

**3. Have a lawyer write a cease letter.** You don't need a lawyer to write a cease letter, but if your letter does not stop the harassment, a letter from a lawyer usually will. Also, collection agencies must stop contacting you once they know you are represented by a lawyer.

**4. Work out a payment plan.** If you decide to work out a payment plan, you should only agree to a realistic plan, preferably one that significantly reduces the debt. In making any agreement, keep in mind your priorities: don't make even small payments if the payments would prevent you from paying your mortgage or rent, food or utilities.

**5. Complain about billing errors.** Collection letters are sometimes in error. If a letter contains a mistake, you should write and request a correction (and keep a copy of your request). If you dispute the debt in writing within 30 days of your receiving notice of the right to dispute, the collection agency must stop collection efforts while it investigates. If the account is an open-end account, like a credit card, you can dispute a charge within 60 days of receiving the bill.

**6. Complain to a government agency.** Mail any complaint you have about a collector's conduct to the Federal Trade Commission, Bureau of Consumer Protection, Washington, DC 20580, to the consumer protection division within your state attorney general's office, and to any local office of consumer protection. You should be able to obtain these addresses from your local Better Business Bureau or office of consumer affairs. Send a copy of the letter to the collector.

**7. File Bankruptcy.** Filing bankruptcy can instantly and effectively stop debt collection efforts of any kind. Often simpler and less expensive action will resolve debt collection harassment, but bankruptcy filing may provide significant other advantages for the debtor. Filing bankruptcy should not be a casual decision, and a competent professional should be consulted before any bankruptcy case is initiated. For a list of bankruptcy attorneys visit [www.nacba.org](http://www.nacba.org).

**8. Sue the Debt Collector.** The federal Fair Debt Collection Practices Act allows you to sue debt collectors who violate the Act's provisions. Statutory damages up to \$1,000, actual damages, costs and attorney's fees are available to persons who bring successful actions. Consult an attorney to discuss such litigation. For a list of attorneys who take these cases visit [www.naca.net](http://www.naca.net).

#### FOR MORE INFORMATION

More information on your legal rights and debt strategies is provided in *Surviving Debt: A Guide for Consumers* (2005 ed.). This 448 page handbook is available by sending \$19 to:

National Consumer Law Center  
77 Summer Street, 10th Floor  
Boston, MA 02110

or visit [www.consumerlaw.org](http://www.consumerlaw.org) or contact NCLC Publications at (617) 542-9595.

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08/05

What You Should Know About

## Debt Collection

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For more information on how to deal with debt collectors, please see NCLC's Guide to Surviving Debt.

## What You Should Know About Debt Collection

If consumers do not have the money to pay all their debts, they must make difficult choices about which debts to pay first. Constant harassing calls and letters from collection agencies can cause consumers to pay the wrong debts first, resulting in serious consequences for the family. Just as dangerous to the consumer is feeling overwhelmed, and ignoring all bills in the unrealistic hope that they will simply go away.

This brochure provides a summary of your rights when dealing with collectors and some guidelines for determining what debts should be given priority in a financial crisis. Even when you do not have the money to pay your bills, you do not have to be subjected to collector pressure tactics.

### *Which debts do I pay first?*

You first should use your money to pay for what is most necessary for your family—food, clothing, shelter, and continued utility service. Because there is very little a debt collector can actually do to you, debt collection efforts should have *no* effect on your decision about which debts to pay first. Threats to bring suit, to seize household goods or garnish wages should be given little weight unless a lawsuit has *actually* been filed and you receive court papers.

Some general rules for setting payment priorities are:

- Mortgage and rent payments should always come first.
- Make whatever payments are necessary to insure essential utility service is not disconnected. The utility company may not require payment in full even if you are behind.
- A car loan should be paid after critical items (food, rent, clothing), but before most other debts for nonessentials.
- Generally, loans with only household goods as collateral should be paid after more pressing debts.
- Debts without property pledged as collateral, such as credit cards, doctor and hospital bills, and accounts with merchants, should have low priority.
- The threat of a lawsuit should not raise the priority of a debt above that of mortgage, rent, utility payments, and a car loan.
- Do not pay those debts that you have a good legal reason not to pay, such as when the car you borrowed the money for is a lemon. Instead, seek legal advice as to how to best fight for your rights.
- When a creditor wins a lawsuit, the consumer's home and other assets may be at risk depending on state law and the amount of equity in the property. If the property is truly at risk, make this a high priority debt.
- Tax liabilities and student loans should be paid ahead of low priority but after top priority debts.

## Dealing with Debt Collectors

Once you have decided which debts you are able to pay and which will have to wait, the next step is to deal with the collectors that aren't being paid first.

### *How should I deal with debt collectors?*

Don't let them pressure you into making the wrong choices about what to pay first. For example, explain to the debt collector, "I have to pay my rent and utility bills first. I have been recently laid-off; when I get a new job I will do my best to meet my debt."

### *What can a debt collector really do?*

A debt collector collecting a debt of the creditor can do little more than demand payment. If the creditor has not taken your house, car, or other property as collateral on a loan, then legally the creditor can only do three things:

1. Stop doing business with you.
2. Report your default to a credit bureau (which will be unavoidable when you cannot pay most of your debts on time).
3. Sue you in court. Although the threat to sue you may be very upsetting, it is not nearly as serious as you might think. Many creditors do

not follow through on their threats. If they do sue you, you can represent yourself, and explain why you cannot or should not pay. After a period of time, the creditor may obtain a court judgment, but this judgment still does *not* force you to pay the debt. It only gives the creditor the right to try to seize part of your wages or particular property. If you do not own very much or if you do not earn very much, creditors will not be able to seize any of your property or wages even though they have a court judgment against you. Only if you are hiding assets can a creditor seize wages or property before a judgment; they cannot send the consumer to jail or send the consumer's children to foster care.

### ***How can I stop being harassed?***

Federal law prohibits harassment by collection agencies or attorneys. For example, they may not contact you at unreasonable hours: before 8 a.m. or after 9 p.m., unless you give your permission. They also may not use obscene or profane language or call you constantly to annoy you. Some states also have laws that provide similar protections against creditors.

Consumers being harassed by debt collectors should follow these eight steps:

**1. Head off harassment before it starts.** When financial setbacks prevent you from paying all of your bills, call the creditor and explain your situation. Explain that you have to pay the landlord and utilities first, and that you will pay your other bills when you can. Don't over promise: it's better to be realistic about your prospects for paying. By contacting the creditor first, you may avoid having the debt turned over

to a collection agency, which will usually be less flexible than the creditor in working out a payment plan.

**2. Write a cease letter.** If explaining the situation doesn't stop collection efforts, the simplest way to stop contacts is to write the collector a cease letter. Federal Law requires collection agencies to stop dunning after they receive a written request to stop. It's a good idea to include in the letter why you can't pay right now and what your expectations are for the future, though this is not necessary. You should also note in the letter any billing errors and/or abusive tactics debt collectors have used in their contacts with you. *Be sure to keep a copy of the letter.* Below is a sample letter:

[date]

[name of collection agency]  
[address]

Name and  
Account Number

Dear Agency:

I am writing to request that you stop contacting me about my account number \_\_\_\_\_ with [name of creditor] as required by the Fair Debt Collection Practices Act 15 U.S.C. section 1692c(c).

This letter is not meant in any way to be an acknowledgment that I owe this money. I will take care of this matter when I can. Your cooperation will be appreciated.

Very truly yours,

[your name]  
[your address]