

# ANSWERING YOUR QUESTIONS ABOUT DEBT COLLECTION

*Published and distributed by  
the Elder Law Center of the Coalition of Wisconsin Aging Groups*

Older Wisconsin residents confront a host of life challenges that can lead to an inability to make ends meet. This publication provides a general overview of the consumer debt collection process in Wisconsin. Debt secured with collateral or arising from taxes, child support obligations and student loans is governed by special rules not described here.

For additional information and assistance regarding your individual concerns, consult your local county benefit specialist.

## ***1. I am unable to pay my bills this month, what should I do?***

Unpaid debts are a problem that will not go away if you ignore them and will almost certainly get worse with neglect. You should contact your creditors as soon as possible and explain why you are unable to meet your obligations. Many creditors are willing to work out alternate payment plans to keep you from defaulting on your debt.

It is important to keep yourself in your home and healthy. Therefore, there are certain bills that you should make every effort to pay even if it means not paying others. As a general guide you should follow this priority list:

1. Food, housing and utilities
2. Car payments, if your car is essential to income or health
3. Child support and tax obligations
4. Loans with household goods as collateral
5. Loans with no collateral such as credit card debt, medical bills and open accounts with merchants

Many people solve their debt problems by contacting a non-profit credit-counseling agency. The credit-counseling agency can help with money management skills, as well as assist you in negotiations with creditors.

***You should proceed with care when selecting a credit-counseling agency, as some agencies may be more interested in your creditor's rights than yours.***

## **2. *What is a debt collector?***

When a creditor is unable to collect a debt, it may hire a debt collector and/or sue the consumer. Debt collectors specialize in locating and contacting consumers in an effort to get them to pay their outstanding debts. The debt collector attempts to pressure the consumer to pay the debt, usually through a series of letters or telephone calls. The creditor pays the debt collector a percentage of the debt or a flat fee if it is successful in obtaining the creditor's money.

You should not allow the fact that you have been threatened with a lawsuit or contacted by a debt collector to be the sole factor in determining which debts you pay first.

## **3. *A debt collector is sending letters and calling me. What are my rights?***

The federal Fair Debt Collection Practices Act and the Wisconsin Consumer Act offer consumers protection from abusive debt collectors. In general, when attempting to collect a debt, debt collectors may not harass you. Specifically, the debt collector may not contact you via telephone between 9 PM and 8 AM. They may not contact your neighbors or employer other than to verify your employment and address. They may not contact you at work if they know your employer prohibits such calls. They may not threaten to take illegal action or threaten to recommend legal action they do not intend to take. If a debt collector is contacting you, keep a written record of the date and time of each contact, as well as its content.

You have the right to know the name, address and telephone number of the debt collector. You have the right to a verification of the debt, as well as the right to insist that the debt collector stop contacting you. You can prepare a "cease and desist" letter to send to the debt collector. Once the debt collector receives this letter, it may not contact you without your permission except in limited circumstances.

***The cease and desist letter does not make the debt go away, it only stops communication from the debt collector.***

## **4. *What happens if a creditor sues me?***

If a debt collector is unsuccessful in getting you to pay your debt, they may recommend that the creditor sue you. You will know that a lawsuit has been filed against you when you receive legal documents called a summons and complaint. The summons will tell you when to appear in court. The complaint states the case against you and asks for your response. Before ruling, the court will give you an opportunity to reach a settlement with your creditor. If you do not respond to the complaint and appear before the court, the judge will automatically find in favor of the creditor.

Many debt related lawsuits are brought in small claims court where it is possible to represent yourself. However, if you have been sued, it is wise to seek legal advice as soon as possible.

### **5. *What happens if I lose in court?***

When the court finds in favor of a creditor, it will enter a judgment against you. The judgment is a legal finding that you owe a certain amount of money to the creditor. The judgment can include the principal amount of the debt, accumulated interest, court costs and fees. The judgment will also specify an interest rate to be charged until the judgment is paid. Once a judgment is entered, the creditor must ask the court for an order of execution. The order of execution directs the sheriff to collect your property to pay the judgment.

### **6. *What does it mean to be “judgment proof”?***

Wisconsin law is designed to protect consumers from becoming destitute as the result of a judgment for debt collection. The law specifies that the judgment should be satisfied from your personal property first and then from any real property you might have. In addition, the law provides that certain property is exempt from execution. Here is a partial list of the exemptions:

- Provisions for burial
- Social Security Disability benefits
- Federal or individual retirement benefits
- A motor vehicle worth \$1,200
- \$1,000 in bank accounts
- \$5,000 in household goods
- 75% of your net income

Some exemptions may differ depending on the type of debt involved. In addition, the judgment attaches to property you currently own as well as property you may acquire for up to 20 years. A person is said to be “judgment proof” if all of his or her assets and income are exempt under state law. “Judgment proof” simply means that, even though the court finds the debt is owed the creditor, it will be unable to collect its money from the consumer. You should seek expert advice before determining that you are “judgment proof” because of the complex nature of the exemption rules.

### **7. *What is garnishment?***

As an aid to execution, your creditor may ask the court for permission to take property belonging to you that is in the possession of others. This is called garnishment. Most commonly, garnishment applies to your earnings. Your earnings are totally exempt from garnishment if you are below the federal poverty line or you receive needs-based public assistance. If your earnings are not totally exempt, then 80% of your disposable earnings are exempt.

### ***8. Can the creditor take my house?***

In most cases, creditors will not force you out of your home. The first \$40,000 of your home's value is exempt from execution. State law permits the creditor to place a lien on your home in the amount of the unsatisfied judgment if your equity (value of your home less your mortgage balance) exceeds \$40,000. The creditor can enforce its lien if you sell your current home and do not purchase a new house within two years of the sale. If the equity in your home exceeds \$40,000, you should seek expert advice as to the actions a creditor may take.

***Remember that if the creditor holds the mortgage on your home, the information in this publication does not apply.***

### ***9. Should I consider bankruptcy?***

Bankruptcy is an effective tool for eliminating burdensome debt once and for all. In your effort to clear away your debts, you should make sure that the cure will not be worse than the disease. Bankruptcy can be expensive and time consuming and could have long term consequences on your access to credit, housing and possibly even health care. Anyone contemplating bankruptcy should consult with a competent professional before proceeding.

***Benefit specialists do not provide advice on bankruptcy matters.***

### ***10. How can a benefit specialist help me?***

The benefit specialist can help you in a variety of ways. Some benefit specialists are able to provide you with referrals to credit counselors or can assist you in dealing with your creditors, particularly in the area of unpaid medical bills. All benefit specialists are able to assist you in drafting cease and desist letters. Most importantly, the benefit specialist is available to provide a "benefits check-up" for you. The "benefits check-up" may result in finding some public benefits for you that might make your bills a bit more manageable.

Benefit specialists are unable to assist you with court-related matters. If you have been sued, you should consult an attorney or the clerk of courts office. The State Bar of Wisconsin provides a lawyer referral service: 1-800-362-9082.



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**May 2003**