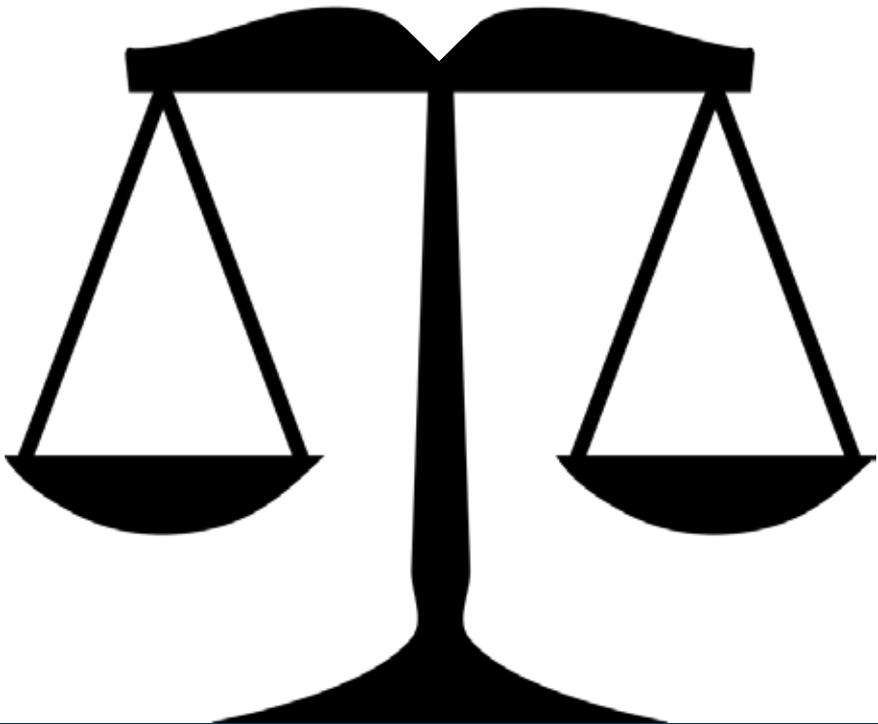


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Debtors' Rights

***Protecting yourself from
debt collection lawsuits***



A project of Consumer Action

Debtors' Rights

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If you are at risk of being sued for an unpaid debt or you are already facing a lawsuit filed by a debt collector, you need to know your rights and options.

Federal and state laws regulate what collectors can and can't do.

In some cases, these laws even can lead to a debt collection case being dismissed or settled in your favor.

This guide can help you understand:

- What your rights and options are when faced with a debt collection lawsuit or the possibility of one;
- The steps you can take to try to avoid legal action;
- The process of responding to a lawsuit;
- What can happen if you lose the case;
- Where to file a complaint if your rights have been violated; and
- Where to find free or low-cost legal help.

Your rights when you owe a debt

All U.S. consumers have equal rights under the federal laws governing debt collection. Most states also have their own laws on debt collection. These are often the same as the federal protections, but some states provide additional or stronger protections.

Federal rights

The main federal law that governs how collectors can do business is the Fair Debt Collection Practices Act (FDCPA). Enforced by the Federal Trade Commission (FTC), this law prohibits debt collectors from using unfair, abusive or deceptive tactics when collecting debts. Under the law, debt collectors are not allowed to say they will take legal action against you if doing so would be illegal or if they don't intend to do so. They cannot threaten to seize, garnish, attach or sell your property or your wages unless the law permits them to do so and they intend to follow through.

The FDCPA applies only to debt collectors. This includes collection agencies working on behalf of a creditor, lawyers who

regularly collect debts, and companies that buy delinquent debts and try to collect them (debt buyers). It generally doesn't apply to the original creditor (the company from whom you borrowed the money), and it doesn't apply to business-related debts.

The FTC has boiled down the FDCPA to its essential points in a free and easy-to-read article you can access online (bit.ly/FTC-debt-collection). Consumer Action also offers a concise guide to the FDCPA (bit.ly/ca-fdcpa).

State rights

Most states have their own laws that govern debt collection practices, and some may be even stronger than the federal FDCPA. For example, California's Fair Debt Collection Practices Act covers more types of collectors, including original creditors collecting debts on their own behalf.

You can find your state's fair debt collection law(s), if any, at the Nolo website (bit.ly/Nolo-state-debt-laws) and the Privacy Rights Clearinghouse website (www.privacyrights.org/fs/fs27plus.htm). You can also contact your state attorney general's office (bit.ly/find-ag) to learn more about the laws in your state.

State law also determines the statute of limitations (deadline for legal action) on different types of debt. A debt becomes "time-barred" when the statute of limitations runs out—in other words, the collector did not make a legal claim against you before the deadline. Once the collector misses that deadline, it no longer has the right to sue you for payment. That doesn't mean you don't owe the debt or that the collector has to stop trying to get you to pay. (Under the FDCPA, however, you can send a letter to the collector demanding it stop contacting you.) It also doesn't mean that the unpaid debt will be removed from your credit report. Derogatory (negative) information stays on your credit report for seven years; a bankruptcy remains for 10 years.

Learn more in the FTC's fact sheet "Time-Barred Debts" (bit.ly/FTC-time-barred). You can check your state's statutes of limitations on the Bankrate website (bit.ly/bankrate_SOLs). Keep in mind that these deadlines do not apply to federal or state tax bills, federally guaranteed student loans or spousal or child support.

Most states impose caps on interest rates, and some require

debt collectors to be licensed by the state. If a loan exceeds the state's maximum allowed interest rate, the lender could be fined, a portion of the finance charges could be erased or the contract could be deemed unenforceable. You can find a list of state rate limits at LendingKarma.com (bit.ly/usury-laws). If you can demonstrate that a collector obtained or pursued a judgment against you without a required license, then the judgment could be deemed void. (Debt collectors need only a general business license to operate in California.)

Verifying the debt

Within five days of first contacting you, the collector must send you a written "validation notice." This document contains information about the debt, including the amount, fees and interest accrued, and the name of the original creditor. It also contains an explanation of your consumer rights, including the right to dispute the debt.

If you are contacted by phone, confirm that a written notice will be sent to you. If the debt collector does not send you this validation notice within five days but continues to pursue you for the debt, they have violated the FDCPA and you have the right to sue them.

To retain your rights, you must either request verification of the debt (information that indicates you owe it) and/or the name and address of the original creditor or dispute the debt in writing within 30 days of receiving the validation notice. (This deadline is why it is so important to not ignore collection notices.)

The Consumer Financial Protection Bureau (CFPB) offers templates for five types of letter that you can customize and send to a collector to dispute a debt, request more information or specify how you want to be contacted (1.usa.gov/1mpCrz5). (The deadlines established under the FDCPA do not apply to original creditors.)

The collection company does not have a deadline by which it has to respond, but it must cease collection efforts until it provides the information you requested and/or proof that you owe the money. It can restart collections after it replies. If you miss the 30-day deadline, you will have forfeited your dispute rights under the FDCPA and the collector will assume the debt is valid.

Reasons to dispute a debt include:

- The debt is the result of identity theft.
- You have been mistaken for someone else.
- It is a medical debt that should have been paid by an insurance company, Medicaid or Medicare, etc.
- You don't agree with the amount of the debt.
- The debt is much larger than what you really owe due to high fees and penalty interest that has been added by the collector.
- You have already paid or settled the debt.
- The debt is too old (time-barred). (If you don't know the statute of limitations on the debt, ask the collector directly. If you do get an answer, it must be the truth. You can also ask what the collector shows as the date of your last payment. This helps determine when the statute of limitations countdown started.)

Always keep copies and proof of your communications with the collector. Acceptable proof can be email responses, fax confirmations or return receipts for certified mail.

Every written collection attempt must contain the name, address and phone number of the collection agency that is contacting you. Use this information to do an online search to check that the agency is legitimate. (There have been cases of fraudulent collectors trying to collect money not owed to them.) Find out from your state attorney general's office whether or not collectors must be licensed in your state. If so, confirm with the state licensing board or agency that the one you're dealing with holds the required license.

Mandatory arbitration

Arbitration is a way of resolving disputes in which an entity outside of the court system decides the outcome of a disagreement. Many credit card and other loan agreements require consumers to agree in advance (pre-dispute) to use arbitration instead of going to court. (However, the creditor does not give up its right to sue you if you become delinquent on a debt.) In most cases, pre-dispute arbitration decisions are final (binding), with no rights of appeal and can result in garnishment.

Whether or not an arbitration clause included in the contract (agreement) you accepted when you entered into a relationship with the original creditor or service provider is valid after the debt is handed off or sold to a debt collector depends on the language in the agreement, and could depend on the relationship between the collector and the original creditor. Generally speaking, though, the assignment of the account to a third-party debt collector does not automatically void or invalidate an arbitration clause. (However, the arbitration clause may not be enforceable for other reasons.)

If the debt collector takes its case against you to arbitration, you will receive a notice. As with a regular lawsuit, you must respond and meet certain requirements and deadlines. If you can't afford the arbitration fee, ask if it is possible to apply for a fee waiver. Even though you don't have to have a lawyer in arbitration, you should consult an attorney to protect your rights.

During the arbitration, you and the collector each have a chance to tell your side of the story. If the arbitrator decides you owe the money, it will issue an "award" to the debt collector, who must then go to a judge and seek a court judgment. If the judgment is granted, the collector can pursue garnishment to have money taken from your paycheck or bank account.

You have the right to "challenge" the award, but the time frame and your reasons for doing so are limited, so seek the advice of a lawyer.

Avoiding legal action

Assuming you owe a legitimate debt, the statute of limitations has not run out, and you don't believe you could win a lawsuit or arbitration case, it's probably in your best interest to avoid legal action. If you were to lose, your debt would immediately increase due to court costs or arbitration fees, and maybe attorney's fees, too.

Since debt collectors would prefer to receive their money without having to take legal action, the best way to avoid a lawsuit may be to communicate with the collector. The goal would be to assure the collector that you intend to repay the debt or to let the company know that a lawsuit would be futile because you are "judgment-proof."

Being judgment-proof means that you have no income that could be garnished or assets that could be seized even if the court awarded the collector a judgment against you. (See the **If you lose the suit** section below for more information about judgments.)

If you do have employment income or financial assets that a court could order be taken to satisfy the debt, you might be better off working out a voluntary repayment plan or a settlement. A settlement means you would pay less than the full balance but the debt would be considered paid in full.

When trying to negotiate a settlement or repayment plan, it helps to know whether you are dealing with a collector working on behalf of the original creditor or a “debt buyer” who purchases unpaid debts for pennies on the dollar and then keeps whatever payment they are able to get.

One way to know if you are dealing with a debt buyer is that on your credit report your original creditor shows a \$0 balance owed to them—this means your account was sold. (Despite the \$0 balance to the creditor, your credit report will still reflect a “charge-off.”) You can also ask the creditor if it sold your account.

Or you can research the company trying to collect from you online to find out if it is a third-party collector or a debt buyer. ACA International, an association of collectors, provides tools and information for consumers at its “Ask Doctor Debt” website (www.askdoctordebt.com).

Debt buyers might be more flexible than other collectors, accepting lower payments over a longer period or settling for a smaller percentage of the original debt. This is not always the case, however, and some will be quicker to take you to court if they are not satisfied with your offer.

Before offering a settlement or repayment plan, analyze your finances to make sure that whatever you propose fits your budget. The collector might be quicker to sue you if you don’t make the agreed-upon payments. A good way to figure out what you can afford is to consult with a non-profit credit counseling agency. A credit counselor can go over your budget and help you determine what, if anything, you can afford to pay. Credit

counselors also can provide useful information about dealing with specific debt collection issues. Find a non-profit credit counseling agency at the National Foundation for Credit Counseling (NFCC) website (www.nfcc.org).

Also, be aware that making any payment, or even promising to make a payment, on a time-barred debt could reset the statute of limitations.

Do not give the collector permission to access to your bank account, either through automated debits or by providing your debit card number. Once the money comes out of your account, it will be difficult or impossible to get back, even if you believe the collector took too much or took it on the wrong date. Send payments by check, or initiate electronic payments using your bank's online bill pay function.

Make sure any agreement you reach is provided to you in writing, on the collector's letterhead, before you make a payment. It should mention the name of the original creditor.

Bankruptcy

If your debt is too large to pay and you don't see any way out, filing for bankruptcy could be an option to consider—either before or after you are sued. A collector cannot continue collecting on an account while the court is considering the bankruptcy case, and it cannot try to collect on a debt that has been discharged (eliminated) in bankruptcy. The fear of losing the ability to collect any part of a debt because of bankruptcy sometimes makes collectors more amenable to repayment plans or settlement proposals.

Though there is a lot of “do-it-yourself” bankruptcy information available, you should be very careful about trying to file bankruptcy without a lawyer. A mistake could result in a debt not getting discharged. Consumer Action offers a general guide to personal bankruptcy (bit.ly/consumer_bankruptcy_guide).

Responding to a lawsuit

Note: *This guide offers general advice. If you are sued, strongly consider seeking the advice of a consumer attorney, as you easily could overlook technical aspects of the case and lose important rights.*

Debt collection cases are heard in civil, not criminal, court, which means there is no requirement for the government to provide you with an attorney if you can't afford one. While it is possible for you to represent (defend) yourself in court, your chances of successfully winning the case are much greater if you have a lawyer. (See the **Free and low-cost legal help** section at the end of this guide for information about finding legal advice and representation when you can't afford to pay for it.)

If a debt collector sues you, the collector must notify you in writing in two documents—the Summons and the Complaint. The worst thing you can do is ignore a notice that you are being sued. If you (or your attorney) do not respond by the date specified in the Summons, you will automatically lose the case and the collector (Plaintiff) will get a “default judgment” against you for the amount it is seeking. With that, the collector will have more options for collecting from you, including possibly garnishing your wages, seizing your bank account or putting a lien on your property.

There have been many cases in which collectors go to court without actually having served the Summons to the person being sued. If you learn of a default judgment against you in a lawsuit you were not notified about, you have a strong legal defense to stop any efforts to collect on the judgment. Consult a consumer attorney specializing in debt collection immediately

To officially respond to a lawsuit and maintain certain rights, you must file an “Answer” before the deadline (typically 20 days). Follow the instructions that come with the documents you receive. Usually a response entails stating in writing what parts of the Complaint you agree and disagree with. Depending on the facts of your case, responses might include stating that the debt is not yours, contesting the amount the collector says you owe because it has been fattened with fees and extra interest, questioning the collector's right to sue to collect the debt (perhaps because it is beyond the statute of limitations), or saying that you do not know if the statements in the Complaint are true. (Do not deny statements you know are true.) If the judge agrees, the case could be dismissed or the judgment might be for an adjusted amount.

If your income is exempt from garnishment (for example, be-

cause it is too low or it is from government sources such as Social Security), you should say that in your Answer. (See the **If you lose the suit** section below for more information about garnishment limits.)

You have the right to make a claim against the plaintiff. For example, if the debt is for a product that injured you or caused damage, or if you believe the plaintiff has violated the FDCPA, state this in your Answer. Usually you must pay a fee when you file a counterclaim. You can get general information about court rules, fees, terminology, procedures and practices by contacting the court clerk, but the clerk cannot give you legal advice.

Bring your Answer, plus two copies, to the courthouse where the Summons says you are being sued. The court will date-stamp everything and keep the original. Deliver one of the date-stamped copies to the plaintiff or plaintiff's attorney in person (get a receipt) or via certified mail, return receipt requested. Keep the other for yourself. (It is possible that the plaintiff may have decided to serve papers to you before filing them with the court. If you do not see a case number on the Summons, or if the court can't find the case, respond only to the plaintiff—not the court—by the due date.)

Some collectors file lawsuits knowing that they don't have enough evidence to prove the defendant owes the debt. But because relatively few people respond to the notice of a lawsuit, they count on winning by default. After you file an Answer, it is possible that the collector will attempt to negotiate with you to avoid a lawsuit it can't prove. If this doesn't happen, the collector may feel confident that it has the needed proof to win the case, and this may be your last chance to negotiate. You will have to weigh your options.

Learn more about responding to a debt collection lawsuit at WashingtonLawHelp.org: "Debtors' Rights in a Lawsuit" (bit.ly/1qnGVkN) and "How Do I Answer a Lawsuit for Debt Collection" (bit.ly/1DtAwPj).

Preparing for your day in court

The lawsuit must be brought in the county where you lived when you incurred the debt or where you live now. (If there is no signed contract for the debt, the collector can only sue in the

county where you live now.)

Arrive prepared and on time.

Bring with you the Summons, the Complaint and your Answer, as well as:

- All correspondence you have received from or sent to the collector, including copies of letters, printouts of email messages and notes of all phone conversations;
- Records of who the collector has contacted (your employer, for example) about the debt;
- Any other evidence that supports your case, which might include a credit report, statements, canceled checks, or other documents that show the debt is time-barred (past the statute of limitations), doesn't belong to you or is in the wrong amount, or that demonstrates you have made a good faith effort to repay the debt; and
- Records verifying your income and assets if you are claiming exemption from garnishment.

It is possible that you will have a last-minute opportunity to try to work out a settlement or repayment plan with the collector just before the case is heard. Make sure any agreement is presented “on the record” in court while you are there, and that you receive a copy of the agreement. Do not agree to any repayment plan that you aren't sure you can fulfill.

It's also possible, in some places, that the judge will require non-binding arbitration. In these cases, the arbitrator is assigned by the court or chosen by the two sides, and fees usually are capped and may even be waived if they are unaffordable. In court-ordered arbitration (unlike the “pre-dispute” arbitration required in many credit agreements), the arbitrator's decision is non-binding, which means that either side can reject the decision and have the case go back before a judge.

If you lose the suit

If the collector wins the case, the court will enter a judgment against you, which states how much you owe. The collector has 10 years to collect, and may renew the judgment for another 10-year period.

If you don't pay in full or by negotiating a payment plan, the

collector may be able to garnish your pay or levy your bank account. Under a garnishment order, your employer is ordered to direct a portion of your wages to the judgment holder, or your bank is ordered to turn over funds from your account. The collector can even get a lien against any real estate you own.

Regardless of the amount of the judgment, the law places limits on what can be taken from you. First, except to pay certain types of debts, such as child support, alimony, student loans and delinquent taxes, most income and benefits from government sources are exempt (can't be taken). This generally includes Social Security, unemployment and workers' compensation, veterans benefits, some government pension/retirement and disability benefits, and Supplemental Security Income (SSI). The FTC offers a fact sheet on "Garnishing Federal Benefits" (bit.ly/FTC_garnishing_federal_benefits).

A portion of your wages is also exempt. Under federal law, a creditor can only garnish 25% of your net wages (gross wages minus taxes and mandatory deductions) or the amount that exceeds 30 times the federal minimum wage (\$7.25 per hour in 2014), whichever is less. State law may offer even greater protection. For example, in California 40 times the state minimum wage, which is \$9 per hour (as of July 1, 2014), is exempt.

More of your earnings can be garnished for certain types of debt, such as taxes and spousal or child support. Learn more in "How Much of My Wages Can Be Garnished?" (bit.ly/1B27H8q). That page also provides a link to Nolo's list of state wage garnishment laws (bit.ly/1siw5Uw).

It is illegal for your employer to fire you because of the garnishment unless you have three different garnishments in a 12-month period.

Some portion of your personal possessions and equity in a car and/or home is also exempt. However, a creditor may be able to take all or most of the money in your bank account (some states allow you to keep a small amount). Even if you are entitled to notification that money in your bank account will be seized, you may not receive the notice in time to avoid bounced-check or non-sufficient funds (NSF) fees on outstanding checks.

For more information about exemptions, read "Money That Can-

not Be Taken From You (“Garnished”) to Pay Off a Debt” ([bit.ly/1siwh6j](#)).

Find information about your state’s homestead exemption (the amount of equity in your home that cannot be touched by most creditors) and other exemptions at the LegalConsumer.com website (www.legalconsumer.com/bankruptcy/laws).

The California Courts website offers information about how to ask for a claim of exemption (www.courts.ca.gov/11418.htm) when you believe certain income and assets qualify to be off limits from creditors. Though exemptions and the process for claiming them vary from state to state, this page provides a general overview.

Generally speaking, a debt collector cannot have you arrested just for owing them money. However, if a collector has obtained a judgment against you, a judge could issue a warrant for your arrest if you ignore an order to appear in court or do not pay the legal fees stemming from your case, if any.

In Arkansas, Arizona, Illinois, Indiana, Minnesota and Washington, debt collectors are allowed to seek arrest warrants for debtors if all other collection methods have failed. (In reality, not all counties in these states enforce debt-related warrants.)

To protect yourself, always show up when summoned, and seek assistance from a lawyer, particularly if you live in a state that allows arrest.

Filing a complaint

If you have a complaint against a debt collector, report the issue to:

- **The Consumer Financial Protection Bureau (CFPB)**, which regulates the collection industry, online (www.consumerfinance.gov/complaint/) or by phone at 855-411-2372.
- **The Federal Trade Commission (FTC)**, which enforces the federal Fair Debt Collection Practices Act: FTC Complaint Assistant (www.ftccomplaintassistant.gov) or 877-FTC-HELP.
- **Your state’s attorney general**. Online, you can find contact information for your state at the National Association of Attorneys General (www.naag.org/current-attorneys-general.php).

If you believe a debt collector has violated the law, you have the

right to sue in federal or state court within a year of the date of the violation. If you win, the judge can order the collector to pay your actual damages (such as lost wages or medical expenses) and cover your legal costs. If the debt collector knowingly and purposely violated the law, the court must award you an additional \$100 to \$1,000. However, you will still owe the debt if it is proven valid.

Visit the National Association of Consumer Advocates (NACA) and use its Find an Attorney link to locate the names of attorneys near you who handle debt collection cases. Or, if you have limited income, the section below lists some sources of free and low-cost legal help.

Free and low-cost legal help

If you need legal assistance with a delinquent debt, visit the website of the National Association of Consumer Advocates (NACA) at www.naca.net and search for an attorney in your area with expertise in debt collection. An attorney might be willing to defend you *pro bono* (free) if he or she believes the collector is breaking state or federal law because the collector (if it loses the case) would be responsible for paying your attorney's fees.

LawHelp.org (www.lawhelp.org) provides legal information and helps low- and moderate-income consumers find free legal aid programs in their communities.

The Legal Services Corporation (www.lsc.gov) provides referrals to local legal aid offices for those who cannot afford a private attorney.

Active duty servicemembers have additional rights under the Servicemembers Civil Relief Act (SCRA). If you are in the military and need legal help, contact your Armed Forces Legal Assistance Office (1.usa.gov/1tnkq1A).

Consumer Action

www.consumer-action.org

Consumer Action empowers low- and moderate-income and limited-English-speaking consumers nationwide to financially prosper through education and advocacy.

Complaint hotline

Chinese, English and Spanish spoken

Submit consumer complaints to our advice and referral hotline online (www.consumer-action.org/hotline/complaint_form) or by calling 415-777-9635.

Online form for Spanish speakers: *Presente su queja* (www.consumer-action.org/hotline/complaint_form_es)

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