

TOO MANY DEBTS ?

HOW TO DEAL WITH YOUR DEBTS AND STOP DEBT COLLECTORS FROM HARASSING YOU

***Important Note:** The following fact sheet is not intended to substitute for legal advice. It only highlights your most important rights with respect to your mortgage loan. For more information, consult additional sources listed at the end of this handout.*

WHAT IS A DEBTOR? WHAT IS A CREDITOR?

A “debtor” is a person who owes money for a hospital bill, personal loan, credit card, department store charge card, or any other financial obligation. A “creditor” is a person or company to whom you owe money.

WHAT CAN THE CREDITOR DO TO ME?

The creditor may:

- stop doing business with you,
- report your debt to a credit reporting agency, or
- bring a lawsuit to collect the debt.

WHAT IF THE CREDITOR SUES ME ?

If the creditor sues you for the debt you can defend yourself and dispute the debt. Do not ignore the legal action. Read and respond to any legal papers you may receive.

A creditor may or may not be able to enforce a judgment and collect money from you. If the debt is “secured” by a collateral such as your car or your home (as in the case of a mortgage), the creditor may take back (“repossess”) the collateral to satisfy the debt. If the debt is not secured, such as a hospital bill, the creditor may seize your bank account, garnish your wages within certain limits or take personal property. However, certain property and

income may be protected from seizure by federal or state laws that make you “judgment proof.”

WHAT DOES IT MEAN TO BE “JUDGMENT PROOF”?

You are judgement proof if, for example:

- you receive governmental benefits such as social security, disability benefits or public assistance, or
- if your weekly take home pay is less than 30 times the minimum wage. (Currently, the federal minimum wage is \$5.15. $30 \times \$5.15 = \154.50)

You are called “judgment proof” because the creditor cannot touch certain income or regular household goods to pay back the money you owe. (For more information about judgments and their enforcement, see Legal Aid Consumer Fact Sheet # 2, “When The Creditor Sues—What Are My Rights?”)

I GET TOO MANY PHONE CALLS FROM DEBT COLLECTORS. WHAT ARE MY RIGHTS?

Debt collectors work for a company or an attorney who are paid to collect debt. Some debt collectors use abusive and unlawful methods such as repeated threatening phone calls. Debt collectors are regulated by a federal law, called the Fair Debt Collection Practices Act (FDCPA), that requires them to deal fairly with debtors.

WHAT DOES THE DEBT COLLECTOR HAVE TO TELL ME ABOUT THE DEBT?

Within five days after you are first contacted, the collector must send you a written notice telling you the amount of money you owe, the name of the creditor to whom you owe the money, and what action to take if you believe you do not owe the money.

HOW DO I DISPUTE THE DEBT?

If you believe that you do not owe the money, you must write a letter to the debt collector within 30 days of receiving the written notice to dispute the debt. If you do not dispute the debt, the debt is deemed valid. Once a debt collector receives your dispute letter, the debt collector must stop all collection activities, get proof of the debt from the creditor, and send you the proof. However, after the debt collector has provided you with proof of the debt, the collector can resume collection.

CAN A DEBT COLLECTOR CALL ME LATE AT NIGHT OR AT WORK?

A debt collector may contact you in person, by mail, telephone or fax, but not at inconvenient times or places, such as before 8 a.m or after 9 p.m., unless you agree. A debt collector may not contact you at work

CAN I STOP A DEBT COLLECTOR FROM CONTACTING ME?

Yes, you can write a letter, called “Cease Letter,” asking the debt collector to stop. Once the debt collector receives your letter, the debt collector may not contact you except to confirm that there will be no further contact, or to tell you that the debt collector will take specific action to collect the debt, such as bringing a law suit.

SAMPLE CEASE LETTER TO DEBT COLLECTOR

Dear Sir or Madam:

I am writing to request that you stop communications to me about my account #..... with(add creditor's name if you know) as required by the Fair Debt Collection Practices Act.

[You may add a paragraph complaining about specific conduct such as late harassing phone calls]

This letter is not meant in any way to be an acknowledgment that I owe this money. Your cooperation is appreciated.

Yours truly,

WHAT KIND OF CONDUCT IS PROHIBITED BY THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)?

The FDCPA prohibits harassing and deceptive collection practices.
Specifically, the debt collector may not :

- tell third parties like your neighbors, friends or relative about your debt;
- contact you if you have an attorney;
- contact you after you write a “cease” letter (except to acknowledge the letter or advise you about action the debt collector may take);
- call you at work;
- telephone you repeatedly and frequently;
- call you at inconvenient times, usually before 8 am and after 9 pm; or
- contact you in any manner that makes it public that you owe money, such as sending you a post card or publishing your name.

The debt collector may not use false or misleading statements or threaten or harass you when collecting a debt. For example, a debt collector may not misrepresent the amount you owe. The debt collector also may not falsely claim:

- to represent a governmental agency;
- to be an attorney or a law firm;
- to be working for a credit bureau;
- that you have committed a crime;
- that you will be arrested if you do not pay your debt;
- that the collector will seize your property, levy your bank account or garnish your salary without first being awarded with a judgment by a court;

The debt collector may not threaten or harass you by:

- using obscene, derogatory or insulting remarks;
- making threats against you or your relatives;

Debt collectors may also not engage in unfair practices such as:

- imposing charges or fees not authorized by a court or state laws;
- collecting more than the amount owed;
- depositing a post-dated check before its date.

WHAT CAN I DO IF A DEBT COLLECTOR VIOLATES THE LAW?

You can file a complaint with the Federal Trade Commission (FTC). The FTC is charged with enforcing the FDCPA.

To file a complaint with the FTC, write to:

Consumer Response Center
Federal Trade Commission
CRC-240
Washington D.C. 20580

You can also call 1-877-FTC-HELP and file a complaint on-line at www.ftc.gov.

Copies of your letter should also be sent to these two agencies:

Office of the Attorney General
Consumer Frauds and Protection Bureau
120 Broadway, 3d Floor
New York, NY 10271
1-800-771-7755

and

Department of Consumer Affairs of the City of New York.
42 Broadway
New York, NY 10004

NOTE: Send all letters by certified mail, return receipt, and keep copies of all letters that you send.

CAN I SUE THE DEBT COLLECTOR?

If the debt collector used harassing or misleading methods in violation of the FDCPA, you have a right to sue the collector in state or federal court within one year from the date the law was violated. If you win, you may recover money for the damages you suffered plus an amount up to \$1,000, as well as court costs and attorney's fees.

RESOURCES:

For more information about consumer and credit issues, or to file a complaint contact:

The Federal Trade Commission (FTC)

1-877-FTC-HELP (1-877-382-4357)
or <http://www.ftc.gov/ftc/consumer.htm>

New York State Attorney General's Office

1-800-771-7755 (info and complaint line)
www.oag.state.ny.us

“Guide to Surviving Debt,” (2002 ed.), published by The National Consumer Law Center (NCLC), cost \$19.00.

To order, contact:

NCLC, Publication Dept.
77 Summer Street, 10th Floor
Boston, MA 02110-1006
(or call 1-617-542 9595)

To find a lawyer, contact:

The Legal Aid Society

Queens Neighborhood Office
1-718-286-2450 or 1-212-577-3300
www.legal-aid.org

Legal Services for the Elderly in Queens

Tel. 1-718-286-1500

The Association of the Bar of the City of New York

Tel. 1-212-626-7373 (English) or 1-212-626-7374 (Spanish)
www.abcnyc.org (click on “Consumer Resources”)

The National Association of Consumer Advocates (NACA) maintains a list of attorneys specializing in consumer law:

NACA
1730 Rhode Island, NW, Suite 805
Washington D.C. 20036.
<http://www.naca.net>

Lawhelp.org/ny can help you find a lawyer and learn more about your rights in New York State.

If you do not have a lawyer and are representing yourself, visit the New York State courts online for information and forms used when representing yourself:

www.courts.state.ny.us/courts/nyc/civil/civil.shtml

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