

YOUR MONEY

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Bill Collectors: Their bark, is usually worse than their bite!



Debt collectors are experts at making threats about the dire consequences of non-payment. It is important to know what a debt collector can and cannot legally do when you get behind on a particular debt. Most debts, such as virtually all credit card obligations, doctor bills, small amounts owed merchants, and many small loans are "unsecured". This means you have not put up any collateral, such as a family home or car, to secure the loan's repayment. An unsecured creditor can legally do only the following 3 things:

1. **Stop doing business with you.** For example, a credit card issuer can cancel your card, or a dentist to whom you owe money might refuse to let you continue as a patient. Usually, though, there are other merchants or professionals who will offer the same goods or services on a cash basis or even on credit. The threat of stopping business with you is only serious where a particular creditor has a monopoly in your community, such as the only doctor in a rural area. Utilities also usually have a monopoly, and dealing with utility is a little more complex. Contact your local regulated commission, either public utility, or public service. Utility commissions can only shut off your service if they have followed the strict requirements set forth by these commissions.

1. **Report the default to a Credit Reporting Agency.** The fact that you are behind in your bills almost certainly will end up on your credit record. You cannot stop this, short of always being current on all of your bills. While this is unfortunate, you only make matters worse by paying a particular bill first just because that collector is threatening to ruin your credit record.

The reason you make matters worse, is the collection agency threatening to ruin your credit is almost always bluffing. If a creditor routinely reports delinquent debts to a credit bureau, you delinquency is already noted in your credit record, even before the collector starts making threats. If the creditor does not normally report information to a credit bureau, collectors who threaten you, almost never go to the bother of doing so themselves.

Many creditors never threaten to ruin your credit record. However, they automatically report monthly to a credit bureau every payment and delinquency. So if you pay a creditor that threatens you, rather than one that does not, you may end up with a problem on your credit record anyway. This is why threats to ruin your credit record should never be taken too seriously.

3. **Begin a lawsuit to collect the debt.** This is the threat that may worry you the most. But there are four reasons why the threat of a lawsuit is far less serious than you imagine. First, it is hard to predict whether a particular creditor will actually sue you on a past due debt. It is expensive to take you to court. Many creditors will not do so for debts under \$1000, although, some creditors do take even small debts to court. Still other creditors do not even take large debts to court. How aggressively a collection agency threatens suit is no indication whether the creditor will actually sue, even if the threat appears to come from an attorney. Second, if the creditor does decide to sue you, you have a right to respond and explain why the money is not owed. Do not let the creditor win by default. You do

not have to hire an attorney to respond to the lawsuit. Often when a creditor sees that you will contest the action, they will stop pursuing the lawsuit.

Third, even if the creditor does pursue the lawsuit and eventually wins, the worse that can happen is that a court judgment will be entered against you. You will not automatically be in contempt of court for failure to pay the judgment. The judgment only gives the creditor the legal right to try to seize your property, to garnish your wages or to seek a court order requiring payment.

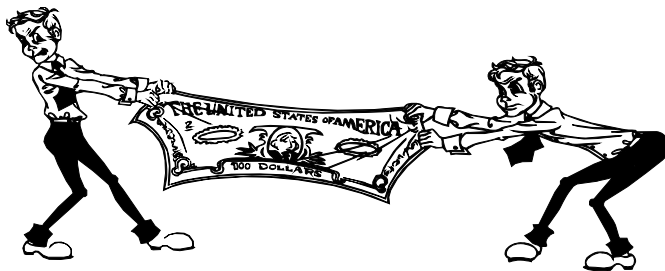
Fourth, if you are “*judgment proof*” you have nothing to fear from even these special collection techniques. You are “*judgment proof*” if all of your assets and income are protected by law from a creditor trying to enforce a court judgment. Contact a local legal service program, or an attorney to provide you a list of exempt property in your state and advise you whether your state’s laws allow your home or any other valuable property to be taken and sold by a creditor with a judgment against you.

A creditor, if he chooses to, can stop doing business with you, report a default to a credit bureau, or sue you on a past debt. Threats to do anything else on an unsecured debt are deceptive and violate federal law. The collector cannot seize your wages or property before the creditor has obtained a court judgment, nor can it send you to jail or send you children to foster care. Additionally, collectors cannot publish your name in a newspaper, report a debt to your neighbors, or seek to collect from other family members, unless they cosigned the debt or a court order is entered which makes the family member responsible.

Remember the cardinal rule about debt collectors— unless they work for your landlord, utility, mortgage holder, or other secured creditor, they often have no bite behind their bark.

Creditors who growl the loudest should not drive you in to the teeth of a creditor with real bite.

6 different ways to stop debt collection harassment:



Because bill collectors have no bite behind their bark, they will bark very loudly, hoping to intimidate you. Do not let them. Here are 6 different approaches to stop debt harassment:

1. **Head off harassment before it happens.** Do not ignore the bill. Explain your situation to the creditor. Make sure the creditor understands that you cannot afford to pay the bill right now, but will as soon as you can. Do not over promise, but be polite and honest. Make it clear that you have to pay your utilities and mortgage/rent first, and then will address their bill.
2. **The Cease Letter:** Assuming you fail in explaining the situation to the creditor, and you are being harassed for the debt, the simplest strategy to stop collection harassment is to write the collector a cease letter. Federal law requires collection agencies to stop their collection efforts after they receive a written request to stop. The federal law does not apply to creditors collecting their own debt, but even these creditors will often honor such requests. Please call us for an example copy of a cease letter.
3. **The Lawyer’s Letter:** You do not need a lawyer to send a cease letter. However, if a cease letter does not stop collection calls, a letter from a lawyer usually will. In addition, the lawyer may be able to raise legal claims on your behalf for violations of the FDCPA.
4. **The Work-Out agreement:** The most common consumer strategy, but not necessarily the best. Collectors will generally stop collection efforts after you work out a payment plan with them. Most collectors ask for much more than you are financially capable of paying, and will even encourage you to borrow money to repay their debt. In most cases, Consumer Credit Counseling agencies can work out a more viable payment plan with these creditors.
5. **Complaints about billing errors:** Collection calls or letters are sometimes in error, mistaking the amount due the account number, or billing the consumer instead of the insurance company. When a collection letter contains a mistake, write to request a correction. (see *Your Money*, November)
6. **Bankruptcy:** When you file your initial papers for personal bankruptcy, this instantly triggers the automatic stay. This stay automatically stops all collection activity against you, from collectors, creditors or even government agencies. Nevertheless, Bankruptcy filing is never your best strategy when your only concern is debt harassment. In fact, you should be wary of any attorney offering to file bankruptcy for you where the only problem is debt harassment.