

NYC Bankruptcy Assistance Project at LSNY

A Project of Legal Services for New York City



What to Do When You Can't Pay Your Debts

The advice in this packet is derived from two booklets, "Too Many Debts? How To Deal With Your Debts And Stop Debt Collectors From Harassing You," and "When the Creditor Sues, What Are My Rights?" Those booklets were distributed by the Legal Aid Society of New York, and funded by a settlement with the Office of the Attorney General of the State of New York. This packet gives general information for low-income consumers and advocates. It is not a substitute for specific legal advice from an attorney about your case. If you have any questions about your legal rights or how to proceed with your case, you should get advice from an attorney.

What is a Debtor? What is a Creditor?

A "debtor" is a person who owes money for a hospital bill, personal loan, credit card, department store charge card, or any other financial obligation. A "creditor" is a person or company to whom you owe money.

What can the creditor do to me?

The creditor may:

- stop doing business with you,
- report your debt to a credit reporting agency, or
- bring a lawsuit to collect the debt.

What if the creditor sues me?

If the creditor sues you for the debt, you can defend yourself and dispute the debt. Do not ignore the legal action. Read and respond to any legal papers you receive.

A creditor may or may not be able to enforce a judgment and collect money from you. If the debt is "secured" by collateral such as your car or your home (as in the case of a mortgage), the creditor may take back ("repossess") the collateral to satisfy the debt. If the debt is not secured, such as a hospital bill, the creditor may seize your bank account, garnish your wages within certain limits or take personal property. However, certain property and income may be protected from seizure by federal or state laws that make you "judgment proof."

How is a money judgment enforced?

Here are some of the ways that an attorney for the judgment creditor can enforce the judgment:

► garnishing your income

This means that money will be taken out of your paycheck to pay back the judgment amount. To do this, the judgment creditor will ask the sheriff to serve you with an "income execution" and a notice stating that the income execution will be served on your employer unless you start paying the judgment amount in installments to the sheriff. Your income may be garnished at 10% of your gross income or 25% of your disposable income whichever is less. However, your weekly income after taxes cannot be reduced below 30 times the minimum wage. (Currently, the current minimum wage in New York

is \$5.15. $30 \times \$5.15 = \154.50). The “income execution” will also explain that you have the right to challenge the income execution.

► **restraining notice**

The attorney for the judgment creditor may serve a restraining notice on you or other persons. The purpose of a restraining notice is to prevent you or any person or entity from selling or transferring any property that the creditor may seize in order to satisfy the judgment.

If your bank is served with a restraining order, it will put a freeze on your account for double the amount of the judgment plus fees. No later than four days after the service of the restraining notice on the bank, you must receive a notice advising you that certain funds are exempt from a judgment:

- Supplementary security income (SSI)
- Social Security benefits
- Public assistance (PA)
- Alimony or child support
- Unemployment benefits
- Disability benefits
- Workers compensation benefits
- Public or private pensions
- Veterans benefits

If you receive a restraining notice do not ignore it. If you believe that the judgment creditor may seize or has already seized any exempt funds immediately contact the judgment creditor’s attorney with proof that the funds are exempt.

► **seizure of personal property**

A judgment creditor may also get a sheriff to seize personal property from you that is not exempt. Exempt property generally includes household goods, one television, radio and personal items like your wedding ring or a watch. If you can show that a computer or a car are indispensable to your work, they may be exempt as “tools of the trade.”

► **lien on your home**

The filing or docketing of a judgment with the clerk in the county where the real property is located automatically places a lien on your home for 10 years. If you refinance or sell your home you must satisfy the lien by paying off the debt.

What if I don’t have anything the creditor can take?

What does it mean to be “judgment proof”?

You are judgment proof if the creditor can’t collect any money from you using one of the methods above. Put another way, you are judgment proof if you

- Have no wages to garnish (your take home pay is less than \$154.50 per week);
- Have no money in the bank other than exempt funds (see list above);
- Have only ordinary personal property—no collections of jewelry, cars, boats, art;
- Have no real property, i.e., you are renting, or you have less than \$50,000 equity in your home (\$100,000 for a couple).

You are called “judgment proof” because the creditor cannot touch certain income or regular household goods to pay back the money you owe.

I get too many phone calls from debt collectors.

What are my rights?

Debt collectors work for a company or an attorney who are paid to collect debt. Some debt collectors use abusive and unlawful methods such as repeated threatening phone calls. Debt collectors are regulated by a federal law, called the Fair Debt Collection Practices Act (FDCPA), that requires them to deal fairly with debtors.

What does the debt collector have to tell me about the debt?

Within five days after you are first contacted, the collector must send you a written notice telling you the amount of money you owe, the name of the creditor to whom you owe the money, and what action you can take if you believe you do not owe the money.

How do I dispute the debt?

If you believe that you do not owe the money, you must write a letter to the debt collector within 30 days of receiving the written notice to dispute the debt. If you do not dispute the debt, the debt is deemed valid. Once a debt collector receives your dispute letter, the debt collector must stop all collection activities, get proof of the debt from the creditor, and send you the proof. However, after the debt collector has provided you with proof of the debt, the collector can resume collection.

May a debt collector call me late at night or at work?

A debt collector may contact you in person, by mail, telephone or fax but not at inconvenient times or places, such as before 8 am or after 9 pm, unless you agree. A debt collector may not contact you at work.

Can I stop a debt collector from contacting me?

Yes, you can write a letter called a “Cease Letter,” asking the debt collector to stop. Once the debt collector receives your letter, the debt collector may not contact you except to confirm that there will be no further contact, or to tell you that the debt collector will take specific action to collect the debt, such as bringing a law suit.

Following are two sample letters for people whose only income is from a protected source, such as SSI, Social Security Retirement, welfare, Public Assistance, Disability, or a pension.

The first is a letter you can send to creditors, collection agents, and attorneys attempting to collect a debt. It tells them (1) that they may not call you unless they have something new to tell you, such as to notify you that they are filing a suit for the debt; (2) It tells them that you are “judgment proof,” that is, that you do not have any income, assets, or property that they can take from you. This letter will discourage most credit collectors from bothering you with harassing phone calls, and it reduces the chance that a creditor will try to take money out of your bank account. That may still happen, and if it does, you need to contact that creditor right away if the money in your bank account is all from a protected source. **You should send this letter by Certified Mail, return receipt requested.**

The second letter is one that you send to your bank. It tells the bank manager that all the money in your account is from a protected source, and should not be frozen. The bank may ignore this letter—most bank managers think that they can’t ignore a restraint notice—but it may help.

[Sample cease letter to debt collector]

From _____

To _____

RE: *Account Number* _____
Name of creditor _____

Dear Sir or Madam:

By this letter, I am directing you to cease all further communication to me about the above account, as required by the Fair Debt Collection Practices Act.

[You may add a paragraph complaining about specific conduct such as late harassing phone calls]

[If the creditor has obtained a judgment against you, or you fear that they will, add the following paragraph]:

Furthermore, you are advised that I am judgment proof. My only source(s) of income is(are) [name the government benefit or other exempt income that you receive] _____ . Accordingly, all the money in my bank account(s) is(are) exempt from seizure by restraining order under New York State Law. Proof of my benefits award is attached. Please note that any attempt by you to restrain funds that you have been advised are exempt would cause a severe hardship to me. If you cause my exempt funds to be restrained in disregard of this notice, I reserve the right to seek compensation from you for damages caused thereby.

This letter is not meant in any way to be an acknowledgment that I owe this money.

Thank you for your attention to this matter.

Yours truly,

[your signature]

Print your name _____

[If the creditor has obtained a judgment against you, or you fear that they will, add the following paragraph]:

[Sample cease letter to your bank]

From _____

To _____

RE: Checking Account Number _____

Dear Bank Manager:

By this letter, I am advising you that I have a dispute with a creditor which could result in that creditor seeking a restraining order against funds in my bank account. All the funds in my checking account are direct deposited from [name the government benefit or other exempt income that you receive] _____.

Accordingly, all the money in the above bank account is exempt from seizure by restraining order under New York State Law. Proof of my benefits award is attached. Please note that any restraint of exempt funds that you permit would cause a severe hardship to me.

Thank you for your attention to this matter.

Yours truly,

[your signature]

Print your name _____

What kind of conduct is prohibited by the Fair Debt Collection Practices Act (FDCPA)?

The FDCPA prohibits harassing and deceptive collection practices. Specifically, the debt collector may not:

- tell third parties like your neighbors, friends or relatives about your debt,
- contact you if you have an attorney,
- contact you after you write a “cease” letter (except to acknowledge the letter or advise you about action the debt collector may take),
- call you at work,
- telephone you repeatedly and frequently,
- call you at inconvenient times, usually before 8 am and after 9 pm, or
- contact you in any manner that makes it public that you owe money, such as sending you a post card or publish your name.

The debt collector may not use false or misleading statements or threaten or harass you when collecting a debt. For example, a debt collector may not misrepresent the amount you owe.

The debt collector also may not falsely claim:

- to represent a governmental agency;
- to be an attorney or a law firm;
- to be working for a credit bureau;
- that you have committed a crime;
- that you will be arrested if you do not pay your debt;
- that the collector will seize your property, levy your bank account or garnish your salary without first being awarded a judgment by a court;

The debt collector may not threaten or harass you by:

- using obscene, derogatory or insulting remarks;
- making threats against you or your relatives; Debt collectors may not engage in unfair practices such as:
 - imposing charges or fees not authorized by a court or state laws;
 - collecting more than the amount owed;
 - depositing a post-dated check before its date.

What can I do if a debt collector violates the law?

You can file a complaint with the Federal Trade Commission (FTC). The FTC is charged with enforcing the FDCPA.

To file a complaint with the FTC, write to:

Consumer Response Center
Federal Trade Commission
CRC-240

Washington D.C. 20580

You can also call 1-877-FTC-HELP and file a complaint on-line at www.ftc.gov.

Copies of your letter should also be sent these two agencies:

Office of the Attorney General
Consumer Frauds and
Protection Bureau
120 Broadway, 3d Floor

New York, NY 10271
1-800-771-7755
Department of Consumer
Affairs of the City of New York
42 Broadway
New York, NY 10004

Send all letters by certified mail, return receipt, and keep copies of all letters that you send.

Can I sue the debt collector?

If the debt collector used harassing or misleading methods in violation of the FDCPA, you have a right to sue the collector in state or federal court within one year from the date the law was violated. If you win, you may recover money for the damages you suffered plus an amount up to \$1,000, as well as court costs and attorney's fees.

Resources

For more information about consumer and credit issues, or to file a complaint contact:

The Federal Trade Commission (FTC)
1-877-FTC-HELP (1-877-382-4357)
<http://www.ftc.gov/ftc/consumer.htm>
New York State Attorney General's Office
1-800-771-7755 (info & complaint line)
www.oag.state.ny.us

"Guide to Surviving Debt," (2002 edition), published by The National Consumer Law Center (NCLC), cost \$19.00.

To order contact:
NCLC, Publication Dept.
77 Summer Street, 10th Floor
Boston, MA 02110-1006
(or call 1-617-542-9595)

To find a lawyer, contact:

Legal Services for New York City (212) 431-7200

The Legal Aid Society
Queens Neighborhood Office
1-718-286-2450 or 1-212-577-3300
www.legal-aid.org

Legal Services for the Elderly in Queens
1-718-286-1500

The Association of the Bar of the City of New York
1-212-626-7373 (English) or 1-212-626-7374 (Spanish)
www.abcnyc.org (click on "Consumer Resources")

The National Association of Consumer Advocates (NACA) maintains a list of attorneys specializing in consumer law:
NACA
1730 Rhode Island, NW, Suite 805
Washington D.C. 20036.
<http://www.naca.net>

Lawhelp.org/ny can help you find a lawyer and learn more about your rights in New York State.

If you do not have a lawyer and are representing yourself, visit the New York State courts online for information and forms used when representing yourself:
www.courts.state.ny.us/courts/nyc/civil/civil.shtml