company isn't a licensed lender, it cannot provide Debt Consolidation.

### **3. Debt Settlement**

Debt Settlement is a flexible option to resolve debts. But settling debts is often misunderstood. Unfortunately, many misconceptions about debt settlement are perpetuated by those who provide debt settlement services.

### **4. Bankruptcy**

Consumers have two choices in Bankruptcy, Chapter 7 or Chapter 13. Chapter 7 will eliminate most debts. However, in Chapter 13, you must pay a Court-appointed Trustee for 3-5 years. Choosing one over the other depends on your income, expenses, and type of debt. Chapter 7 is usually the cheapest. But certain kinds of debt problems, such as a mortgage foreclosure, can only be solved in a Chapter 13.

Although bankruptcy can be a viable option, someone who previously filed Chapter 7 might have to wait to file another Chapter 7. In addition, any bankruptcy can remain on your credit report for up to 10 years. Finally, for various reasons, not everyone qualifies for Chapter 7 Bankruptcy.

## **What is Debt Settlement?**

Debt Settlement involves repaying debts at a discount as a result of negotiation. The goal is to have the creditor agree to accept less. Unlike the Full Payment and Debt Consolidation options, Debt Settlement pays off your debts for less.

## **Why Does Debt Settlement Work?**

Why would creditors accept less than the total balance owed?

The answer is that collecting is difficult and expensive. If a borrower doesn't pay, the creditor must pay a lot of money to collect. There are costs to investigate someone's ability to pay, hire an attorney, and pay the court fees. Then the judge must decide in their favor. If the debtor moves out of state, finds new employment, or just has no money, the creditor must repeat all or part of this process. By accepting less, the creditor recoups something and minimize their costs.

However, if a creditor won't settle for less, there is nothing you can do. No one can force a creditor to settle.

## How Does Debt Settlement Work?

In theory, debt settlement is a simple process. You offer to settle, and the creditor either accepts, declines, or returns with a counteroffer. When the debtor and creditor agree, papers are signed, you pay, and the creditor issues a receipt indicating that you owe nothing more.

Unfortunately, to settle your debts at a discount requires the debt to be delinquent.

## What Types of Debt Can be Settled?

Debt Settlement works for most types of debts. Credit cards and medical debts are typical debts that we can settle. However, settling taxes, student loans, mortgages, HOA dues, and vehicle repossessions require more skill.

## Can you Stop Lawsuits or Garnishments?

Absolutely. Debt Settlement can resolve debts whether they have or have not gone into the court system. Debts may be in pre-litigation, in litigation, or in post-litigation (which is when a court has entered an order or judgment). Debt settlement is an option in any of these circumstances. While a Debt Settlement can stop further wage garnishment, settling is usually not retroactive. So a settlement typically will not return any of the money the creditor already received.

## Should I Settle Debts 5+ Years Old?

Creditors have a limited time to collect a debt. Once this time elapses, if the creditor sues, the debtor may claim an affirmative defense under the statute of limitations. But creditors can still sue despite how old the debt is. It is crucial to understand this defense only works if you promptly respond to the lawsuit and actively claim this defense. Failing to follow required procedures usually means the creditor will win. As a result, this defense might be meaningless.

In addition, depending on state laws, speaking with the collection company or making even a modest payment could reset the statute of limitations. As a result, you could lose this defense. As a result, you might have to wait out the required years all over again. Therefore, communicating with a creditor or debt collector about an old debt is risky. Whether you do this yourself or have someone else act for you, proceed with caution.

## Does the Size of the Debt Matter?

In general, the answer is no. Debt Settlement works for debts of all sizes. Settling just requires the creditor to agree and for you to pay. Typically creditors discount more on larger debts and discount less on smaller accounts. If you hire a company to settle your debts, be sure to ask if there is a minimum debt amount. Many settlement companies and law firms only accept debts that are above a specific size.

## Can I Be Sued While in Debt Settlement?

Oh yes. Being enrolled in a debt settlement program does not protect you from a lawsuit. However, from experience, AFS has found that law firms often will, out of "professional courtesy," delay litigation while the lawyers negotiate.

## Who Controls My Settlement Savings?

The answer to this question will depend on what company you hire. Some companies will tell you to save on your own. Others will require you to authorize monthly withdrawals to set aside for settlement. Each will say theirs is the best solution. Each can work if done correctly. At AFS, we encourage the client to save on their own. However, if having this money in your bank is too tempting, our clients can deposit their savings in the firm's client trust account.

## How Much Does Debt Settlement Cost?

The cost of debt settlement depends on who you hire. Some charge hefty upfront fees, monthly maintenance fees, settlement fees or percentages, etc. Understanding these fees is crucial to selecting the right company. Look for companies that charge most of their fee when their work is successful. Be cautious of any company that won't explain its fees in easy-to-understand terms.

# How Much Will Debt Settlement Save Me?

The answer is, *"it depends."* Five factors affect your results.

1. **The Negotiator's experience** – an experienced negotiator understands the process. S/he knows how to push for advantage and what information creditors do and do not need. In addition, the negotiator must understand what alternatives are available when regular avenues haven't worked. Often, negotiators may even know the creditors' representatives, having worked with them before. This relationship can make for a better settlement.
2. **Age and type of Debt** – The debt's age is essential because legal defenses can apply. Some debts are more difficult to settle. For example, tax debts, student loans, and other debt tied to government programs are more complicated.
3. **Your personal and financial story** - Factors such as the your age, income, marital status, dependents, and assets are central to negotiating a better settlement. You can get a better offer if your assets or income cannot be garnished or levied.
4. **Legal status of your account** – Accounts in litigation are more challenging to settle. As a result, the result to settle is often less favorable compared to debts in pre-litigation status.
5. **Attorney vs. Non-Attorney** – An attorney almost always has an advantage over a non-attorney. An attorney understands the law and knows the loopholes. Attorneys will always talk to each other and may even have social connections. In addition, they often refuse to work with anyone who isn't an attorney. Attorneys typically extend "professional courtesy" to another attorney, which may mean holding off on requiring a response to the court.

For example, a creditor law firm may postpone proceeding with a lawsuit if a brother or sister attorney represents a debtor. By contrast, a creditors' attorney may refuse to communicate with a debt settlement company representative.

And of course, a non-attorney CANNOT give legal advice.

You might think there is a vast price difference between hiring an attorney instead of a non-attorney settlement company. However, that may not be the case. If you pay the attorney more, only if you save more, the attorney might cost less.

# When Settling isn't the Best Option.

Debt Settlement is one way to resolve your debts. It is advantageous in many situations. However, there are situations when other financial remedies are better.

For example, if you do not have funds to settle or cannot raise the money to do so, Debt Settlement will not be your best option.

If you have several accounts to settle, be realistic. One thing to consider is the size of your debts. For example, how long will it take you to save at least 50% of this amount? The longer you must wait to settle, the more likely you are to be sued. As a result, you may have to pay a higher settlement to avoid garnishment.

# How Debt Settlement Affects Credit.

Generally, when your debts are settled, your credit report will say that the debt was "settled for less." However, because this debt was "late" for many months, this delinquency has damaged your credit, not the settlement itself.

Non-attorneys may suggest that you can "*pay to delete*" this debt from your credit. However, if a creditor removes truthful information from your credit report, the credit bureaus will penalize them. So if a low-level employee takes your money to make this happen, part of your payment is a "bribe." The debt can reappear once the boss finds out. As a result, you paid for a temporary benefit and now have no recourse for squandering extra money for a pay to delete.

# Will I Owe Taxes By Settling?

Creditors must report a settlement to the IRS if you save is more than \$600 by settling a debt. If you saved more than \$600, a creditor will send Form 1099 at the end of the year. Depending on the amount saved, you might have to pay additional taxes. However, compared to your savings, any tax will be small.

# Is Settlement Better than Bankruptcy?

There is no simple answer to this question. Each situation is different. The answer is both a personal and financial decision. Debt Settlement provides you with the option to avoid bankruptcy, but it doesn't mean this is always the best decision.

Here are examples of when Debt Settlement MAY or MAY NOT be the best option.

## MAY BE BEST OPTION

- You have only a few accounts.
- You have enough money to settle.
- Your profession will be affected by filing bankruptcy (example: CPA, military, stockbroker).
- You do not qualify for bankruptcy (income too high, total debt insufficient, or are disqualified from filing because of a recent bankruptcy).
- You would pay more in Chapter 13 than with Debt Settlement.
- You adamantly do not want to file bankruptcy even though it would be cheaper.
- You would lose assets not protected by an exemption in Chapter 7 (such as a second home, multiple cars, artwork, guns, jewelry, etc.)

## MAY NOT BE BEST OPTION

- You don't have enough money to pay a settlement.
- You are facing foreclosure of property you wish to keep.
- You have multiple garnishments.

If you have questions about Debt Settlement, the most objective opinion will come from an attorney representing both Debt Settlement and Bankruptcy clients.

# Do I Need an Attorney to Settle Debts?

Anyone can settle their debts because this process doesn't require a professional license or an ethical code. If you know what you are doing, hiring an attorney might not be necessary until something goes wrong. But if something does go wrong, it is likely only an attorney can help you. Unfortunately, once you begin representing yourself, you may have damaged your case to the point where even the help of an attorney may be limited.



Settling debts involves negotiation, a skill learned by experience. Creditors use every tool to strengthen their position. Because this is their career, they have this expertise. Their most effective tool is your fear of what they "might" do. Someone who settles without an attorney may succumb to creditor threats, often paying much more than the creditor would accept.

Settling also involves signing a contract. The contract may not say what you believe. Relying on what a creditor promises in a conversation might be a mistake. To settle a debt, you must understand the debt settlement procedures and the nuances of contract law. The creditor has no obligation to educate you along the way. Unfortunately, without experience, education often comes "the hard way."

Collection companies exist to COLLECT. Any information that you reveal will be used against you. If you try settling by yourself, read, research, and understand the process before undertaking this task.

## Why Should I Hire an Attorney?

There are many benefits having an attorney represent you. It may cost you less because you save more. The attorney knows what debt collectors can do, what client information must be released, and what information can be refused. Here are some of the other reasons why you want an attorney in your corner.

1. Attorneys can claim attorney-client confidentiality about what they know, while debt settlement companies do not have this option.
2. An attorney can take over all communication from the creditor. The result is NO MORE harassing telephone calls from your creditors.
3. An attorney will make sure that the legal paperwork protects you.
4. Some creditors and their attorneys will not deal with third-party debt settlement companies. But all creditors must work with your attorney.
5. Most importantly, only attorneys can give legal advice. Only attorneys have an ethical duty to act in the best interest of their clients.

*Example #1: The creditor demands your current address and phone number as a condition to negotiate on the account. The collection company uses the updated information to research your associated accounts and assets linked to this information. The collection company then uses this new information to discover where you work. However, the attorney declines to provide this information claiming attorney-client privilege and provides the law firm's address and phone number instead. The collection company negotiates without having any new information about you.*

*Example #2: A medical bill goes from \$5,000 to \$50,000 due to the doctor's coding error to an insurance company. A non-attorney debt settlement company settles this debt for \$20,000.00. Attorney discovers the debtor's spouse filed bankruptcy after the medical procedure. Because the couple lives in a community property state, the debtor spouse is no longer obligated to pay the debt even though she did not personally file bankruptcy. As a result, the attorney's client pays nothing to this creditor.*

*Example #3: A credit card company tries to collect \$10,000. The debtor is retired, has no significant assets, and social security is his only income. A non-attorney debt settlement company can settle the debt for \$3,000. But the attorney knows this creditor cannot garnish social security or levy any bank accounts that only contain social security benefits. So the attorney advises the client to either settle for \$1,000 or ignore the debt entirely.*

The difference between having an attorney settling your debts can be profound. Do you need accurate and specific legal advice for your situation, or will a "one size fits all" solution work? What might happen if a creditor sues? Can trust the company you hire? Are they in Nevada or somewhere else? What recourse do you have if they fail to do what they promise?

## Why Choose A Fresh Start Law?

There are several reasons why A Fresh Start (AFS) could be your best choice.

### Free Evaluation

AFS offers a free consultation with a Nevada licensed attorney. AFS reviews your finances to determine if Debt Settlement is a viable option. AFS also provides alternative advice, such as Bankruptcy and Asset Protection Strategies. AFS also lets you know if Debt Settlement is unnecessary because you have legal protection from your creditors.

### Reasonable and Fixed Fees

AFS charges as little as \$100 for each account. This fee lets the legal team take over all communications with your creditors for up to six months. Once we get results, you will also pay a settlement fee, a percentage of what we save you. **So the more we save you, the more we earn - a win-win.**

If we cannot settle or you change your mind, your only cost is the one-time retainer. Even if you change your mind, your only cost is this one-time retainer. Unlike non-attorney settlement firms, AFS does not have a monthly service fee. In addition, AFS does not charge you based on your total debt. Our job is getting you out of debt, not putting you into more debt.

Our retainer fee begins at \$100 for each non-litigation account and \$150 for each case with an attorney either in or with litigation pending.

*Example:* \$5,000 debt with AJAX credit card. The client pays a \$100 retainer fee to sign up. The telephone calls and text messages from the debt collectors immediately stop and go to the law firm. AFS successfully settles the debt for \$2,000. Since  $\$5,000 - \$2,000 = \$3,000$ , you save \$3,000. Because 10% of \$3,000 is \$300, which is the amount of your settlement fee. So the total paid for representation to save \$3,000 is \$400.

### **Small Firm – Personal Touch**

As a small law firm, our clients speak directly to AFS's attorney and the debt negotiator. We know each of our clients personally.

### **Bankruptcy and Debt Settlement Law**

AFS provides bankruptcy as well as Debt Settlement services. When negotiating with creditors, being in the bankruptcy business does impact the Law Firm's ability to settle your case. . Many of these creditors know AFS because of our bankruptcy representation during the past 40 years. Creditors know there is a bite to working with AFS and might agree to a smaller offer because they believe you might choose bankruptcy instead.

### **Experience**

The staff at AFS have handled thousands of Debt Settlement cases, which is an essential advantage in negotiations. We may already know what the creditor's best deal will be even before we start communicating. Years of negotiation also let us know when to push, back off, or simply walk away. Over the years, we have formed relationships with many of the creditors and attorneys representing them. These relationships can benefit the negotiation process. Creditors and their attorneys are willing to treat AFS fairly because they know AFS's reputation for honesty and prompt payment.

## **Flexibility**

You decide which debts to assign to us to settle. You also set the amount we can accept on each account. If an offer is over your limit, we require your approval to accept it. You also can prioritize the order of the debts you want to settle.

In addition, you can also retain AFS just to take over all contacts from your creditors. Doing this means you are no longer bothered by constant phone calls or creditor communication. Instead, if you receive a harassing call, you just say, "call my attorney."

## **Legal Advice & Asset Protection**

During debt settlement, you may need to protect yourself by opening a new bank account, removing or closing other bank accounts, or filing specific documents. AFS will give you this legal advice.

## **Violations**

Debt collectors are required to obey the Fair Debt Collection Practices Act (FDCPA). These laws set out what a collection company can and can't do to collect a debt. If a collector violates these laws, you, the consumer, may obtain money damages. Again, since AFS is a law firm, we can spot these violations, and either bring action to collect damages for you or use any violations to benefit you in negotiations.

## **Free Credit Repair**

AFS also includes free credit rebuilding classes clients after settling your debts.

# **If It Isn't a Good Fit.**

There are many benefits to selecting AFS to represent you to settle your debts. But just because we provide this service does not mean we are a good fit for your needs. AFS retains the right to deny any potential client or terminate a current client.

For example, suppose you fail to cooperate with us, or the information you give us is incomplete or is even dishonest. In those circumstances, we may stop representing you by refunding a pro-rated portion of your fee. AFS understands that the Debt Settlement process is stressful. However, trust, responsibility, and respect work both ways.

# How to Get Started.

Starting is a simple step-by-step process.


**First, list your debts.** Indicate what you owe and when you last paid each. Give us the creditor's phone and fax number, if available. An easy way to get this information is to order a free credit report through either [annualcreditreport.com](http://annualcreditreport.com) or [creditkarma.com](http://creditkarma.com).

**Second, rank your debts.** Start with the one you would like to settle first, second, third, and so on. When ranking your debts, we recommend you do this by choosing those which are more likely to sue you instead by either the interest rate or balance. At this point, getting legal advice can be significant because the attorney may know which creditors might sue you first.

**The final step is to evaluate your ability to pay.** Is money available right now to pay the settlement? What can you realistically afford to pay each month into savings to implement a settlement? Until you can afford it, enrolling to settle is only wishful thinking. While enrolling in debt settlement might delay a lawsuit or a wage garnishment, it is unreasonable to expect it to be a magic wand.

## Conclusion.

Debt Settlement offers several advantages over repaying your debts in full. However, settling requires that you know what you are doing. At A Fresh Start Law, we have the professional qualifications and experience to settle your debts.



**Other eBook Topics from  
A Fresh Start Law  
can answer your questions  
about Debt Settlement,  
Student Loans, &  
Bankruptcy**

Hope you have enjoyed this important information about Debt Settlement.

Debt Settlement is not a "one-size-fits-all" process.

*Before you sign a Contract and commit to any debt settlement program, consider the potential damage to your credit, the uncertainty, and potential tax consequences .*

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