Arkansas Legal Services Partnership

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ALSP Law Series

DEBT COLLECTION

Are Bill Collectors Calling?

Anybody who has missed the due date on a bill has probably received a phone call or letter from a bill collector. This fact sheet offers basic information about how to deal with bill collectors.

Definitions

Common words used when discussing bill collectors:

- **Collateral —** A property or item offered to secure a loan. The lender can take the collateral if the loan is not properly repaid.
- **Collection Agency —** A company (sometimes a lawyer or law firm) that a creditor hires to collect money owed on a debt.
- **Creditor** — A person or company to whom money is owed.
- **Debt** — A legal responsibility to pay someone money for services or products. Debt is another word for a bill. Debts and bills do not need to be in writing.
- **Debtor** — A person who owes money to someone or some company.
- **Default** — Failure to repay a debt according to the terms of the loan.
- **Secured Debt** — Debt backed by collateral to reduce the lender's risk, such as a car loan or a home mortgage. The car or the home is the collateral. If the debtor defaults, the lender seizes the car or home, sells it, and uses the money to pay all or a part of the debt.
- **Unsecured Debt** — A loan or debt that is not secured by a specific asset. Credit card or medical bills are examples of unsecured debt.

What Should You Pay First?

When you get a call or letter from a creditor or collection agency, the representative will pressure you to pay what you owe as soon as possible. You must decide for yourself whether you can pay without getting into more financial trouble. **If you cannot pay all your bills, you need to decide which ones to pay first.** This is an important decision. Some bills are more important than others. You should first pay for things that are necessary for your family. These include rent/mortgage, utilities, medication and food — **in that order**. After you have paid these, you can pay other important bills, such as a car loan or a doctor that you need to keep seeing. Leave other bills — such as credit cards, medical bills for treatments that are completed, repossessed cars and old loans — for last.

Dealing with Creditors

Do not let debt collectors pressure you into sending a hot check or post-dated check. Do not let them pressure you into sending money you need for something more important. They are only interested in getting their money. They do not know what is right or best for you. When a collector calls, you are not required to give him or her any information. You do not even have to answer the phone. If you choose to speak to the collector, you can tell him or her why you are unable to pay and when you expect to start paying again. If the caller starts to argue, you can say "good-bye" and hang up. Remember, the collector's job is to try to talk you into paying.

What Can They Do to Me? What Are My Rights?

If you don't pay a bill, the creditor or collection agency is usually allowed to:

- Stop doing business with you.
- Report your bill to a credit-reporting agency.
- Call or write to you to ask for payment (see limits below).
- Sue you in court (even if you continue to make partial payments).

Debt collectors often threaten to sue. Sometimes, they threaten to take a person's house or car or paycheck. If you are sued, the creditor should give you written notice of default. The creditor can send it by certified mail, postage prepaid mail or by first-class mail to your last

known address. If you receive a notice of default or intent to sue from the creditor, **contact a lawyer immediately!**

If you have been sued, you have 20 days to file a written answer. You must do this to preserve any rights or defenses you may have. You must file the response with the clerk of the court where the lawsuit was filed. You must also send a copy to the creditor's attorney.

A creditor has limited rights to take something from you. Normally, the creditor must go to court first. If the creditor gets a judgment, there are limits on what can be taken from you. For example, many public benefits and retirement benefits are protected. However, such benefits might not be protected if they are deposited in an account with money from other sources of income (whether yours or someone else's). You should keep your protected benefits in a separate bank account, especially if you think you might be sued. If you are employed, a creditor may be able to take part of your paycheck. You have the right to protect part or all of your paycheck if you are below a certain level of income. Bankruptcy can eliminate most judgments or the ability for creditors to take part of your wages. **Remember: call an attorney immediately if you think someone is suing you.**

A creditor has more rights if you signed a secured loan. These are often the loans used to buy a house, trailer or vehicle. In these loans, the borrower signs a contract giving the creditor the right to take the collateral if the loan is not paid. For example, most car loans give the creditor the right to take back the vehicle if you are late on your payments. This is called repossession. The creditor may not need to warn you in advance that it is about to happen.

Most mortgages give the creditor the right to "foreclose" on your house (re-sell) if you get behind on your house payment. A mortgage company must warn you and give you a chance to catch up. **If you are worried about losing your home, call an attorney immediately**. Unsecured creditors cannot take anything from you without first going to court and getting a judgment. Credit cards and medical bills are the most common unsecured debts.

Debt collectors *cannot* get you arrested for not paying your bills. If a collector threatens to have you arrested for not paying a bill, he is lying. There only a few ways someone can get arrested in Arkansas for not paying a bill. The most common are failure to pay child support, writing hot checks and failure to pay rent.

There are also limits on what a debt collector may do to try to collect a bill. A federal law called the "Fair Debt Collection Practices Act" (FDCPA) protects debtors from harassment by collection agencies. It is important to remember that this law applies only to a collection agency and lawyers collecting debts on behalf of a creditor. **It does not apply to the original creditor.** Under the FDCPA, collection agencies cannot:

- Call you before 8a.m. or after 9p.m.
- Use obscene language.
- Call you repeatedly.
- Tell your neighbors or employer about your bill.
- Threaten to have you arrested.
- Go into your home unless invited by an adult member of your household.
- Stay in your home when asked to leave.

Unless you tell them otherwise, collectors are allowed to call you at work. They can also ask other people where to find you — but nothing more.

One of the most helpful rights under the FDCPA is the right to send a letter to the collection agency asking the collection agency to verify the debt and to stop contacting you. (See the sample letter included.)

What if the collection agency violates collection laws?

You can call a lawyer. You can also call the Arkansas Attorney General (1-800-482-8982) and the Arkansas Board of Collection Agencies (501-376-9814). Both offices can help with problems involving collection agencies and all other types of debt collectors.

Other Ways to Deal with Bill Collectors

- **Payment Plan**. If you have enough money after paying for your basic needs, you can try making a payment plan. Do not agree to a plan you cannot afford. If your payments are not enough to cover the interest, you will never pay off the bill. Tell the collector you want a payment plan with a low interest rate. If you are trying to catch up on payments you missed while unemployed, you can ask to move the missed payments to the end of the loan. If your income has gone down, ask if there is any way to permanently lower your payments. You can also ask the creditor to change your due date.
- **Complain about billing errors**. If a creditor bills you for something you don't owe, tell the creditor immediately in writing. It is best to send a letter. Include copies of any relevant receipts. Be sure to keep a copy of the letter for yourself and to keep your original receipts.
- **Write a "Stop Contact Letter."** (See the sample letter.)
- **File for bankruptcy.**
- **Sue the collection agency.** If a collection agency breaks the law, you may have a right to sue it. Save all letters. Keep a list of every time the collection agency calls you. Note the date, time, name of the caller and what was said. Save any threatening messages left on your answering machine.

Sending a Stop Contact Letter

The FDCPA gives you the right to send a letter to a collection agency telling it to stop contacting you. The letter can also point out billing mistakes and request verification of the debt (for example, a copy of the contract that you signed). If the collector does not respond to this request, you can sue the collection agency.

The letter should mention any reason why you cannot or will not pay the debt. For example, if you ordered something over the Internet and the company never sent it, you should explain that in your letter. Or if you cannot pay because you were permanently injured in a car accident and now live on a small disability check, put that in the letter.

The letter must include your name and the relevant account number so the collection agency knows who to stop calling. Keep a copy of the letter for yourself. Send it by certified mail, return receipt requested from the U.S. Post Office. That will give you proof that you sent the letter. There is an automated form letter on the ALSP website (www.arlegalservices.org). There is also a sample letter below. Change it as necessary to meet your situation. After you send it, give the collection agency 10 days to receive and process it. If the collection agency is still calling after 10 days, contact a lawyer. Remember that the FDCPA does not require a creditor handling its own bills to stop contacting you.

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The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how consumer law matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. ***Always do what the court tells you to do.***

SAMPLE STOP CONTACT LETTER TO COLLECTION AGENCY

RE-WRITE THIS LETTER TO FIT YOUR SPECIFIC SITUATION

YOUR NAME AND ADDRESS HERE

Date of the letter

COLLECTION AGENCY NAME
AND ADDRESS HERE

Re: Account Number #_____

Dear Sir or Madam:

I am writing to request that you stop contacting me about the above account as required by the Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(c). I also request that you send me written verification of this debt.
Currently, I cannot pay this debt because *REASON YOU CAN'T PAY*
IF NECESSARY LIST ANY PROBLEMS OR MISTAKES IN THE BILL AND DESCRIBE ANY COLLECTION AGENCY ABUSE
I will resolve this matter as soon as I can. Your cooperation will be appreciated.
Sincerely,

INSTRUCTIONS FOR USING THIS FORM LETTER
1. Fill in the *information* indicated. If you dispute the amount you owe, or if the debt collectors have behaved improperly, mention it in the letter.
2. Make a copy of the finished, signed letter, then mail it by certified mail, return receipt requested.
The purpose of this letter is:
1. To make collection agencies stop calling (as required by law);
2. To make non-collection agencies understand that you cannot pay and that nothing they do willmake you pay (so they will not want to contact you anymore).
3. Keep in mind that a collection agency can call you one more time after receiving this letter to confirm that you sent the letter to the collection agency and to tell you what the agency intends to do (for example, to file suit against you to collect the debt).
Remember, if a collection agency continues to contact you after that, you should contact a lawyer or the HelpLine.
Remember that non-collection agencies (when a creditor handles its own bills) are not required to listen to your letter. Be sure to save copies of whatever letters you send out.