

## Understanding the Consumer Debt Collection Process & Your Options

### General Information

#### **Debtor: You are a debtor if you owe money to another party.**

- You are a debtor if you borrowed money to buy a car, a home, other merchandize, or to go to school.
- You became a debtor as a patient who received medical care, or a customer who took merchandise home without paying for it in full and agreed to pay for it later (on credit) under specific terms.
- You became a debtor because you applied for a credit card and you agreed to pay for charges on the credit card under specific terms, and you used the credit card.
- If you were told your debt is “charged off” you still owe the debt.

#### **Creditor: You are a creditor if a person or entity owes you money.**

- **If your debt is not paid in a timely manner, or under the specific terms you agreed to, the creditor may**
  1. **Call you or write you asking you to pay.** See laws about what a creditor can or cannot do to collect debts at: <http://www.consumer.ftc.gov/articles/0149-debt-collection>
  2. **Notify credit reporting agencies** of your late payment. These late payments generally get listed on your credit report at some point. You can ask the original creditor what its policy is for reporting late payments to credit reporting agencies. Negative late payment reports of this sort generally lower your credit score.
  3. **Hire a collection agency (third party) to collect from you, or sell your entire debt to another agency who will try to collect** the money owed. (Please See Verification Column Below)
  4. **File a lawsuit against you to collect** the money you owe plus the costs and fees of trying to collect the debt, including the lawsuit. The creditor has four years to file a lawsuit. The four years (called Statute of Limitations) starts over again when you make a payment.

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**Understanding the Consumer Debt Collection Process**

Call Us to Help Resolve the Dispute at Any Time (213-736-1145)

VERIFY DEBT & AMOUNT	NEGOTIATION	LITIGATION
<p><b>1. Is This Your Debt?</b></p> <p><b>2. Correct Debt Amount?</b> Ask for Accounting of Interest &amp; Other Charges in a Certified Letter.</p> <p><b>3. Who is the Collector?</b></p> <p>a. Original Creditor so OK? b. Hired Collector? c. New Owner of the Debt?</p> <p style="text-align: center;"><b><u>IF NEED VERIFICATION</u></b>  <b><u>ASK FOR IT</u></b>  <b><u>BY CERTIFIED LETTER:</u></b></p> <p><b>1. Send a letter to the collector</b> telling them that <u>you believe</u>:</p> <p>a. You do not owe the debt, or that the debt is not yours. b. The amount is not correct. c. You do not owe a debt <u>to them</u>.  <b>[Only list those that apply.]</b></p> <p><b>2. Ask them to send you information verifying the above.</b></p> <p><b>3. Keep a copy of your letter</b> for your records.</p> <p>See Sample Letter: Click on <u>"I need more information about this debt."</u>  <a href="http://www.consumerfinance.gov/skcfpb/1695/ive-been-contacted-debt-collector-and-need-help-responding-how-do-i-reply.html">http://www.consumerfinance.gov/skcfpb/1695/ive-been-contacted-debt-collector-and-need-help-responding-how-do-i-reply.html</a></p>	<p><b>1. You negotiate directly to</b></p> <p>a. make a payment plan? b. lower entire amount owed? c. both?</p> <p><b>2. Generally done during business hours.</b></p> <p><b>3. Creditor cannot give you legal advice, does not represent you and uses info you give to try to collect the debt.</b></p> <p><b>4. You may want to get legal advice before making an agreement</b> with a creditor. Referrals?</p> <p style="text-align: center;"><b><u>WE CAN CALL CREDITOR</u></b>  <b><u>TO OFFER NEGOTIATION</u></b>  <b><u>BY TELEPHONE</u></b></p> <p><b>Phone Mediation (Conciliation):</b></p> <p>a. We help both sides communicate to see if possible deal. b. Confidential Process c. Low-to-No Cost d. We help as neutrals, not as lawyers or advisors to either side. e. Voluntary Process.</p> <p><b>**It is recommended to negotiate a plan that you can comply with.</b></p> <p><b>Note re Active Military:</b> Debt Collection Rules differ for Active Military. Please See: <a href="http://www.dfas.mil/garnishment/milcom mdebt/debtcollect.html">http://www.dfas.mil/garnishment/milcom mdebt/debtcollect.html</a></p>	<p><b>1. You Receive a Summons &amp; Complaint for Nonpayment of Debt:</b> Common Count or Breach of Contract. <b>Case Begins: Proper Notice?</b>  <b>See: <a href="http://www.nolo.com/legal-encyclopedia/creditor-lawsuits-how-the-case-begins.html">http://www.nolo.com/legal-encyclopedia/creditor-lawsuits-how-the-case-begins.html</a></b></p> <p><b>2. Possible Small Window to Negotiate</b> before Timely Answering</p> <p><b>3. You Decide to Respond or Not</b> (Called Answer): <b>Important Decision.</b> Please See: <a href="http://www.courts.ca.gov/1322.htm">http://www.courts.ca.gov/1322.htm</a> and <u>Get Advice</u>.</p> <p>a. <u>Pros of Answering:</u> 1) You get court date to prove to Judge you don't owe the debt, you have a defense(s), and/or the collector violated the law in its collection efforts, 2) You get another possible chance to negotiate a settlement but <u>may cause your final balance due to be higher</u> if don't settle before Court Judgment (<u>See Discovery below</u>)</p> <p>b. <u>Cons of Answering:</u> 1) <u>Discovery Costs May Get Passed on to You:</u> Creditor starts a process called "Discovery" to get evidence from you to prove its case to the Judge. Discovery = Questions you need to answer. You can do Discovery too. Creditor's attorney charges for Discovery efforts. <u>If Judge decides you owe the debt you may be required to pay the debt, interest, court fees, and attorney's fees including discovery fees and costs.</u></p> <p>c. <u>Cons of Not Answering:</u> <b>If you don't owe the debt you automatically lose your case by "Default."</b> Creditor gets Court Judgment.</p> <p>d. <u>Pros of Not Answering:</u> <b>If you owe the debt</b> and have no defenses, or claims of illegal debt collection practices, the creditor gets a <b>Default Judgment against you that is lower</b> because there was no Discovery.</p> <p>e. <u>Possible Defenses:</u> Numerous &amp; Complex. Please Get Legal Advice and/or Go to An Answer Clinic for Help. See Clinics Below.</p> <p>f. <u>If You Owe the Debt:</u> <b>Don't Answer Just to Tell the Judge Your Good Reasons for Not Paying.</b> Not a factor in Judge's decision.</p> <p><b>4. Go to an Answer Clinic for Help Deciding, Defenses and/or Answering</b></p> <ul style="list-style-type: none"> <li>• Neighborhood Legal Services (Chatsworth Courthouse)</li> <li>• Norwalk Courthouse</li> </ul>

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CREDITOR HAS COURT JUDGMENT	COMMON CREDITOR ATTEMPTS TO COLLECT	POSSIBLE CLAIM OF EXEMPTION	OTHER OPTIONS & RESOURCES
<p><b>1. Court Judgment Good for 10 Years &amp; Renewable for 10 More Years</b></p> <p><b>2. You voluntary pay within 30 days.</b></p> <p><b>3. If you don't pay within 30 days,</b> you are legally required to fill out a form called a <b>"Judgment Debtor's Statement of Assets."</b>*</p> <p><b>4</b> You can <b>find this form</b> (SC-133) at: <a href="http://www.courts.ca.gov/documents/sc133.pdf">http://www.courts.ca.gov/documents/sc133.pdf</a></p> <p><b>5. Send completed form</b> to the creditor within 30 days of the Court Judgment.</p> <p><b>6. If you don't send this required form, the creditor may request an "Order for Examination"</b> where you will be required to appear in court to give information about your assets.*</p> <p><b>7. Setting aside a Default Judgment:</b> contact a legal service provider.</p> <p><b>*Creditors use this information</b> to try to collect what they are owed under the Court Judgment.</p> <p><b>See This Website For Creditor Options &amp; Collection Procedures:</b> <a href="http://www.courts.ca.gov/partners/documents/collecting.pdf">http://www.courts.ca.gov/partners/documents/collecting.pdf</a></p>	<p><b>Execution on Judgment</b> = Creditor attempts to collect what is owed under the Court Judgment through Wage Garnishment, Bank Levy and/or Judgment Lien on Property.</p> <p><b>1. Wage Garnishment</b> = Creditor can take some of your wages each month if earn \$320 per week. Employer notifies you: up to 25%. Sherriff fees added on to monthly payment. Child support treated differently by law.</p> <p><b>2. Bank Levy</b> = Creditor can take money out of your bank account(s). You get notice by a form called a <b>Writ of Execution</b>. Government Benefits may be exempt: get advice if an issue.</p> <p><b>3. Judgment Lien on Personal Property:</b> Creditor can take your personal property to satisfy the Judgment. (Car, Boat, etc.) If there isn't a lot of value in the personal property, the creditor may not try to take it. If you don't get notice, Judgment Lien still exists.</p> <p><b>4. Judgment Lien on Real Property:</b> Creditor notifies County Recorder's Office of their right to payment. Creditor's right is recorded on your property record. County Recorder's Office sends you notice. Generally required to pay off this debt before selling or refinancing. Forced sale of property is limited. See Homestead Exemption in California.</p> <p><b>Personal Property Liens By Contract:</b> You purchased an item on credit and agreed that the seller has a lien on the property. Called a Personal Property Lien: generally allows the creditor to repossess the asset or foreclose.</p>	<p><b>Debtor Files Claim of Exemption</b> = Debtor attempts to resist collection of Judgment by Wage Garnishment and/or Bank Levy.</p> <p><b>1. Debtor's way of telling the Court s/he cannot afford to pay.</b></p> <p><b>2. Debtor must file Claim immediately after receiving notice.</b></p> <p><b>3. Claims of Exemption not granted</b> if you are able to afford non-essential items or owe money to certain people. See: <a href="http://www.courts.ca.gov/11418.htm#">http://www.courts.ca.gov/11418.htm#</a></p> <p><b>4. Creditor May Resist Your Claim of Exemption:</b> You'll Get "Notice of Opposition to Claim of Exemption" &amp; "Notice of Hearing on Claim of Exemption."</p> <p><b>5. If Creditor Doesn't Oppose Claim of Exemption:</b> You should get notice that wage garnishment or bank levy is stopped or reduced. Overpayment gets returned.</p> <p><b>6. If your Claim of Exemption is Granted at Hearing</b> (Not Required To Go): Levy or Garnishment Is reduced or stopped.</p>	<p><b>Bankruptcy</b></p> <p><b>1. Many Types of Bankruptcy:</b> It is a complex process that <b>can impact you financially in the future</b> in many ways. Please see Legal Referrals to <b>get advice before filing.</b></p> <p><b>2. Possible way to get rid of debts.</b></p> <p><b>3. Stops all collection efforts.</b></p> <p><b>4. Almost never get rid of the following types of debts:</b> child support, student loans, and money owed to government.</p> <p><b>5. On credit report for 10 years.</b></p> <p><b>6. After You Successfully Claim Bankruptcy: Limits on Doing Again.</b></p> <p><b>General Note for Debtors: Please contact a legal advisor if you do not work, have no assets, and are not likely to work or own assets in the future as you may need info on being judgment proof.</b></p> <p><b>Note: <u>The CCR Is Available to Assist You to Negotiate Your Debt Dispute at any Point in the Process.</u> We Are Neutral Mediators.</b> Please Call 213-736-1145 or Apply Online at: <a href="http://www.ils.edu/CCR/HelpRequest">www.ils.edu/CCR/HelpRequest</a> We look forward to being of service. Thank you.</p>

**THIS GENERAL INFORMATIONAL FLYER CANNOT SERVE AS LEGAL ADVICE. WE RECOMMEND YOU CONTACT A LEGAL SERVICE PROVIDER TO GET ADVICE.**

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## Helpful Websites

### Debtor Rights

[http://www.dbo.ca.gov/Consumers/education\\_outreach/default.asp](http://www.dbo.ca.gov/Consumers/education_outreach/default.asp)

### What the Creditor Can Do to Collect

<http://www.consumer.ftc.gov/articles/0149-debt-collection>

<http://www.courts.ca.gov/partners/documents/collecting.pdf>

<http://www.nolo.com/legal-encyclopedia/creditor-lawsuits-how-the-case-begins.html> (When Creditor Files a Lawsuit Rules to Follow)

<http://www.dfas.mil/garnishment/milcommdebt/debtcollect.html> (If You Are or Were Military – Different Rules)

### Sample Letter for Asking the Creditor to Prove You Owe the Debt to Them Plus Other Letters that May Apply to Your Situation

<http://www.consumerfinance.gov/askcfpb/1695/ive-been-contacted-debt-collector-and-need-help-responding-how-do-i-reply.html>

### Deciding to Respond or Not to Respond to the Creditor's Lawsuit

<http://www.courts.ca.gov/1322.htm>

<http://www.nolo.com/legal-encyclopedia/defenses-counterclaims-creditor-lawsuits.html>

Also Please Get Help by Attending an Answer Clinic at the Chatsworth or Norwalk Courthouse (See Referral Sheet)

### Court Forms

Answer to Complaint for Non-Payment of Debt (Form PLD-C010): <http://www.courts.ca.gov/documents/pldc010.pdf>

Judgment Debtor's Statement of Assets (Form SC-133): <http://www.courts.ca.gov/documents/sc133.pdf>

### Information and Court Forms for Filing a Claim of Exemption

- Can I File a Claim of Exemption: <http://www.courts.ca.gov/11418.htm#>
- Claim of Exemption Court Form (Form WG-006): <http://www.courts.ca.gov/documents/wg006.pdf>
- Financial Statement Court Form (Form WG-007): <http://www.courts.ca.gov/documents/wg007.pdf>
- Notice of Filing of Claim of Exemption Court Form (Form WG-008): <http://www.courts.ca.gov/documents/wg008.pdf>

### Learn about Wage Garnishment

<http://www.dol.gov/whd/garnishment/index.htm>

### What a Creditor May Do If There is a Judgment Lien on Your House

<http://www.nolo.com/legal-encyclopedia/can-judgment-creditor-foreclose-home.html>