

# **Legal Assistance of Western New York, Inc. ®**



We provide free legal aid to people with civil legal problems in western New York.

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## **Dealing with Debt Collectors**

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*Can they sue you? Can they take your house or your car? Can you go to jail?*

Perhaps it's happened to you: you've lost your job and the bills are starting to pile up, or you've had some unexpected medical expenses that your paycheck just won't cover. Suddenly you are in debt and worried about what's going to happen to you and your family.

What can happen to you when you owe money? Can you end up in jail? Can you be sued? What about those annoying phone calls from the debt collectors--can you stop them? You should know, there are laws in place to protect you if you can't afford to pay your debts.

Please read below for more information about your rights. If you have questions, call our office or your local legal services office.

#### **Can I go to jail for not paying my debts?**

No. You can't be thrown in jail because you owe money on a credit card or dentist bill. The only cases where someone goes to jail for debt issues is where they commit tax fraud, fail to respond to a court order or subpoena in a debt case, or fail to pay child support or court fines and restitution. If a debt collector is threatening you with jail, this may be against the law.

#### **What can creditors do if I don't pay my debts?**

A creditor is someone who has given you something in exchange for a promise to pay them back at a later date. Anyone who gives your credit or a loan is a creditor. Banks, landlords, utility companies, department stores, and even the government can be creditors.

If you can't pay a creditor, what the creditor can do to collect the debt depends on what kind of debt it is. For instance, if you are behind on the rent, your landlord can take you to court to have you evicted. Your utility company can shut off your gas and electric service if you don't pay your bill. Your phone company can shut off your phone. The bank can repossess your car if you fail to pay on a car loan. Other creditors, such as credit card companies and hospitals, may have to sue you to collect on debts.

#### **What is the difference between secured debts and unsecured debts?**

Some debts are called "secured debts." Secured debts have something that you agreed to offer as collateral for the loan. This means that the creditor can take the collateral back if you don't pay the loan. Automobile loans, mortgages, and some furniture installment contracts are examples of secured debts.

If you fail to pay the loan on a secured debt, the creditor will take back ("repossess") the collateral. After the repossession, the creditor can sell the collateral and apply the money from the sale to what you owe on the loan. If the collateral sells for less than what is owed on the loan, the creditor may sue you to collect the difference.

For example, if you owe \$5,000 on a car loan and you can't make the payments, the creditor can repossess the car. If the creditor sells the car for \$3,000, it would leave you with a balance of \$2,000. The creditor can then sue you in court for the remaining \$2,000 balance. The creditor may also be able to sue you for additional charges and fees as a result of the repossession.

### **What happens if my debt has been turned over to debt collectors?**

Sometimes creditors will turn your bills over to a debt collection agency or an attorney to try to get the money from you. Collection agencies or attorneys cannot harass you to get you to pay a debt. The law has specific rules about what such bill collectors can and cannot do.

#### **Debt collectors, including attorneys, cannot:**

- Contact other people such as your neighbors, relatives, or employers about the debt except to get your address and phone number.
- Contact you before 8:00 A.M. or after 9:00 P.M.
- Contact you at work if you tell the collector your employer does not allow this;
- Contact you directly if you have an attorney;
- Continue to try to collect the debt if you dispute the debt in writing;
- Lie to you about the debt or threaten or harass you.

These rules only apply to debt collectors and attorneys collecting debts for creditors--they do not apply to the original creditors, such as the bank or credit card company you owe.

### **How do I stop debt collectors from contacting me?**

If you tell the debt collector in writing to stop contacting you, the debt collector cannot contact you again (in writing, on the phone, or in person). The only time the debt collector can contact you after this is to tell you that a specific legal action is being taken, such as filing a lawsuit against you or selling your debt.

If you are being harassed by a debt collector, send a letter asking them not to contact you again. Send the letter "return receipt requested" and keep a copy for yourself. It is illegal under federal law for the debt collector to continue contacting you after you have asked them to stop. If they do, you may be able to sue them for damages. Again, this rule only applies to debt collectors and attorneys collecting debts for creditors. This rule does not apply to the original creditor.

Sending this letter will not erase your debt. The debt collector can still sue to collect the money they say you owe. **DO NOT IGNORE ANY LETTERS REGARDING LAWSUITS!** If you get

anything in the mail or are served with anything that appears to be a lawsuit, contact a lawyer right away.

### **What happens if I have been sued by a debt collector or creditor?**

If you do not pay your debts, the creditors or debt collectors may file a lawsuit against you. To start a lawsuit, the creditors or debt collectors have to file court papers. These papers are usually called a Summons and Complaint. You need to be served with a copy with court papers.

### **Do the court papers need to be served by the Sheriff?**

The court papers do not have to be served by a Sheriff. There are a few different ways you could be served. The most common way to be served is in person. This means that someone, other than the person suing you, hands you the court papers at your home or place of business. If you are not home, the person serving you can leave the court papers with someone at your house as long as they are of "suitable age and discretion." This is called substituted service. For this type of service, you also have to be mailed a copy of the court papers. Finally, if the person serving you has not been able to serve you in person or through substituted service after a few attempts, the person can serve you by taping or nailing a copy of the court papers to your door and sending a copy to you in the mail. This is called "Nail and Mail" service and is usually a last resort. *If you get court papers, don't ignore them--no matter how you are served.*

### **What do I do if I am served with court papers?**

There are very short deadlines to respond to court papers. Usually the deadline to respond is only 20 days from the date you are served. For debt collection cases, you are not usually given a court date to appear. *In order to respond to the court papers, you have to file an answer with the court.* In an answer, you list any defenses you may have to the court case.

You can get a copy of this form from the court clerk's office. You can find a copy online here: <https://www.nycourts.gov/RULES/CCR/forms/Consumer-Credit-Answer.pdf>.

After you file an answer, a hearing may be scheduled. In court, you will have a chance to prove that you do not owe the money, that you already paid it, or any other defenses that you put in your answer. If you do not file an answer before the deadline, the judge will sign a default judgment saying that you owe the money. If you file an answer and ultimately lose in court, the judge will sign a judgment saying that you owe the money. Once your creditor has a judgment against you, they can take other action to try and get the money from you.

**Do not ignore any court papers.** Contact an attorney for help responding to court papers.

### **Should I bother responding to court papers if I owe the money?**

Even if you think you owe the debt, you should talk to a lawyer. There are a lot of defenses that you may have to prevent a judgment from being entered against you, even if you agree you owe some of the money. For example, the debt could be beyond the statute of limitations, meaning the debt is so old that the debt collector cannot get a judgment against you. For a list of common defenses in debt collection cases, see the court's website here: <http://nycourts.gov/CourtHelp/MoneyProblems/defenses.shtml>.

## **Judgments**

A judgment is a legal document that says that one person owes another person money. Your creditor must sue you to get a judgment. Judgments collect interest of 9% per year. This means you will owe more money if you wait to pay. Judgments in New York are valid for twenty years. This means a judgment can be collected for twenty years or until you pay it off. If you make payments on the judgment, be sure to save your receipts. When you have paid all you owe, the creditor must file a "satisfaction of judgment" with the court and give you a copy. After you have made your last payment, be sure to check with the court that the satisfaction of judgment has been filed.

### **I just learned a default judgment was entered against me, can I challenge it?**

Yes, though it can be difficult to overturn a default judgment. If you want to overturn a default judgment, you should ask the court to vacate it by filing an "Order to Show Cause to Vacate a Default Judgment." You can ask the court to vacate the judgment if you were never served with the original court papers. If you were served and failed to respond, you have to show the court that you had a good reason for not responding and that you have a defense to the debt. There may be time deadlines for vacating default judgments. Contact our office or your local legal services agency for more assistance with this. You can also find information about vacating default judgments on the court website here: <https://www.nycourts.gov/courthelp/AfterCourt/vacatingDefault.shtml>.

### **What can a creditor do with a judgment?**

Once a creditor or debt collector has a judgment against you, they can use that judgment to garnish your wages and seize your assets. Certain types of income and assets are protected by the law and cannot be seized to pay back most kinds of debt.

### **I received an information subpoena. What is that?**

An information subpoena is a document which asks for information about your income and assets. An information subpoena is usually several pages long and asks you several questions about you make and what you own. If you receive an information subpoena, a judgment has likely been entered against you. Once a judgment has been entered, a creditor or debt collector can from time to time serve you with an information subpoena to get information about your income and assets. You must fill out the information subpoena to the best of your ability and send it back to the creditor, even if you have nothing the creditor can take. If you refuse to complete the information subpoena, you may be held in contempt of court.

### **Protected income and property**

Some kinds of income and property are protected (“exempt”) from most types of collection. In most cases, protected income and property cannot be taken from you by a creditor to pay a debt.

Some kinds of income protected from garnishment are:

- Most welfare benefits (public assistance, TANF, food stamps, etc.)
  - Social Security
  - Social Security Disability
  - SSI
  - Pensions
  - Unemployment benefits
  - Veterans benefits
  - Worker’s compensation
  - Child support and alimony
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- An IRA or 401K Retirement Fund
  - Rental or Utility Security Deposits
  - Equity in your home of up to \$85,400 per owner (Western & Central NY amount) *The amount is higher if you live in some Counties in the Eastern part of NY.*
  - In most cases, the first **\$2,832 of a bank account** (this may be higher if your income is protected).
  - Equity in your car up to \$4,550

Creditors cannot seize items such as clothing, furniture and appliances, wedding rings, burial plots, or school books unless they were used as collateral to get a loan.

### **What does it mean to be judgment proof?**

If you are judgment proof, this means that even if a debt collector sues you and gets a judgment against you, you have nothing that the debt collector could take to satisfy the judgment. Usually this means that your income and assets are exempt from collection. The debt collector can still sue you and get a judgment against you, but they would not be able to take anything from you. Many creditors and debt collectors will insist on getting a judgment against you even if you are judgment proof. They do this in case your income situation changes because you go back to work, win the lottery, or inherit money.

If a judgment is entered against you and you are served with an information subpoena, you still

have to respond to it even if you have nothing the debt collector can take. If you are judgment proof, you may be able to negotiate a lower settlement with the debt collectors or see if they will forgive the debt. There may be tax implications for any debts that are forgiven.

### **Can a creditor or debt collector take the money in my bank account?**

If a judgment was entered against you, a debt collector might be able to freeze and take money from your bank. In most cases, the first **\$2,832** or less of your bank account is exempt from collection. If you *only have exempt income* in your bank account (such as Social Security, SSI, child support, public assistance, etc.) the first **\$2,850** is exempt from collection. If you have both exempt and non-exempt income in your account (such as money from your work and Social Security income), the lower limit applies. Remember, a creditor or debt collector cannot freeze your bank account unless they get a judgments against you.

### **Wage garnishment**

Your wages can only be garnished if the debt collector wins the lawsuit and gets a judgment against you. There are limitations on what a debt collector can take from you. As of January 2020, if you make less than \$354 per week after taxes are taken out, your wages cannot be garnished. If you make \$354 per week or more after taxes are taken out, your wages can be garnished. Generally, the debt collector can only take 10% of your paycheck. If the debt collector gets a judgment against you and attempts to garnish your wages, you will be served with a paper called a Notice of Income Execution. This notice will give you the chance to set up payments before the garnishment takes place. Only one creditor can garnish your wages at a time. If you owe money for back child support or a government debt, more money can be taken from your paycheck (see below).

### **Child support is different**

The rules are different for child support or spousal maintenance. As much as 60% of your pay can be taken out if you owe child support. Some property exemptions don't apply if your debt is for child support. You can even end up in jail, if you had the ability to pay and deliberately refused or neglected to pay your support.

### **What about debts I owe to the government?**

If you owe a debt to the government, such as a tax bill, student loan, or overpayment of government benefits, the rules are also different. The government may be able to seize your tax refund or take from your government benefits (such as your Social Security check) to pay back your debt without suing you. This is called an offset. There are some limitations on what the government can take. Contact your local legal services agency for more help with government debts.

### **Can a creditor or debt collector take my house?**

If you own a house, your creditor may be able to place a lien on the house. Before placing a lien on your house, a creditor must sue you to get a judgment against you saying that you owe a certain amount. If you have a mortgage on the house, the mortgage holder will already have a lien on the house. There can be multiple liens on one house. If you sell the house, any creditor

who has put a lien on the house will be paid before you receive whatever money is left. Most creditors will not force the sale of your house to collect on a judgment. The creditor will likely wait until you sell or refinance the home to collect on the lien.

### **Be careful about starting to pay on really old debts**

Some debts may be too old for debt collectors to get a judgment against you. The New York Statute of Limitations (time limit) to collect debts is usually six years from the last payment you made. The time limit may be longer or shorter depending on what type of debt you have. If you make a payment on an old debt, the statute of limitations is renewed, even if the original statute of limitations had already expired. This means that the debt collector could sue you and get a judgment against even for a really old debt.

### **Should I file for bankruptcy?**

Filing for bankruptcy is usually considered a last resort option. It can be expensive and is not right for everyone. Completing a bankruptcy will also have a negative impact on your credit. For more information, see our article on bankruptcy. Although you are not required to have an attorney to file for bankruptcy, talking with an experienced bankruptcy attorney will help you fully understand your options and determine if bankruptcy is right for you.

### **Where can I go if I need help or have questions?**

If you are being sued or having problems with debt collectors, contact our office or your local legal services office. Keep in mind that many legal services offices do not handle this type of problem, but they may be able to refer you to another agency that can help you.

If you are having difficulty paying your debts, talk with your creditors. They may be willing to work out a modified payment plan. If you can work out a payment plan, be sure to get it in writing. You can also contact a credit counseling service. Credit counseling services may be able to advise you on how to manage your debt. You can find a list of some credit counseling services on the United States' Trustee's website here: <https://www.justice.gov/ust>.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

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