

Protecting Your Money from Garnishment

If the collector wins the lawsuit, they may “garnish” (take) some of your wages, bank account or other property to pay the debt. Some of your money is protected by law from being garnished, including:

- The greater of 75% or \$217.50 of your weekly pay after taxes and other automatic deductions;
- Social Security, SSI, TANF and other government benefits; and
- Retirement benefits for many categories of public employees.

However, you may have to take action to protect this money. You may want to get assistance from an attorney.

The best way to protect exempt benefits is to keep them separate from any other money. For example, you can receive your Social Security on a “Direct Express” debit card, so that it cannot be garnished from a bank account. If you would rather keep exempt benefits in the bank, you should keep them in a separate account. Don’t deposit any other money – such as gifts or paychecks – in that account. If a collector tries to garnish that account, you can send a letter to the bank explaining that all the income in the account is exempt.

Protecting Your Job

Your employer may be angry if they are ordered to garnish your wages. However, they cannot use the garnishment as a reason to fire you, as long as it’s only for one debt. If your employer does fire you or threaten to fire you, you should speak to an attorney.

Garnishment “Out of the Blue”

What if a collector tries to garnish your income, but you never received papers about the lawsuit in the first place? You can stop the garnishment and invalidate the judgment for “lack of service.”

Special Protections for Active Duty Military Personnel

If you are on active duty in the military and you are sued by a collector, you can ask that the case be delayed. This is called a “stay.” The Court must stay the case for at least 90 days, but you can ask for more time if you need to.

You can also ask the Court to stop garnishment during your military service.

You will need to write a letter to the Court explaining how your current military duties prevent you from appearing in court or from paying the debt and when you will be able to appear or pay. You must also include a statement from your commanding officer that your duties prevent you from appearing and that leave is not currently authorized for you.

Where to Find Legal Help and More Information:

If you cannot afford an attorney, you may be eligible for free legal assistance.

Call...

You may be able to find a private attorney to represent you through the National Association of Consumer Advocates by visiting www.naca.net or by calling (202) 452-1989. You can also find lawyers through your State Bar Association

To learn more: The National Consumer Law Center publishes a book called “**Surviving Debt.**” The book provides information about dealing with debt and debt collectors, saving your home from foreclosure, student loans, car loans, income tax collections, bankruptcy, special rights for members of the military and more. It is available online at www.consumerlaw.org or by phone at (617) 542-9595.



How to Stop DEBT COLLECTORS

What You Need to Know When Debt Collectors Take You to Court

- Responding to Court Papers
- Your Best Defenses
- Special Protections for Military Personnel
- Protecting Your Money From “Garnishment” by Debt Collectors
- Finding Legal Assistance

I'm Being Sued by A Company I Never Heard of!

Many collection lawsuits are brought by companies called Debt Buyers. Debt Buyers pay money to other companies for the right to collect money owed to those companies. For example, you might owe \$3,000 on a store credit card. After a while, the store may decide to sell the debt to a Debt Buyer for a few hundred dollars, instead of trying to collect it. Then the Debt Buyer will try to collect from you.

If the company suing you is not the company you think you owe money to, deny any statement in the Complaint that says the collector purchased the debt or has the right to collect it. That way, the collector will have to prove to the Court that they really own the debt, in order to sue you.

Definitions of Common Court Words

Plaintiff: the debt collector.

Defendant: you.

Summons: the official document telling you that a lawsuit has been filed against you and telling you the deadline to respond.

Complaint: the document that the plaintiff uses to begin the case. It tells the Court why they are suing you.

Answer: the document you send to respond to the Complaint and present your defenses.

Judgment: the Court's final decision. If you do not respond to the lawsuit, the collector will get a "default judgment" against you.

Garnish: "to take" – garnishment is a legal process that allows collectors to take money out of your wages or bank account if they have a judgment against you.

Defenses to Debt Collection Lawsuits

If you ignore a court case, you will lose. This is called a "default judgment."

But if you respond, you may have very strong defenses. You should try your best to find an attorney to help you with the lawsuit. The other side of this brochure has a list of places to look. Even if you can't find an attorney, you can still defend yourself.

You should list and explain all of your defenses in your Answer to the Complaint, after responding to the collector's statements. Don't miss the deadline!

I already paid that!

You should not have to pay the same debt twice! But sometimes collectors don't have certain information, or just ignore it. Tell the Court if:

- You have already paid the debt;
- You made an agreement that the debt would be settled or cancelled if you paid part of it;
- You went through a bankruptcy and the debt was discharged; or
 - You have been sued before about the same debt.

That wasn't me!

Collectors often try to collect from the wrong person – you may be a victim of identity theft, the debt may belong to someone with a similar name, or the collector may be trying to get you to pay a family member's debt or a business account that isn't your responsibility. If you are not the right person, the Court should dismiss the case.

That's the wrong amount!

Even if the debt is yours, the amount may be more than you actually owe.

The collector cannot sue you for attorney fees, late charges or interest *unless* you agreed to pay such charges when you borrowed the money (for example, in the fine print of your credit card agreement). Ask the Court to make the collector show the contract that authorizes those charges.

If the collector cannot show the contract that authorizes them to collect fees and interest, they cannot collect any amounts beyond your account balance.

You should also check the amount and tell the Court if it does not agree with your records. The collector may not have credited all your payments.

Other Defenses

An attorney will be able to help you raise these and other, more complicated defenses to debt collection.

Always Respond to Court Papers!

Collectors often try to trap you into admitting information that will help them win. They will write a long list of statements about the debt and about you. You will have a certain amount of time to respond. Many of the statements may be false, but if you do not tell the Court that they are false, it is legally the same as admitting that they are true. If you do not respond within the time allowed, the Court will not require the collector to prove anything and the collector will win by default. Remember: do not miss the deadline!

The statements will be in the Complaint and sometimes in a document called a "Request for Admissions." You must read each statement carefully and do one of the following:

- Admit that it is true;
- Deny it;
- Deny part of it, explaining which part; or
- Say that you do not have knowledge of whether it is true or false.

You should write your response to each statement in your Answer to the Complaint, or in a response to the Request for Admissions.