

Overview of Consumer Debt & Debt Collections Lawsuits

Having a debt in collections or being sued over a debt is not a reason to panic, but it is important to be aware of how the process works so you can make informed decisions. Contra Costa Senior Legal Services (“CCSLs”) can assist our clients with information and decision making regarding the issues discussed in this document.¹

DEALING WITH DEBT COLLECTORS

If you are unable to pay a debt, such as a credit card balance or medical bill, you will probably begin hearing from a debt collector. “Debt collectors include collection agencies or lawyers who collect debts as part of their business. There are also companies that buy past-due debts from creditors or other businesses and then try to collect them. These debt collectors are also called debt collection agencies, debt collection companies, or debt buyers.”²

Debt collectors use a variety of approaches, but they are not allowed to lie, make threats, or harass you by calling too often or at odd hours. If the account was sold, the debt collector must send you written information within five days of contacting you that identifies the original creditor and amount of the debt. You have 30 days to dispute ownership of the debt in writing or request additional documentation. You also have the right to request in writing that a debt collector contact you only by mail, or not at all. CCSLS can assist with this letter. Templates are also available online at www.consumerfinance.gov/consumer-tools/debt-collection.

PAYMENT PLANS

If you can afford to make monthly payments, you can often negotiate a plan to pay less than you owe. Settlements for 50 to 80% of the original debt are possible. Some things to keep in mind:

- You should never agree to a payment plan that would not leave you enough for housing, food, medication, or other essentials.
- You cannot be sued after four years have passed since your last payment on the account, but if you make a payment, the clock restarts.

DELINQUENT DEBT, CREDIT, AND RENTAL HOUSING

When you fall behind on a debt, the creditor usually reports it to the three major credit bureaus, and this record remains on your credit report for 7 years. A poor payment history can keep you from getting a good interest rate or from being approved for new credit at all. Unpaid debt may also affect your ability to qualify for rental housing, including low-income senior housing. Agreeing to a payment plan for a reduced amount will not help your credit score significantly because the account will be noted that you paid less than owed; however, some creditors will agree to delete their tradeline with the credit bureaus, meaning remove the record of the debt, so you should ask before agreeing to a plan.

¹ CCSLS clients must be 60 or older and reside in Contra Costa County. **Assistance is subject to staff availability.** This document is for general information only and is not intended to be legal advice. This information is provided without warranty, but to the best of our knowledge is current as of August 2021.

² Consumer Financial Protection Bureau, “What is a debt collector and why are they contacting me?,” at <https://bit.ly/3kBQWki>. Retrieved 8/20/2021. Debt buyers pay only pennies on the dollar when they buy accounts, but they have the right to seek repayment for the original amount of the debt. Midland Credit Management and Portfolio Recovery Associates are the largest junk debt buyers.

Even if the debt remains on your credit report, completion of the payment plan will reduce your chances of being turned down for rental housing or future credit. Your individual circumstances and goals should guide your decision about whether to set up a payment plan with a debt collector. If you decide to go this route, keep in mind that it is far better to work with the debt collector directly rather than use a debt settlement company, for the reasons discussed below.

AVOID DEBT SETTLEMENT COMPANIES

Having a lot of debt can feel overwhelming, but we strongly recommend that you steer clear of debt settlement companies (also known as debt relief companies).³ There are many such companies, but some of the biggest include National Debt Relief, Freedom Debt Relief, New Era Debt Solutions, Century Debt Services, and Pacific Debt Inc.

While debt settlement companies tend to market themselves as solving your problems for you, they charge high fees to do a small amount of work. They are unlikely to get you a better deal than you could have gotten for yourself, and their fees are generally 15 to 25% of the original amount of your debt. This is money you could have used to pay off your debt faster.⁴

What many consumers don't realize is that enrolling in a debt settlement program does not prevent you from being sued by creditors, and your monthly fees don't include assistance with litigation. Please contact CCSLS for more information before enrolling in a debt settlement or debt relief program or for an assessment of your contractual right to withdraw from a program.

DEBT COLLECTION LAWSUITS: SHOULD YOU RESPOND?⁵

Some debts never lead to a court case, but if you are served with a lawsuit, you need to assess your options. Responding is not mandatory, and whether it makes sense for you depends on your personal circumstances and willingness to participate in the process. If you are served with court documents, make note of the date to calculate how long you have to respond (this is 30 days if you have been personally served). If you are a Contra Costa County resident over 60, call CCSLS as soon as possible to assess your situation. You have two choices:

Choice 1: Do Nothing

You will not face jail or any other legal trouble for not filing an answer to a complaint in a debt lawsuit, and these types of judgments no longer appear on credit reports. The main consequence is that the plaintiff will be permitted to ask the court to enter a default judgment against you for the amount in the complaint, plus attorney's fees and costs. Choosing not to file an answer may be the best option for you if you have no defenses, cannot pay the debt, do not own a home, and think you would have difficulty following the court requirements described above.

Choice 2: File an Answer to the Complaint

To preserve your rights to participate in the case, you must file an answer to the lawsuit within 30 days. If so, the case moves toward trial, which may not take place for 6 months or more. Plaintiffs frequently ask the court to dismiss these cases just before trial; they were hoping you would not file

³ One of the best-known debt settlement companies, Freedom Debt Relief, paid \$25 million in fines and restitution in 2019 after allegations that they broke multiple consumer protection laws. See <https://wapo.st/3fN1D19>.

⁴ Additional information is available from the Consumer Financial Protection Bureau at <https://bit.ly/3xwjL61> and the Federal Trade Commission at <https://bit.ly/37uzo3n>.

⁵ Excerpted and edited from the California Courts website: www.courts.ca.gov/1322.htm. Retrieved 8/9/21.

an answer and they don't want to pay their attorneys to go to trial. Unfortunately, there is no way to know in advance if this will happen in your case.⁶

You should also respond if you have a defense—such as the lawsuit is for the wrong amount or it has been more than four years since your last payment. If you hope to settle, you *may* be able to negotiate a better deal after filing an answer.

Another consideration is that if the plaintiff is a debt buyer, the company may not have the documentation it needs to prove its case in court.

If you decide to file an answer, CCSLS can prepare the papers for you to file.⁷ If you file an answer, here's what to expect:

- You will need to pay a filing fee unless you qualify for a fee waiver from the court.
- You will need to attend at least one meeting called a case management conference at the court with the judge and the plaintiff's lawyer. The trial date is usually set at that time.
- Occasionally the plaintiff will serve you with discovery requests, and you must respond within 30 days with the requested written responses, documents, etc.
- If your case goes to trial, it will generally take 30 minutes or less. If the plaintiff wins, the judge will issue a money judgment (or "judgment") against you.

WHAT HAPPENS IF THERE IS A JUDGMENT AGAINST YOU

After a judgment is entered against you, the plaintiff—now officially called the *judgment creditor*—is permitted to use some additional tools to try to collect. If you are "judgment proof" (see page 4), it may be impossible for the plaintiff to get this money from you. If you own a home, the plaintiff can now place a lien on your property (see page 4).

(1) Debtor Examinations

A debtor examination requires you to appear on a specific date to answer questions about your income and assets. The meeting itself is only a big deal if you miss it. You will need to answer questions about your bank accounts and property you own. If you have no assets or income that the creditor has a right to seize, you may not hear from them again. If you do not show up, the judge could issue a warrant for your arrest. If you are served with a Notice of Examination, GO.

(2) Bank Levies

A levy is a legal process that orders your bank to take money from your bank account and turn it over to the sheriff, who will send to the judgment creditor. Your income from social security, ERISA-qualified pensions, and public benefits (e.g., SSI) is exempt and cannot be seized, as long as you have it directly deposited into your account. Other funds may be exempt if you can show they are needed to meet your basic needs. Additionally, there is an "automatic exemption" of \$1788, meaning the bank must leave a minimum balance of \$1,788.⁸

If there are judgments against you, keep exempt income separate from nonexempt funds (such as a birthday check, wages, or distribution from a retirement investment account). This can reduce the chance that the bank will freeze your account while it determines the source of the money in your account. The bank will notify you that you have 15 days to oppose the levy by returning a "Claim of Exemption." CCSLS can assist you to prepare this form.

⁶ Dismissal tends to happen more often when the plaintiff is a debt buyer rather than the original creditor. You should be notified by mail if the plaintiff files a request for dismissal but check the court website regularly about the status of your case: <http://icms.cc-courts.org/tellme>.

⁷ Assistance is dependent on staff availability. Generally, CCSLS is not able to represent you in a debt lawsuit; there may be an exception if you have a valid defense *and* CCSLS has staff availability.

⁸ This automatic exemption only applies to one account.

(3) Wage Garnishment

Wage garnishment (“earnings withholding”) requires an employer to redirect a portion of an employee’s paycheck to a judgment creditor. If the creditor serves your employer with an “Earnings Withholding Order,” your employer must give you several documents, including a Claim of Exemption form you may file to challenge the order.

The judgment creditor will be limited to no more than 25% of your take-home pay. The employer must follow other guidelines in calculating the amount to be garnished.

Creditors may not take your wages if you can show the court you need the money for basic expenses, but you will need to complete and return the Claim of Exemption form. If the judgment creditor objects, you will have an opportunity to explain your position at a hearing with a judge. CCSLS can assist you with completion of the forms.

(4) Property Liens and Homestead Exemptions

If you own real property, a judgment creditor can no longer foreclose on your home for consumer debt such as credit cards or medical debt. The judgment creditor can, however, place a lien on the property, and the amount of the money judgment accrues 10% interest per year. The lien must be paid out of your equity if you sell or refinance the property.

If you record a homestead declaration on your primary residence with the County Recorder, up to \$600,000 of the equity will be protected from seizure by creditors when you decide to sell it, as long as you reinvest it in a new primary residence within 6 months.

CCSLS can provide you with the homestead declaration form to record with the County Recorder. In Contra Costa County, the fee to record this document is currently \$95.

ARE YOU JUDGMENT PROOF?

California has rules that limit what creditors can take to satisfy a money judgment after the creditor wins in court. If you do not have income or property that a judgment creditor can seize, you are considered “judgment proof.”

Your directly deposited social security, pension, and/or public benefits are exempt, meaning they cannot be seized by creditors.⁹ Money from other sources, such as employment, may also be exempt if you can show you need it for basic necessities.

SHOULD YOU FILE BANKRUPTCY?

Many people facing overwhelming debt believe filing bankruptcy is the best or only option. For seniors whose income and assets are largely exempt from seizure by creditors, filing bankruptcy is usually unnecessary, but there may be advantages if you own a home with significant equity or feel overwhelmed by multiple debt collection lawsuits.

Keep in mind that filing bankruptcy is not free, and a Chapter 7 bankruptcy will stay on your credit report for ten years. CCSLS does not practice in the area of bankruptcy but can help you assess whether bankruptcy might be the best option for you.

⁹ Although creditors could seize and sell personal property if it has adequate value, they rarely do so.