

# DEALING WITH DEBT



Your Rights and Responsibilities in Minnesota

Fifth Edition Revised 2022

The laws talked about in this booklet change often, so be sure to check for changes. This booklet only gives general rules which may or may not apply to your situation. For legal advice, contact a lawyer. If you have a low income and need legal help, call your legal aid office at 1 (877) 696-6529 or look for help from other programs at [www.lawhelpmn.org/providers-and-clinics](http://www.lawhelpmn.org/providers-and-clinics).

If you have a low income, you can get a free copy of this booklet from your local Legal Services office. You can also find it online at [www.LawHelpMN.org](http://www.LawHelpMN.org) to view or print out. Others can purchase the booklet for \$7.48 (which includes applicable sales tax, postage, and handling) by going to [www.mnlegalservices.org/orderbooklets](http://www.mnlegalservices.org/orderbooklets). If you have questions about ordering a booklet, email us at [statesupport@mnlegalservices.org](mailto:statesupport@mnlegalservices.org).

For free information about this and other civil legal topics, visit [www.LawHelpMN.org](http://www.LawHelpMN.org).

© 2022 Minnesota Legal Services Coalition. This document may be reproduced and used for non-commercial personal and educational purposes only. All other rights reserved. This notice must remain on all copies. Reproduction, distribution, and use for commercial purposes is strictly prohibited.

## Table of Contents

What This Booklet Is About .....	4
SECTION 1 - Managing Your Debts .....	5
If You Can't Pay All of Your Bills .....	5
(Other than Credit Cards) .....	5
SECTION 2 - Credit Cards.....	6
Other Things to Consider .....	6
Should You Cancel Your Credit Card? .....	6
Keeping Credit Card Debt Low .....	6
Getting Credit Reports .....	7
SECTION 3 - Your Debt Collection Rights under the Fair Debt Collection Practices Act.....	7
Written Notice .....	8
Disputing a Debt.....	8
Payment Plans.....	8
Paying on Multiple Debts.....	8
Post-Dated Checks .....	8
Stopping the Calls and Letters .....	8
What is abuse and harassment? .....	9
Enforcing Your Rights.....	10
SECTION 4 - The Threat of a Lawsuit .....	11
Protections from Garnishment .....	11
Are you collection proof?.....	12
How will you know you are being sued? .....	12
How to Respond to a Lawsuit .....	13
Responding in Conciliation Court (Small Claims Court) .....	13
Getting Ready for Court .....	14
If You Lose in Conciliation Court .....	15
Responding in District Court .....	16
SECTION 5 - Wage Garnishment and Your Rights.....	17
Can your benefits be garnished? .....	17
Can they take money from your bank account? .....	18
How to Claim a Bank Account Exemption .....	19
Can they take money out of your paycheck? .....	19
If you don't have exemptions, how much can they take? .....	20
How to Claim a Paycheck Exemption.....	20
What happens after you claim an exemption for your paycheck or bank account? .....	20
What if the creditor objects? .....	20
SECTION 6 – Student Loans.....	21
Keep Your Student Loan Out of Default .....	21
Income based repayment plans.....	21
Public Service Loan Forgiveness Program.....	22
Deferral .....	22
Forbearance .....	23

When Your Loan is in Default .....	23
Getting Your Student Loan Out of Default .....	24
What if a collection company calls? .....	25
Making Your Student Loan Go Away .....	25
Need more information? .....	26
Problems with your lender or servicer? .....	26
SECTION 7 - Refinancing .....	27
Don't Turn Unsecured Debt into Secured Debt.....	27
Ask Questions before You Sign Any Document .....	28
Beware of Refinancing Scams .....	28
Beware of Lenders That Aggressively Advertise .....	28
Beware of Loan Modification Scams .....	28
Don't Refinance with the Company that Holds Your Original Debt .....	29
Get Advice Before You Sign .....	29
SECTION 8 - Bankruptcy .....	29
Chapter 7 .....	30
Chapter 13.....	30
Good Things about Bankruptcy .....	30
Bad Things about Bankruptcy .....	31
Discrimination Because of Bankruptcy .....	31
Filing for Bankruptcy .....	31
SECTION 9 - Debt Management, Debt Settlement, and Avoiding Scams .....	32
How to Avoid Scams .....	32
Bankruptcy May NOT Be the Solution .....	34
Credit Counseling May Help .....	34
Sample Debt Collection Cease and Desist Letter .....	35
Sample Garnishment Exemption Notice.....	36
Sample Debtor's Exemption Claim Notice .....	38
Monthly Budget Chart .....	39
What are credit reports? .....	41
Free Credit Report Request .....	47
Credit Report Request .....	48

## What This Booklet Is About

Most families face debt at some time or another. Losing a job, losing public assistance benefits, sudden medical bills, or divorce can push a family into debt. There are many ways creditors can try to collect debts. Two of the most common ways are when they use a collection agency, and when they file a lawsuit. These methods are talked about in this booklet.

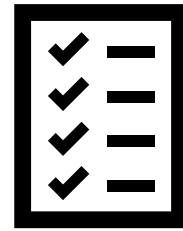
Debt collectors often use pressure tactics that can make a stressful situation worse – and sometimes are against the law. This booklet was written to help families struggling with debt by explaining consumer rights and giving resources that might help. This booklet is a brief guide and is not meant to answer all legal or financial questions.

If you are facing foreclosure, eviction, or repossession of property you should look for legal advice and financial counseling.



## SECTION 1 - Managing Your Debts

Sometimes families find that their debts are more than their income. Not paying some debts can cause greater problems than not paying others. For example, if you don't pay your rent, you can be evicted. When there just isn't enough money for all your expenses, there are agencies, publications and other resources that can help manage debts and work with creditors.



**Be careful who you ask for help!** Many businesses advertise that they want to help you get out of debt but are really just trying to take your money. They don't follow through on any of the services or results they promise.

On the other hand, there are several agencies in Minnesota that have been helping people manage their debts for years. For example, you can get help managing debts from a Consumer Credit Counseling Service like [Family Means](#) at 651-789-4014 or 1-800-780-2890 or [Lutheran Social Service of Minnesota](#) at 888-577-2227.

If you choose a different one, make sure to find out if the counseling agency is a member of a major association, like the National Foundation for Credit Counseling ([www.nfcc.org](http://www.nfcc.org)). Being a member means they meet certain quality and ethical standards and that the credit counselors get proper training.

If you are being sued or believe you have a good reason not to pay, contact your Legal Services office for help at 1-(877) 696-6529.



### **If You Can't Pay All of Your Bills (Other than Credit Cards)**

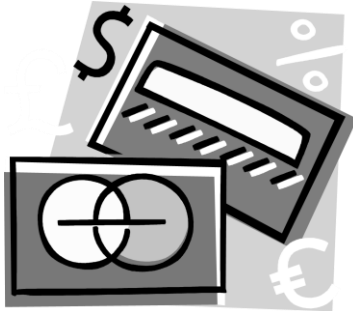
Don't listen to debt collectors when you are trying to figure out which bills to pay. Don't let them scare you into making a bad decision. The law protects many types of income and assets from creditors. Talk to a lawyer to see if you are at risk.

Don't mortgage your home to pay your debts. Minnesota law protects up to \$450,000 of your home's value from most creditors. But you will lose your home if you can't pay a mortgage.

Call a Credit Counseling agency to help you get things back on track.

## SECTION 2 - Credit Cards

Using a credit card is borrowing money at a very high interest rate. Ignore temporary “teaser” rates, especially if you can’t pay off your credit card charges in full each month. A “teaser” rate is a very low interest rate offered for a short period of time (but no shorter than 6 months) that automatically goes up. If you build up a balance when the interest rate is low, you will be paying it back at the much higher permanent rate.



### Other Things to Consider

Besides the interest rate, check to see if the card offers a “grace period.” A “grace period” means no interest charges if you pay your account in full before the due date. Some cards charge you interest from the date you use your card to make a purchase. Also, find out if the company charges an annual fee for the card.

Annual fees can run from \$25 to \$100 or more. Make sure you also look at other charges like:

- transaction fees—these are often charged when you use the card to get a cash advance
- late charges
- over-the-limit charges

Read the terms carefully because some cards raise your interest rate if you make a late payment.

### Should You Cancel Your Credit Card?

If you have a credit card with a high interest rate, transaction fees, an annual fee or no grace period, you should think about **cancelling the card!** You can cancel a credit card at any time, but you still have to pay any money you owe on the account.

### Keeping Credit Card Debt Low

- Try to pay off the total balance each month.
- If you can’t pay it off, try to pay more than the minimum payment if you can. Sometimes the minimum payment doesn’t even cover the amount of interest you are being charged each month. If you only pay the minimum, you will **never** pay off the debt and you end up paying interest on the unpaid interest charges. Pay one card off at a time. Pay as much as you can. The more you pay, the sooner you can pay off the card. Then go on to another.

- Carefully check your statement each month to look for mistakes and charges that are not yours. If your credit card is lost or stolen, the most you have to pay is \$50, under the Truth in Lending Act.
- Check to make sure your credit card company has not added a service you don't want (like loss protection or credit insurance).
- Make your payments on time. If your payment is late you will be charged a late fee. Many cards raise the interest rate if the payment is not on time.
- Avoid special services and programs offered by credit card companies. These are things like credit card fraud or loss protection and life insurance. Most of these services are a bad deal. They usually cost a lot and are not necessary.

### Getting Credit Reports

Once every 12 months you can get a copy of your credit report for free from each credit reporting bureau (Transunion, Experian and Equifax.) There are some situations when you can get a free copy more than once a year. See page 41 for more information about credit reports.



## SECTION 3 - Your Debt Collection Rights under the Fair Debt Collection Practices Act

There is no law that protects you from having to pay debts you owe, but the **Fair Debt Collection Practices Act (FDCPA)** is a federal law that can protect you from abusive debt collection practices. Minnesota has a state law that includes all of the protections of the FDCPA and other protections too. All debt collectors doing business in Minnesota must follow it. A debt collector is any person or company that collects debts owed to other companies as a part of their regular business. They are usually referred to as debt collection agencies or debt buyers.

If you owe money to a business, they may try to collect it themselves or they may hire a collection agency. Debt collection agencies can't harass or abuse you. If a lawyer regularly collects debts the law treats the lawyer like a collection agency too.

Creditors who are directly collecting their own debts, such as department stores or credit card companies, are not covered under the FDCPA.



## Written Notice

Within 5 days of its first call or letter to you, the collection agency must send you a written notice. The notice must include

- the amount of your debt
- the name of the company that you owe and
- the fact that they will assume the information is right unless you disagree within 30 days.

## Disputing a Debt

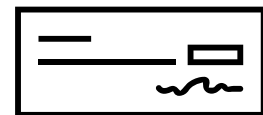
**If you disagree with the notice about your debt, send a letter to the collection agency within 30 days.** If you send this letter, the collection agency **must stop** trying to collect it until they send you proof of the debt.

## Payment Plans

If you do owe the debt, you may be able to set up a payment plan to take care of it. Many creditors are satisfied with a small payment, as long as it arrives regularly. Ask the creditor for a payment plan. Some creditors will freeze or reduce the interest charges if you start making payments. If you make any kind of deal, try to get it in writing. If nothing else, write it down in a letter to the agency or creditor. **Always keep a copy.**

## Paying on Multiple Debts

If a collection agency is collecting on more than one debt, you can choose which debt your payment will go toward. You can't choose to have your payment applied to a debt you are disputing.



## Post-Dated Checks

Never give anyone a post-dated check. This is a check with a later date on it. A collection agency is allowed to ask for one, as long as they don't cash it before the due date, but it is not a good idea to give them one. If it does get cashed, you end up bouncing a check.

## Stopping the Calls and Letters

You can stop the collection agency from calling you or writing you by sending them a letter called a Cease & Desist letter. Your letter should ask them to stop calling and writing you or it can tell them that you are refusing to pay the bill.

At the end of this booklet is a sample Cease and Desist letter on page 35. This letter is only an example. Every situation is different, and you need to write your letter about your situation. Maybe you don't owe what they claim, maybe you owe but can't pay. The most important thing is that your letter is in your own words and says, "Stop contacting me."

Date your letter, sign it and keep a copy. Send it to the collection agency.

If possible, send the letter by certified mail with a return receipt requested, so you know the debt collector got it.



You can also [create a Stop Contact letter online](https://www.lawhelpmn.org/self-help-library/legal-resource/stop-contacting-me-about-debt-letter-creditors-do-it-yourself). This is a step-by-step form-helper that lets you print out a finished letter at the end. You can find it at <https://www.lawhelpmn.org/self-help-library/legal-resource/stop-contacting-me-about-debt-letter-creditors-do-it-yourself>

After getting your letter, the collection agency can only call or write you to tell you what legal action they plan to take. **Remember, this doesn't give you the right to ignore court papers.** For example, if you get a letter called an Order for Disclosure saying you have to tell them what money and assets you have, you must respond. If you don't, you could face fines or jail time for contempt of court.

## What is abuse and harassment?

In general, a collection agency can't contact other people and tell them about your debt. They can't tell your employer, co-workers, neighbors, parents, relatives, or friends about your debt. If they need your home address, work address or phone number they can call people to ask for it. But they **can't** say that you owe money. They **can't** say that they work for a collection agency unless they are asked.

It is illegal for collection agencies to:

- use obscene or abusive language
- call before 8:00 a.m. or after 9:00 p.m.
- call you at work if they know your employer doesn't allow personal calls or creditor calls
- accept cash without giving you a receipt

- threaten you with criminal prosecution
- contact you directly if they know you have a lawyer
- make a letter look like it is from the government, the court or a lawyer
- fail to give you the full name of their agency
- threaten to take any legal action that they do not really plan to take
- give you legal advice, like "You have no legal defense to this debt."

## Enforcing Your Rights

If you think a collection agency is breaking the law, keep careful records of your contacts. When they call, write down the following

- the date
- the time
- the name of the caller
- and what was said



You might be able to take the collection agency to court. Usually, you need to start the lawsuit within 1 year. Call a lawyer or your local legal aid office at 1 (877) 696-6529.

To make complaints about collection agencies, write to

Minnesota Attorney General  
Consumer Assistance  
1400 Bremer Tower  
445 Minnesota Street  
St. Paul, MN 55101  
(651) 296-3353 or 1-800-657-3787  
<https://www.ag.state.mn.us>

Enforcement Division  
MN Department of Commerce  
85 Seventh Place East, Suite 280  
St. Paul, MN 55101  
651-539-1600 or 1-800-657-3602  
<https://mn.gov/commerce/>

The Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
1-877-FTC-HELP  
(382-4357)  
<https://reportfraud.ftc.gov/#/>

Describe in detail the actions you believe violated your rights. See the Sample Debt Collection Cease and Desist Letter on page 35.

## SECTION 4 - The Threat of a Lawsuit

Threats of being sued, and actually being sued, are two different things. When a creditor starts a lawsuit against you, it does not mean they are going to win in court and be awarded a money judgment.

Even if the creditor wins the lawsuit, there is no guarantee they will be able to collect the amount of the court's judgment from you. It is expensive to go to court. If the debt isn't large enough, some creditors don't think it is worth going to court.



If the creditor starts a lawsuit and wins, the court awards the creditor a “judgment.” A “judgment” is a court order stating the specific amount you owe to the creditor. The judgment usually includes the amount the judge says you owe, plus allowed court costs and fees. The judgment earns interest at a set rate, so if it is not paid soon the amount goes up every day.

The court's order doesn't force you to pay. The order simply says you owe the money. Usually the creditor takes further steps to force you to pay. For example, garnishment of your wages, other income or bank accounts (see Section 5). It can also be seizure (called attachment) of your property. This can force you to pay to get your property back, or to get your property so that it can be sold, and the money put toward paying off the judgment.

Your wages or bank account could be garnished even without the creditor getting a judgment against you. If you get a “Summons and Complaint” follow the instructions on it to avoid garnishment.

### Protections from Garnishment

If you do not pay a bill, a creditor or collection agency may be able to garnish your wages or bank account or force the sale of your property. **Remember, the creditor does not need to get a judgment against you to be able to garnish your wages or bank account.** But the law protects some of your money and property. For example, a creditor can't take more than 25% of your “net wages, or \$380 a week, whichever is higher.” Net wages means your take-home pay or what you earn **after** taxes are taken out. Your salary or earnings can't be garnished if you get any kind of public assistance or for 6 months after you stop getting public assistance.



Income from Social Security or the Veteran's Administration is protected from most creditors.

You can keep your home if the value is \$450,000 or less (unless the creditor has a mortgage or lien against the property), a car worth up to \$4,800 and furniture and appliances worth up to \$10,800. Money held in a health savings account with a present value of up to \$25,000 is protected as of May 1, 2018. Contact a lawyer to figure out if your income or property is at risk.

## **Are you collection proof?**

Federal and Minnesota state laws "exempt" a certain amount and certain types of income and property. "Exempt" means that certain things can't be garnished, seized, or taken in order to pay a judgment debt. This happens when you have little or no income and little or no property.

Certain types of income are also exempt. If you are not sure if you, your income, and your property qualify as exempt, contact your local Legal Services office at 1 (877) 696-6529 or a private lawyer.

If your income or property is "exempt," creditors can't take your property or income to pay the judgment they won in court. Even though a court order says you should pay the creditor, your income and property are protected from the creditor's attempt to collect the debt and you are "collection-proof."

## **How will you know you are being sued?**

You will know when you are sued because you will get papers called a "Summons and Complaint."

Getting the papers is called "Service." Service means papers are delivered to you in person, by mail and sometimes through a published notice in the local legal newspaper.

- If they are delivered to you in person, they will be delivered by a "private process server" or a sheriff's deputy.
- If the papers come in the mail and are about a lawsuit filed in the district court, you will be asked to sign and return a statement saying that you got them. If you don't sign and return these papers, the court may make you pay the other side's costs of using the sheriff's deputy or a "private process server" to serve the papers on you.



- If you are served by published notice in the newspaper, only the Summons will be published. Being served by published notice usually means that the person who is suing you doesn't know where you are. If you actually see the published notice, it is up to you to contact the person or business that is suing you (the plaintiff). Let them know where you are. Once you let them know they must serve you with the actual Summons and Complaint. If you don't see the notice, the lawsuit can go ahead without you.

## How to Respond to a Lawsuit

If you are sued, always respond, especially if you think the creditor's claim is wrong. If you don't respond the creditor will almost always win by "default." You are in "default" if you do not respond to a lawsuit.

How to respond depends on if you are sued in Conciliation Court or in District Court. **Conciliation Court** is the small claims court here in Minnesota. If you are sued in Conciliation Court, you are usually served with notice of the lawsuit by mail. The notice papers are called the Summons and Complaint. The papers will tell you the date, time and place for your hearing. They also give you a short statement about the claim brought against you.

In Conciliation Court you don't have to respond in writing unless you have a separate claim against the party who is suing you. This is called a counterclaim. But you must go to court on time to tell the judge why you should not be held responsible for the claim filed against you.

If you are sued in **District Court**, the notice you get does not tell you the date or time for the hearing. The hearing will be scheduled later by the court administrator's office. Your response to the papers must be made in writing to the lawyer who is representing the other party. Your response must be made within a limited period of time, usually 20 days, or you will be in default for not responding.

## Responding in Conciliation Court (Small Claims Court)

Conciliation Court is Minnesota's small claims court. You can be sued for up to \$15,000. If the claim is a consumer credit transaction the amount is \$4,000. A "consumer credit transaction" is a purchase or loan taken out for personal, family, or household purposes. You don't need a lawyer. You also don't have to file a written answer to the claim brought against you.



If you want to respond to the lawsuit brought against you with a claim or lawsuit of your own against the person who is suing you, then you must bring a "counterclaim." To do that you must go to the court administrator's office at least 5 days before the date of your hearing to fill out the forms. Ask the court clerk what forms you need.

You might want to try to settle your case before the hearing by making an agreement with the other side. You might agree to pay some amount but not as much as the other party sued you for. You might agree to a plan to make payments on the original amount. Or you might agree to turn property over to the other party in settlement of your claims.

If you want to settle with the other side, call or write to them before the hearing date. In the metro area you may even be able to arrange for a mediator to work with the two of you before the hearing to help settle the dispute. In Minneapolis, Duluth, and St. Cloud, you can call the Conflict Resolution Center at (612) 822-9883.

If you manage to settle your case, put your agreement in writing. Be as clear as possible in describing the agreement you have made. On the day of your hearing take the written agreement with you to court and ask the judge to approve the agreement and make it a part of the court order in your case. This protects you and the other side in case there is a disagreement later.



You must go to court on the day and at the time scheduled. If the court is running behind schedule you should wait. Your case eventually will be called for hearing. If you know that you can't go or have to leave due to some emergency, call or tell the court administrator's office as soon as possible. You can ask for another hearing within 20 days after the scheduled hearing, **but** you have to be able to prove that you had a serious emergency which made you miss your scheduled hearing. A serious emergency is something like being in the hospital. In very rare cases, you can ask for a new hearing within a reasonable time.

## Getting Ready for Court

Get ready for your court appearance. You have to speak for yourself so plan what you will say before you get there. Make a written outline of everything you need to say.

Talk to any witnesses who might have something to say about your case. Ask them to come to the hearing and tell the judge what they told you. The judge probably won't accept a written statement from a witness who can't come to court.

If a witness you need won't come to your hearing when you ask them, talk to the court administrator about how to make them come by sending them a subpoena. A subpoena is a court order saying they have to come to court.



If the plaintiff (the other side) has papers, documents or other things that help your case, and won't let you see them, ask the court administrator for a subpoena. The subpoena orders them to provide you with the documents.

If specific laws or statutes are involved consider going to your county law library (usually in the county courthouse) or on the Internet to look up those laws so you can point out how they do, or don't, apply to your case.

It is a good idea to:

1. Practice the presentation you plan to make in court to the judge. Go and watch a conciliation court hearing well before the time scheduled for your own hearing. You can [watch a video about conciliation court online](http://mncourts.gov/Help-Topics/Conciliation-Court.aspx) or go to <http://mncourts.gov/Help-Topics/Conciliation-Court.aspx>
2. Organize your documents and bring all of your evidence with you to court. Evidence might include
  - photos
  - letters
  - receipts
  - estimates
  - leases or other contracts which may be a part of the case
3. At the hearing remember where you are and that the judge has the power to decide the case either way. Be very polite to the judge and to the other party.

## **If You Lose in Conciliation Court**

If you lose, you have 20 days from the date of the court's judgment to appeal the decision to the District Court. If you are sure that you want to appeal, call a lawyer as soon as possible to ask for advice on how to appeal. There is a risk you will lose the appeal and may have to pay even more money to the other side. You may need to hire a lawyer to represent you and this could mean even more for you to pay.



If you lose and the other party wins, they are the "prevailing party." As the prevailing party they get a judgment from the court. The judgment is an order stating you owe a certain amount of money to the other party. If you don't or can't pay the judgment amount, the winner (also known as the judgment creditor or the prevailing party), may take further action to force you to pay the debt.



They may try to garnish your income or bank accounts or try to seize some of your assets. A portion of your income, some of the property you own and possibly some money you have in your bank accounts may be protected.

See the sections called “Are You Collection Proof?” on page 12 and “Don’t Turn Unsecured Debt into Secured Debt” on page 27.

If you appeal to the District Court and lose, the judgment stays on your record for 10 years unless you pay it off or have it removed in bankruptcy. If you do not pay it off, the creditor can renew it for another 10 years again and again until it is paid off or removed in bankruptcy.

Judgment amounts earn interest at a rate set up by law. The interest rate will depend on the established rate for the year in which the judgment happened. A judgment will be on your credit record just like a bankruptcy and may make it hard for you to get credit.

The winner or “prevailing party” can collect the judgment anytime within the 10-year period if they find out that you have new income, accounts, or assets.

## **Responding in District Court**

District Court is more complex than Conciliation Court. If you get District Court papers, you should see a lawyer as soon as you get them. If you have a low income, you should contact your local Legal Services office at 1 (877) 696-6529.



The District Court papers you get are called a “Summons and Complaint.” Respond by writing an “Answer” to the Summons and Complaint within 20 days. If you don’t, you will normally lose your case by default. Mail your Answer to the other side’s lawyer. If they are not using a lawyer, mail it directly to them. Keep a copy of your Answer for yourself and take it to court.

Your Answer must say why you think you do not owe the money the other side is claiming in the lawsuit. The fact that you don’t have the money or can’t afford to pay the amount claimed is not a “defense” and won’t stop the court from entering a judgment against you.

If more than 20 days have passed since the date you got the Summons and Complaint, call a lawyer right away. It may still be possible to present a defense to the court.

The court may try to get you to settle the case by making an agreement through a process called “alternative dispute resolution.” This is also called mediation. You and the other party may be asked to choose a mediator to help you try to reach an agreement. An agreement might have things like, paying the other party some of the money or making a payment schedule. If both of you come to an agreement, put it in writing and give it to the judge for review and approval at your hearing.

If you are representing yourself, prepare for your hearing. It is a good idea to learn what you can about the process of presenting your case and about the laws which affect the outcome of your case. Ask a person you trust to help you practice how to present your case. Practice what you will say to the judge.



## SECTION 5 - Wage Garnishment and Your Rights

Garnishment is when someone collects money you owe by taking it out of your **bank account** or your **paycheck**. Sometimes, the creditor gets a court judgment against you, but usually not. The creditor does not need a judgment in order to garnish your bank account or paycheck.

In some cases, your money **can't** be garnished. Money that can't be garnished is called "exempt." You have to fill out papers claiming that your money is exempt. If your money is not exempt, try to work out a deal with the company or person that has a judgment against you. They might accept a payment plan, or even payment of less than the full amount. If you make a deal, be sure it is in writing and signed by both sides. Keep a copy of it.

A non-profit debt counseling agency like the National Foundation for Credit Counseling can help. Call 1-800-388-2227 for a local office. **Watch Out** for companies that charge money to "repair" your credit. Many of these are rip-offs!

### Can your benefits be garnished?

Usually, public assistance benefits can't be garnished. These benefits are called "government benefits based on need." Government benefits based on need includes programs like

- MFIP
- Emergency Assistance
- Medical Assistance
- General Assistance
- MSA
- SSI
- Energy Assistance

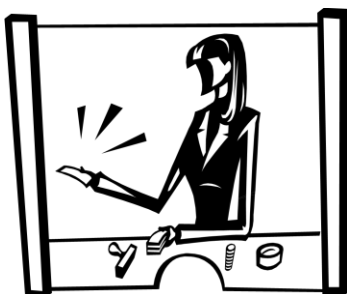
**Note:** This list does not include all programs that are government benefits based on need. At least 2 courts in Minnesota have ruled that EITC (Earned Income Tax Credit) money is exempt from most garnishments.

Other programs like Social Security RSDI and Veterans Benefits are also exempt from garnishment. If you are not sure if the benefits you get are exempt talk to a lawyer or call your local Legal Services office at 1 (877) 696-6529.

BUT there are times that this money is NOT safe. Get advice from a lawyer if someone has threatened to take your benefits.

For example:

- Up to 15% of your social security retirement, disability or survivor benefits can be garnished to pay for government-related debts like child support, student loans and income taxes as long as you get a minimum of \$750 each month. You must get a warning from the U.S. Treasurer before this happens.
- Also, your benefits can be reduced or stopped if your county decides that you got benefits that you should not have.



### Can they take money from your bank account?

Yes, unless the money is “exempt.” If your bank account is garnished, you won’t be able to use your money in your account. It is “frozen” while you claim your exemptions. You do not get a notice before this happens. **The bank sends you a notice after the money is “frozen.”** The notice tells you your rights about exemption. It takes time before your bank releases (unfreezes) your

money.

**If you have written checks or have automatic payments—they may bounce!!** Talk to the people you wrote checks to and tell them about the problem. If you have set up automatic payments, these will bounce also. Cancel your automatic payments! Talk to the bank manager about what is happening. They might agree to cancel overdraft charges.

Money in your bank account from certain sources is protected (exempt) from garnishment. Some of those sources are

- government benefits based on need and most other public benefits
- unemployment benefits
- workers' compensation
- (most) pensions
- life insurance proceeds
- veterans' benefits
- the earnings of your minor child
- any child support paid to you
- disability insurance benefits



Loans, gifts, and other peoples’ money are **not protected** from garnishment when they are put in your bank account. **BUT**, if you have a **joint account**, the other person’s money may be protected.

Talk to a lawyer right away.

Sometimes money that is usually exempt is **not protected if you owe** debts like

- child support
- alimony or spousal maintenance
- student loans or
- taxes

Exempt wages only stay exempt for 20 or 60 days after you deposit them in the bank. See “Can they take money out of your paycheck?” on page 19.

If a bank or financial institution is trying to take money you owe out of another account you have with them, call a lawyer right away.

## How to Claim a Bank Account Exemption

You do not get any warning *before* your account is frozen. The bank must send you a written notice and exemption forms *after* the money in your account has been frozen. If your money is exempt (see above) fill out **BOTH** exemption notices. Be sure to include copies of your bank statements for the last 60 days. Give one copy to the person or company who is garnishing you and one copy to your **bank**.

If the company does not object to your claim in 6 days, the bank should put the money back into your account. If the bank doesn't get your exemption notice within 14 days, it keeps holding your money, and you can't use it.

## Can they take money out of your paycheck?

They can't take money from your paycheck if

1. You are getting or got “government benefits based on need” in the last 6 months (see page 17 on benefits above)



**Note:** Courts in Minnesota have ruled that EITC (Earned Income Tax Credit) money is exempt from most garnishments. One court has ruled that MinnesotaCare is a “government benefit based on need.”

2. You were an inmate in a correctional institution in the last 6 months.

These 2 exemptions protect your paycheck for **60 days** after you deposit it in your bank.

## If you don't have exemptions, how much can they take?

Most of your paycheck is protected - even if you are not exempt. Usually, the amount protected is either \$380 or 75% of your take-home wages (as long as you still get a minimum of \$290 per week), whichever is higher.

**Only 20 Days:** This "25% limit" also applies to paychecks deposited into your bank account – but only for 20 days. Example: if you deposit a \$1,000 paycheck into your bank, \$250 can be garnished right away and the other \$750 could be garnished after 20 days.

**BUT- if the garnishment is for child support,** then up to 65% of your wages can be withheld.

**NOTE:** If you are an **independent contractor** or if you **own your business**, then these wage exemptions may not apply. You should talk to a lawyer to see if this applies to you.

## How to Claim a Paycheck Exemption

You should get written notice at least 10 days before your paycheck gets garnished for the first time. Find out if your money is exempt (see above). If your wages are exempt, fill out the exemption notice that comes with the letter. Hand-deliver one copy to the person or company who is garnishing you and one copy to your employer. Do this as soon as possible. **If you do not do it within 10 days, you can still claim the exemption**, but it will take longer to stop the garnishment and get your money back.



### What happens after you claim an exemption for your paycheck or bank account?

You can call the creditor and ask when they are going to tell your employer or bank to give your money back. The creditor might ask you for more information or proof, like benefits statements. You might get your money returned sooner if you send them the proof that they ask for. You might need to talk to a lawyer to help you prove your exemption claim.

## What if the creditor objects?

If the creditor objects to your exemption claim, they have 6 days to ask for a court hearing to see if your money is exempt. You can go to the hearing without a lawyer. Remember to bring any documents that will help prove your exemption.

**IMPORTANT: If you do not claim your exemptions or ask for a hearing on time, you can still do it later. You never lose your right to stop a garnishment or to get your exempt money back. Never rely on legal advice from a creditor or debt collector.**

## **SECTION 6 – Student Loans**

A college education can be one of the best investments you ever make. It can help you find jobs that make more money.



Many people have to borrow money to pay for school. Student loans are different from other kinds of debt. They can be easier to manage because a number of different payment options are available. But they can also be harder to manage because lenders, including Guarantee agencies and the US Department of Education, can be hard to communicate with. If you fall behind on student loan payments, the loan goes into “default.” That means the lender may be able to take your money even if you are otherwise “collection-proof.”

Remember that you have to repay any loans you take out. Try to finance your education with grants, scholarships, work study, and other types of financial aid as much as possible. Minimize your living expenses while you are in school. If possible, finance your education with Direct Student Loans (made directly by the US Department of Education), because they often offer the best terms.

### **Keep Your Student Loan Out of Default**

You have a number of options available to keep your student loan in good standing. If you are not able to make your monthly loan payment, contact your lender.

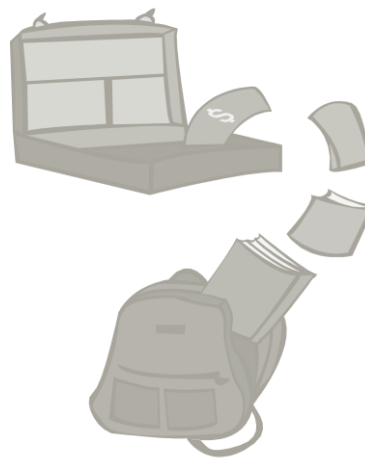
### **Income based repayment plans**

You can ask your lender to lower the amount of your monthly payments. If you took your loan out after July of 1993, the lender may be required to offer you a repayment plan that is based on your income.

There are 4 types of income-based repayment plans:

#### **1. Income Based Repayment (IBR)**

If you have a federal loan and are not in default, you can probably get an IBR repayment plan. This includes anyone with Federal Family Education Loans (FFELs).



To qualify for IBR, you have to show that you have enough debt relative to income. IBR uses a sliding scale to figure out how much you can afford to pay each month.

You have to verify your income every year. Your payment may be adjusted if you have changes in income and family size.

## 2. Income Contingent Repayment (ICR)

You can only use ICR if you have a Direct Loan or Direct Loan Consolidation. The payment can't be more than 20% of your earnings above the **poverty level**. If your income is below the poverty level, your monthly payment could be zero. If you keep making your payments for 25 years, any debt that is left will be canceled.

## 3. Income Sensitive Repayment (ISRP)

ISRP is the Federal Family Education Loan (FFEL) that requires minimum payments that equal the amount of accrued interest. With these plans, your monthly loan payment is figured out based on your expected monthly gross income. Adjustments are made every year.

## 4. Pay as You Earn (PAYE)

To qualify for PAYE, you must have a **partial financial hardship**. You have a partial financial hardship if the monthly amount you are required to pay on your loan is higher than the monthly amount you would pay under PAYE.

For more information on these plans and eligibility rules, go to: <https://studentaid.gov/>.

Another good site is: [www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org).

## Public Service Loan Forgiveness Program



If you work full-time in certain public service jobs, you may be able to get part of your student loan forgiven.

With a standard loan you should be paid off after about 10 years. But if you are on a program that lowers your payment amount, it would take longer than 10 years to pay. In this program, if you make 120 payments (about 10 years) you may be able to stop paying after that. The balance after 120 payments is the part that can be forgiven and you won't have to pay. You can't be in default or you won't be able to do this program.

For program details and more information, go to: <https://studentaid.gov/>

## Deferral

If you can't make a payment at all, ask for a "deferral." A deferral means you do not have to make any payments and no interest is added on the loan for the length of the deferral. A deferral can last up to 3 years. You may be able to get a deferral if you:

- lose your job,
- have health problems,
- take time off work to care for your preschool children,
- are on active military duty, or
- have some other form of hardship, such as low earnings.

You can only get a deferral if your loan is not in default when you ask for it and you have not already used up your 3 years of deferral time.



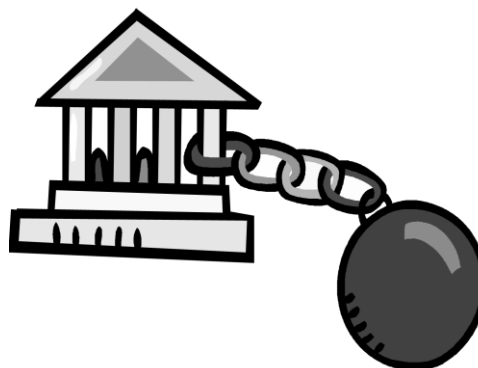
## Forbearance

If you are temporarily disabled or having financial hardship you can ask for a "forbearance." A forbearance means the lender agrees to let you stop making payments for a while or make lower payments. The lender may give you a forbearance even though you have already used up your 3 years of deferral. But interest will be added to the principal of your loan during the length of the forbearance.

The difference between a deferral and a forbearance is that interest continues to grow with a forbearance.

## When Your Loan is in Default

The lender may declare the loan in default if you fail to make the required payments for at least 9 months.



**There are serious consequences of default.**

They include

1. You lose your right to a deferral.
2. The lender can sue you, get a judgment against you, and seize any of your income or property that is not exempt under state law.
3. Even without bringing a lawsuit against you, the U.S. Department of Education can take



your federal income tax refunds including the Earned Income Tax Credit-EITC.

4. Without suing you or getting a judgment against you, the U.S. Department of Education or State Guarantee agency may garnish your wages if you earn more than 30 times the federal minimum wage.
5. If you get more than \$750 per month of Social Security or Veterans Administration benefits, the U.S. Department of Education can take 15% of your check, or the amount by which your check is more than \$750, whichever is less. **If you get Supplemental Security Income (SSI), or your Social Security benefits are not more than \$750 per month, the Department of Education can't take any part of your benefits.**
6. If you want to go back to school, you can't get any new financial aid, either loans or grants.

## Getting Your Student Loan Out of Default

**There are a number of ways to get your loan out of default.** You can stop the Department of Education from taking money from your wages or Social Security benefits and from taking your tax refunds.

- You can “rehabilitate” your loan. To do this, you and your lender decide on a monthly payment amount that is reasonable and that you can handle. You need to consider things like income and expenses. You have to make 9 monthly payments in a row to get out of default.
- If you have more than one loan, think about a consolidation loan. These are offered by the U.S. Department of Education. The new loan pays off your old loans. If your lender has not gotten a judgment or an order of wage garnishment against you, you could qualify for a consolidation loan. Some reasons for taking out a consolidation loan are:
  - You would no longer be in default, so you would qualify for deferral, even if you had already had a deferral on your old loan.
  - A Direct Consolidation loan can be repaid under an “income contingent” repayment plan. In other words, the lender would have to accept as a monthly payment an amount that is affordable to you based on your actual income.

To ask about a Direct Consolidation loan, call the Student Loan Support Center at 1-800-557-7394.

- If your main concern is that you want to be able to get more loans and grants to go back to school, you might be able to make an agreement with the lender to lower your payments to something you can afford. If you make 6 payments in a row you are eligible for new

educational loans and grants. **Note:** But your loan is still in default for other purposes, like collection. The lender could still take collection actions, like taking your tax refunds and garnishing your wages.

- Even if you took your loan out before July of 1993, you may be able to reinstate it. This means get it out of default, renew your eligibility for deferrals, stop collection action. You may be able to do this if you make 12 payments in a row of an amount you agree to with your lender.

You can ask for a forbearance even if you are in default. A lender may, and sometimes must, give you a forbearance. A forbearance does not take your loan out of default or renew your eligibility for new student loans or grants, but it will stop collection action.

## What if a collection company calls?

If debt collectors are collecting on student loans, they can't harass you and they have to follow the Fair Debt Collection laws. See Section 3 – Your Debt Collection Rights on page 7.



## Making Your Student Loan Go Away

### 1. Bankruptcy

The general rule is that student loans can't be discharged in bankruptcy. Discharge means you do not have to pay the loan back. However, if a judge decides the student loan will cause you "undue hardship" if it is not discharged, he/she can order the loan discharged. If the loan is discharged, then you no longer have to pay it. The lender can't take any further collection action, and you would be eligible for new student loans and grants.

"Undue hardship" is a hard thing to prove. You have to show that you have no income or resources to make any significant payments on your student loans, and that you won't be much better off in the future. It is easier to do this if you are disabled.

### 2. Forgiving the Loan

Sometimes the lender must give up trying to collect on your loan. This is called "forgiving" the loan. The lender **has to** forgive your loan under certain circumstances:

- **Closed school**  
You got a loan after January 1, 1986, but could not complete your education program because the school closed.

- **Inability to benefit**

Your school let you enroll in a program that they knew you could not benefit from. For example, if you did not have a high school diploma at the time you enrolled, and the degree/license or certificate you were working towards required a high school degree.

- Your school **forged your signature** on the loan application.

- You are **totally and permanently disabled**.

The Department of Education has forms to use if you want to apply to forgive your loan.

Download them from the website at <https://studentaid.gov/>

Give as much information and documentation as you can to support your claim. Return the completed form, together with supporting documents, to your lender or their collection agent.



### **Need more information?**

If you have questions about student loans, repayment plans or need more information, go to the Department of Education website at: <https://studentaid.gov/>

Or call the Federal Student Aid Information Center (FSAIC) at: 1-800-4-FED-AID (1-800-433-3243), (TTY) 1-800-730-8913. Or visit the website at [https://www.usa.gov/federal-agencies/federal-](https://www.usa.gov/federal-agencies/federal-student-aid-information-center)

[student-aid-information-center](https://www.usa.gov/federal-agencies/federal-student-aid-information-center)

If you don't know who your student loan lender is, you can ask the National Student Loan Data System at <https://studentaid.gov/> or by calling [1-800-433-3243](https://studentaid.gov/).

### **Problems with your lender or servicer?**

Most student loans are “serviced” by a company other than the lender. These companies collect payments, answer borrower questions, and do other administrative tasks associated with maintaining a loan.

Student loan servicers in Minnesota must be licensed by the Department of Commerce. If you have a complaint against your servicer, you should contact the department at [consumer.protection@state.mn.us](mailto:consumer.protection@state.mn.us) or by phone at 651-539-1600 or 800-657-3602. You can file a complaint electronically at <https://mn.gov/commerce/consumer/file-a-complaint/>. The department can make the servicer give you money back (called “restitution”) for wrongdoing.

Minnesota also has passed a “Student Loan Borrower Bill of Rights.” It is against the law to mislead you or deceive you. Also, among other things, servicers must check your eligibility for an income-based repayment program.

You may also call the federal Student Loan Ombudsman at 1 (877) 557-2575 or look for the “Ombudsman” online help form at <https://studentaid.gov/>.

## SECTION 7 - Refinancing

Refinancing your debt when you can’t afford your current monthly payments may seem like a good idea but might not be in your best interests. Here are some things to think about when refinancing seems like a way out of your debt situation.

- **If you have any doubts, don’t refinance.** Refinancing almost always costs money. It may be up-front costs, or it may be over the term of the new repayment schedule. Ask yourself if the payments you make now, or the new refinanced payments will be better for you. Add up the costs. What will the new grand total be that you will pay over the lifetime of the loan?
- For how much longer do you have to make payments?
- How much is your new interest rate and what does it mean in terms of the total interest you will pay over the lifetime of your loan?

### Don’t Turn Unsecured Debt into Secured Debt



**“Secured loan”** means that the creditor can take a promised piece of property (called “collateral”) if you don’t pay. The creditor does not need to sue you first – they can usually take the collateral as soon as you are late. These are usually home mortgages and car loans.

**“Unsecured loan”** means that there is no collateral. If you don’t pay, then the creditor has to sue you in court to collect.

It is usually a bad idea to borrow money from a secured loan to pay for an unsecured loan. The reason this is bad is because your exemptions may protect all of your property from unsecured creditors like credit card companies. But these exemptions do not stop secured creditors.

**For example:** you borrow money from your house (called Home Equity Loans) to pay your credit card bill. Even though the house was safe from the credit card company, you could lose your house if you don't pay on the Equity Loan.

## **Ask Questions before You Sign Any Document**

- What will your new interest rate be?
- What property that you own are you putting up as collateral for the loan?
- How long and for how many years and/or months will you be paying on the new refinanced debt obligation?
- What will the total of all your monthly payments be when you get done paying the debt?
- Are there special rules (terms) about your payments during the time you have the loan?
- Will the amount change?
- What are the up-front closing costs?
- Are there any continuing closing costs?
- When can your new lender demand you pay the total amount owed before the end of the contract?

## **Beware of Refinancing Scams**

Do you know the bank, loan business, or finance agency you are dealing with? Were you introduced to them when someone came to your door? It is much better to use a local, established company than a “fly-by-night” agency. There are many people out there looking to scam you. They will take your money today and be gone tomorrow by selling your payment obligation to another financing company that may not be available to work with you. You could lose your home.

## **Beware of Lenders That Aggressively Advertise**

- Be careful of a lender that offers to lend you more money than the collateral is worth.
- Be careful if they promote the tax deductibility of your loan. If they do, make sure they explain when and why your loan may not be tax deductible in language you can understand.



## Beware of Loan Modification Scams

- If you are in foreclosure and would like to adjust your loan or lower or extend your payments, the Minnesota Homeownership Center operates a **statewide foreclosure prevention program**. For help, call the Homeownership Center at 651-659-9336 or visit their website at <https://www.hocmn.org/>
- Be very careful of offers to help you get a loan modification from a person or business that charges you a fee. If you choose to use a person or business to help you get a loan modification, you do not have to pay any fees until they provide the service they promise.

## Don't Refinance with the Company that Holds Your Original Debt

They may say you have to pay new loan closing costs and other fees as a condition of getting the loan. They may charge you prepayment penalties when they pay off your old loan. They may insist you pay a higher interest rate on your new loan. They may also insist you add more property to the deal to secure your new debt obligation.

## Get Advice Before You Sign

Make sure you get independent legal or financial advice from a professional before you sign. You need to choose the person to help you. Don't just use someone the lender suggests. Ask the person to look at the paperwork and give you advice before you sign.



**If the loan is a home equity loan or credit line**, then you have 3 days to cancel the loan after you sign. You can cancel for any reason by letting the lender know in writing. Remember with this kind of loan you are putting your home up as collateral.

## SECTION 8 - Bankruptcy

Bankruptcy is a legal proceeding in federal court. A person with a lot of debts can get rid of those debts ("discharge" them) or get a new re-payment plan ("re-structure the debt") if it is approved by the court. The two primary types of consumer bankruptcies are called Chapter 7 and Chapter 13.

## Chapter 7

Chapter 7 bankruptcies are also known as liquidation bankruptcies. You can get rid of your responsibility for all or most of your debts by giving up your **non-exempt** property to be sold. This does not usually include your home, car or furniture. The money is then used to pay off your creditors.

In this type of bankruptcy, the creditor only gets back pennies on the dollar of the original amount they were owed. If the bankruptcy is approved, you are no longer legally obligated to repay the debts. You only have to pay if you “re-affirm” your obligation to pay specific debts after the bankruptcy is granted. Reaffirming a debt means you agree to pay that specific debt.

## Chapter 13

Chapter 13 bankruptcies let you re-organize your debts and assets. A “Chapter 13 plan” is created so you can pay off your debts over a span of 3 to 5 years. The bankruptcy court has to approve the plan. The creditors don’t usually get all of the money you owe them, but they get some of it.

The idea is that it is better to get some money back than to get none. In this type of bankruptcy you can sometimes keep some non-exempt property. But property that was listed as a “security interest” or collateral is different. You may have to work out a new agreement or contract with the company listing the property as a security interest. You can’t always keep all your property in this type of bankruptcy.

## Good Things about Bankruptcy

- Gives you a fresh start on managing your finances and meeting your financial obligations.
- Lets you keep your home or car so that you can keep using them. Filing for bankruptcy can prevent foreclosures, cancellations of contracts for deed and repossession of vehicles.
- Puts a stop to collection activity for a time. Filing for bankruptcy protection stops:
  - Collection activity including garnishments and attachments that are already started
  - Lawsuits for foreclosure, eviction, cancellations for contracts for deed
  - Lawsuits to enforce collection of other obligations
  - Utility terminations
  - Collection of judgments against you.



Stopping these activities is only temporary, but after some time you may be able to work out a

new payment plan or make other arrangements to put an end to collection action.

## **Bad Things about Bankruptcy**

- Bankruptcy can mean that you have to give up property that is not exempt or which is not protected for some other reason. Like being subject to a mortgage, contract for deed or security interest (like your house or car).
- Bankruptcy can also mean you could have a hard time getting credit in the future for important and necessary goods and services. A bankruptcy stays on your credit history for 10 years and may cause many lenders from approving credit.



Some local creditors may not care about your credit report, or because of your local standing in the community, may still be willing to give you credit.

- Bankruptcy may have a bad impact on your reputation if it becomes known publicly. This may be a reason for you to “re-affirm” debts owed to lenders in your community.

## **Discrimination Because of Bankruptcy**

Filing for bankruptcy protection may lead some businesses to discriminate and refuse to provide credit to you. They may also refuse to hire you. You do have some protections like

- An employer can’t fire you for filing bankruptcy.
- A utility company can’t deny or refuse services because you have filed for bankruptcy.
- Medical providers can’t refuse to give you emergency medical services because you filed for bankruptcy. But medical providers CAN refuse routine services to you if you have a bankruptcy in the past, unless you have proof of present ability to pay.

If you can show that the denial of services or employment or housing is because of your bankruptcy filing, you could have a basis to sue in court and get the denial overturned.



## **Filing for Bankruptcy**

To file for bankruptcy, you almost always need the help of a lawyer. Many lawyers charge a set fee plus court filing costs for specific types of bankruptcy help. Some lawyers are willing to set up payment schedules for their fees. Others want the full amount up front.

If you have questions about bankruptcy meet with a lawyer who practices bankruptcy law in order to discuss your rights, options and the required procedure.

If you would like legal advice about your debts or a possible bankruptcy, call a lawyer or your local Legal Services office at 1 (877) 696-6529.

If you would like help with budgeting or with paying your debts, you should call Family Means' Consumer Credit Counseling Service (CCCS) at 651-789-4014 or 1-800-780-2890. CCCS may be able to help you set up a repayment plan to take care of all your debts.

## **SECTION 9 - Debt Management, Debt Settlement, and Avoiding Scams**

### **How to Avoid Scams**

You may owe on credit cards, for medical bills, or for back taxes to the IRS. Being in debt can be very stressful. That stress can make it easy for people to fall for scams. There are many dishonest "businesses" that make you think they want to help you. In fact, the "business" is just a scam to get your money.



Do not to fall into a trap that makes your debt problems worse. Here are some things to look out for and avoid.

- DO NOT sign up with any business that says it will help you
  - get out of debt
  - fix your credit
  - get creditors to leave you alone

Get advice from a legitimate nonprofit credit counseling agency. Again, make sure the agency is accredited and their counselors are certified.

- Be careful of companies offering “**debt management**” services or plans. These are plans where the company acts as a go-between with your creditors. The company says they will set up a repayment plan with each of your creditors. Then they take a lump sum payment from you each month and make the monthly payment to each of the creditors. But the lump sum you pay includes fees for the debt management company. You should make sure the lump sum you pay includes the **full amount owed to your creditors in addition to the fees**. Ask the debt management company to tell you **exactly** where all the money you pay goes.



Debt management service companies **MUST** have a license from the Minnesota Department of Commerce. They **MUST** follow strict Minnesota laws. For example, **BEFORE** you sign a contract with them, they have to tell you which of your creditors has said they will be part of the plan and which refuse to participate. They can't charge more than a one-time \$50 “origination” fee and then no more than \$75 per month “maintenance” fee.

- Be very careful about companies offering “**debt settlement**” services. These companies say they will lower your debts by getting creditors to “forgive” a large part of what you owe – whether it is on credit card debt, medical debt, or tax debt. **Do not sign anything** until you check to see if the service has a current license from the MN Department of Commerce.

#### **IMPORTANT NOTE:**

Debt settlement companies **CANNOT** take any money up-front and can ask you to pay fees only after they have provided the services they promised.

Debt settlement companies **MUST** have a license from the Department of Commerce. They **MUST** follow very strong Minnesota laws that protect consumers. For example, before you sign a contract, they have to make sure the plan is right for your situation. They have to tell you they don't guarantee success, and that you can still be contacted and sued by creditors. They also have to tell you that interest and fees will keep adding up during the time you are in the debt settlement plan.

The main purpose of “debt management” is to help you fully repay all that you owe. The main purpose of “debt settlement” is to help you get part of your debt “forgiven” so the total you have to pay is less than what you owe.

Before signing up with a debt management or debt settlement company, make sure they are licensed. You can check with the Minnesota Department of Commerce to see if the company is licensed by calling 651-539-1600 or 800-657-3602 or going to



their website at <https://mn.gov/commerce/licensing/license-lookup/>

## Bankruptcy May NOT Be the Solution

Bankruptcy is NOT the only way to deal with your debt. You have options. Bankruptcy may not be necessary or make sense if:



- you have no income, savings, or other property or assets which can be taken from you to pay off your debts
- you want to keep property that can be taken to pay off your debts
- you have only a few debts
- you have a strong defense as to why you don't owe the debt
- you have a way to make payments on your debt or
- the only reason you want to file for bankruptcy is because you want to stop being bothered by creditors. There are ways to stop this other than bankruptcy.

**Note:** If the debts you are worried about are backed (secured) by your home or car or other important property and your income isn't enough to pay both current and past due debts, bankruptcy will not help you (see the section starting on page 29 for more information).

If any of these factors apply to you, there are other things you can do instead of bankruptcy.

## Credit Counseling May Help

Legitimate credit counseling agencies can help you figure out the best way to deal with your debt. Legitimate agencies are here to help people, not scam them. The best way to be sure that the agency is legitimate is to use a nonprofit service that is either free or low-cost.

Good credit counselors can help you review your situation, give you options, and advise you on the best ways to get back on your financial feet. They also may offer free or low-cost financial training so you can avoid credit problems in the future.

Make sure that the agency you use is "accredited." This means that they are given a seal of approval that they meet high standards. Also make sure that the counselors are "Certified Consumer Credit Counselors." These counselors have to pass tests to make sure they are good counselors.

You can find out if an agency is accredited by checking with the National Foundation for Credit Counseling at <https://www.nfcc.org/>

## Sample Debt Collection Cease and Desist Letter

This example says the person owes but can't pay right now.

---

Your Name  
Your Address  
Your City, State Zip

Mr./Ms. Bill Collector  
Name of Debt Collector or Collection Agency Their Address  
Their City, State Zip

Date

Re: Account #123456789

Dear Sir or Madam:

I am writing to ask that you stop communications to me about my account with Amy's Department Store, as required by the Fair Debt Collection Practices Act.

I was laid off from work two months ago and can't pay this bill at this time. I am now in a training program that ends in March and hope to find work that will let me to make payments soon after that.

You should know that your employees have engaged in illegal collection practices. For example, I got a phone call at 6:30 a.m. from one of them last week. Later that day, the same person called me at my training program. Personal phone calls are not allowed except for emergencies. My family and I were very upset by these tactics.

Stop contacting me.

I will take care of this matter when I can. Your cooperation is appreciated.

Sincerely,

---

*(signature)*

## Sample Garnishment Exemption Notice

The next pages are an example of the notice you get in the mail from the Creditor who is garnishing you. The first 2 pages would be filled out by the creditor with the necessary info. You do not need to write anything on them. But the 3rd page is the exemption form you need to fill out and mail back.

---

STATE OF MINNESOTA  
COUNTY OF \_\_\_\_\_

DISTRICT COURT  
\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_  
(Creditor)

against

GARNISHMENT EXEMPTION NOTICE  
AND NOTICE OF INTENT TO GARNISH  
EARNINGS WITHIN TEN DAYS

\_\_\_\_\_  
(Debtor)

and

\_\_\_\_\_  
(Garnishee)

THE STATE OF MINNESOTA  
TO THE ABOVE NAMED DEBTOR

PLEASE TAKE NOTICE that a garnishment summons or levy may be served upon your employer or other third parties, without any further court proceedings or notice to you, ten days or more from the date hereof. Some or all of your earnings are exempt from garnishment. If your earnings are garnished, your employer must show you how the amount that is garnished from your earnings was calculated. You have the right to request a hearing if you claim the garnishment is incorrect.

Your earnings are completely exempt from garnishment if you are now a recipient of relief based on need, if you have been a recipient of relief within the last six months, or if you have been an inmate of a correctional institution in the last six months.

Relief based on need includes the Minnesota Family Investment Program (MFIP), Emergency

Assistance (EA), Work First Program, Medical Assistance (MA), General Assistance (GA), General Assistance Medical Care (GAMC), Emergency General Assistance (EGA), Minnesota Supplemental Aid (MSA), MSA Emergency Assistance (MSA-EA), Supplemental Security Income (SSI), and Energy Assistance.

If you wish to claim an exemption, you should fill out the appropriate form below, sign it, and send it to the creditor's lawyer and the garnishee.

You may wish to contact the lawyer for the creditor in order to arrange for a settlement of the debt or contact a lawyer to advise you about exemptions or other rights.

#### PENALTIES

(1) Be advised that even if you claim an exemption, a garnishment summons may still be served on your employer. If your earnings are garnished after you claim an exemption, you may petition the court for a determination of your exemption. If the court finds that the creditor disregarded your claim of exemption in bad faith, you will be entitled to costs, reasonable lawyer fees, actual damages, and an amount not to exceed \$100.

(2) HOWEVER, BE WARNED if you claim an exemption, the creditor can also petition the court for a determination of your exemption, and if the court finds that you claimed an exemption in bad faith, you will be assessed costs and reasonable lawyer's fees plus an amount not to exceed \$100.

(3) If after receipt of this notice, you take action in bad faith to frustrate the garnishment, thus requiring the creditor to petition the court to resolve the problem, you will be liable to the creditor for costs and reasonable lawyer's fees plus an amount not to exceed \$ 100.

DATED: \_\_\_\_\_  
\_\_\_\_\_  
(Lawyer for) Creditor

Address \_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

**Sample Debtor's Exemption Claim Notice** (this is the part of the notice that you fill out)

I hereby claim that my earnings are exempt from garnishment because:

(1) I currently get public assistance based on need. (Fill in the public assistance program, case number, and the county where you get your assistance.)

_____	_____	_____
Program	Case Number (if known)	County

(2) I am not now getting public assistance based on need, but I have gotten it in the last six months. (Fill in the public assistance program, case number, and the county where you get your assistance.)

_____	_____	_____
Program	Case Number (if known)	County

(3) I was an inmate of a correctional institution within the last six months. (Specify the correctional institution and location.)

_____	_____
Correctional Institution	Location

I hereby authorize any agency that has distributed relief to me or any correctional institution in which I was an inmate to disclose to the above-named creditor or the creditor's lawyer only whether or not I am or have been a recipient of relief based on need or an inmate of a correctional institution within the last six months. I have mailed or delivered a copy of this form to the creditor or creditor's lawyer.

Date: \_\_\_\_\_

\_\_\_\_\_  
Debtor

Address \_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

## Monthly Budget Chart

<b>MONTHLY INCOME</b>	
-----------------------	--

<b>BASIC MONTHLY EXPENSES</b>	
Rent / House Payment	
Property Taxes & Insurance	
Heat	
Electric	
Phone	
Water / Trash	
Home Maintenance (cleaning, repairs)	
Car Payment	
Car Insurance (divide by 12 months)	
Car Maintenance	
Car Registration (divide by 12 months)	
Gas/Parking	
Bus Fare	
Child Support	
Child Care/Babysitting	
Food/Groceries	
Children's School Supplies	
Medical Bill Payments	
Debt Repayment	
Laundry	
Other	
<b>TOTAL BASIC EXPENSES</b>	



<b>FLEXIBLE EXPENSES</b>	
Restaurants/Fast Food	
Beer, Wine, Liquor	
Your Clothes	
Children's Clothes	
Cable TV	
Gifts (Birthday, Christmas, etc.)	
Movies, Videos	
Entertainment	
Haircuts, Beauty	
Lottery/ Bingo, Gambling	
Cigarettes	
Other	
Other	
Other	
Other	
<b>TOTAL FLEXIBLE EXPENSES</b>	

<b>TOTAL EXPENSES</b> (add totals on front and back)	
---	--

Subtract your TOTAL EXPENSES from your monthly income. If your total expenses are higher, you need to start spending less. Start by cutting back on things on your flexible expenses list, maybe eat out less or cut off your cable TV.



## Credit Reports

### What are credit reports?

Credit reports are done by companies called credit reporting companies. They collect information about your history of payments on bills and loans. If a car dealer, bank, landlord, credit card company, or other business is thinking about doing business with you, they can buy a credit report from a credit reporting company, to see if you are a good risk. Some employers do a credit check on you when you apply for a job.

It is a good idea to check your credit report to make sure the information is correct. If there are things that are wrong in your report, it could make it hard for you to get an apartment or job.

You must be told if a credit report has been used against you. Anyone who uses a credit report against you – for example, to deny an apartment, a job, or a loan – must tell you in writing the name, address, and phone number of the credit reporting company that made the report.

### Can I get a copy of my report?

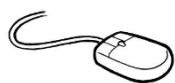
Once every 12 months you can get a free copy of your credit report from each of the 3 big credit reporting companies. The 3 big credit reporting companies are Equifax, Experian and Trans Union. They have a central website, a toll-free number and a mailing address so you can get your report easily.

- You can ask for it online at [www.annualcreditreport.com](http://www.annualcreditreport.com). Doing it online is the fastest. You get your report right away. You can also download a form to fill out and mail in.
- You can call 1(877) 322-8228 to give your information on the phone and they will mail your report to you.
- Or you can send in a written request. Write a letter or use the form “*Free Credit Report Request*” attached. Make sure you give your full name, mailing address, social security number, and your date of birth. Mail your completed form or letter to:

Annual Credit Report Request Service  
PO Box 105281  
Atlanta, GA 30348-5281

Or you can [create a Credit Report Request letter online](#).

Go to [www.lawhelpmn.org/forms](http://www.lawhelpmn.org/forms)



- Look under “Debts, Fees & Deposits”
- Click on “Credit Report Request”

It is best to get a copy from all 3 credit reporting companies to make sure the information is accurate. This is important because one credit reporting company may have different information than the others. Make sure you mark on the form or write in your letter if you want a report from all 3 credit reporting companies.

Going through Annual Credit Report Service is the best way to get your credit report for free. The credit reporting companies offer free reports, but they also sell credit reporting products. It can be confusing to understand what you are asking for, and you may end up buying something you don't need. Especially if the reporting company collects a credit card number as a way to verify your identity. Other companies also offer to help with your credit report but many of these are scams or people trying to steal your credit information.

There are a few times when you can get your report free from the credit reporting companies. These are described in the next section.

### **What if I need to see my report more than once a year?**

Even if you already got your free annual report, there are times when you can get another copy for free. You can get another free copy if:

- anyone has used it against you in the last 60 days, or
- you are unemployed and plan to look for a job within 60 days, or
- you are getting public assistance, such as MFIP, SSI, GA, MA, or food stamps, or
- your report is wrong due to fraud, including identity theft

Free credit reports are widely available. If you have to pay for one, read the offers carefully. Each credit reporting company offers several products including a combined report from all 3 companies. These usually include ongoing monitoring that has a monthly fee. Be careful when paying for a credit report!



To get your **free** or **paid** credit reports directly from the 3 credit reporting companies, call their toll free number, go to their website to do it online or fill out the form, “Credit Report Request” attached and mail it in. Make sure to keep a copy of it for yourself.

Send the form or letter to the credit reporting companies listed below. They may require you to also send a copy of a photo ID and a utility bill or other document that shows your name and address. Each reporting company has directions on how to get your free report. You should get the report in 2-3 weeks if you ask for it by mail. You may get it right away if you do it online.

**Equifax**

PO Box 740241  
Atlanta, GA 30374

1(800) 685-1111  
[www.equifax.com](http://www.equifax.com)

**Experian**

PO Box 2002  
Allen, TX 75013

1(866) 200-6020  
[www.experian.com](http://www.experian.com)

**Trans Union**

PO Box 1000  
Chester, PA 19016

1(800) 888-4213  
[www.transunion.com](http://www.transunion.com)

**Remember:** Your credit report has personal information. If you are using a public computer, make sure your information will be erased when you are done to protect against identity theft. Ask the librarian or someone else you trust if you do not know how to do this.

**How do I fix a mistake on my credit report?**

Mistakes are common in credit reports. If you find a mistake in yours, do this:

1. Contact the credit reporting company in writing, by phone or report the mistake through their website. Tell them what the mistake is.
2. Give them all the information you can like the name of the creditor, the account number, and the reason why the report is wrong. Each reporting company has a list of required information they need to find your account, so make sure you give details.
3. If you are in the middle of a dispute with a business, tell the credit reporting company and have them report it as a disputed debt on your credit report.
4. If you are mailing the dispute, send a copy of the credit report you got with your letter. Circle the mistake on it, and write next to it, "Please Remove." Keep a copy of the report for yourself.
5. Send copies of any other papers that help explain the situation.
6. Date your letter or make a note of when you called. If you did it online keep a confirmation page or other proof. Make sure you keep copies of your credit report and your letter for yourself.



7. **Also, send a copy of the letter and credit report to the creditor/business that gave the wrong information and ask them to stop reporting wrong information about you.** For example, if the credit report says you owe money to Smith Department Store, and you do not, write to the credit reporting company **and** write to Smith Department Store. They may agree to stop reporting it. They might also give you a letter saying they made a mistake. Then you can send that letter to the credit reporting companies, so they can fix your report.

If the company **doesn't** agree they made a mistake the debt will probably stay on your credit report. But it should say on your report that you dispute the debt. Send the credit reporting company a 100 word or less explanation and they have to include that with your report.

### **What happens after I send in a correction?**

- The credit reporting companies must check the things you say are wrong, usually within 30 days. They will contact the company or person giving out the information – for example, an old landlord or creditor. The company or person has to check your evidence and report back to the credit reporting company. The credit reporting company must give you a written report of its investigation. If they change your report, they must also give you a copy of the new report.
- Your credit report lists all the businesses that got the report in the last 6 months. If you correct a mistake, you can ask the credit reporting company to send a corrected report to everyone who got the one with mistakes.
- If the credit reporting company won't remove an item that is incomplete or wrong, you can send a statement of up to 100 words telling your side of the story. The bureau must put that statement in all future reports.



If the credit reporting company or the company reporting your information to them does not follow these rules, contact the Consumer Finance Protection Bureau (CFBP) on their website, by phone or by mail at:

CFBP  
P.O. Box 27170  
Washington DC 20038

(855) 411-2372  
[www.consumerfinance.gov/complaint](http://www.consumerfinance.gov/complaint)

**Note:** It is very common for companies who report to credit reporting companies to do poor investigations. Especially when the company is a debt collector or bought the debt from an original lender. The CFPB requires a response from the company you are complaining about and

posts your complaint and the company's response on their website. The CFPB may also investigate and fine companies who don't follow the rules because of your complaint.

**You can sue the company making the false report.**

### **How long do bad debts stay on my credit report?**

Generally, for 7 years from the date your debt was charged off by the lender. Reporters often make mistakes on reporting that date which can cause a debt to be reported longer than it should be. But:

- They can report a bankruptcy for 10 years.
- If you are applying for \$150,000 or more in credit or life insurance, or for a job that pays over \$75,000, they can report negative information, no matter how old it is.

### **What are some common errors on credit reports?**

- If you have a common name (like "John Smith"), your credit report might list the debts of other people with the same or similar name. If you are named after a relative, your report might list their debts. You can clear this up by sending them proof of your social security number, date of birth, or addresses.
- It is possible that the business will refuse to remove the negative information because they claim you owe the money. If this happens, you might need to go to court to prove that you do not owe the debt. It is possible that you may not owe the money if the business was guilty of fraud, deception or broke consumer protection laws.

For example, if a car dealer lied to you about the mileage on the car when they sold it to you, then you might have a defense against the debt and can get it removed from your credit report. If you think that you might have a defense against the debt, talk to a lawyer.

- Companies sometimes make a mistake and change the charge off date that is reported to the reporting company. The reporting company uses this date to determine how long to report your debt. They may report it longer than they should if that date is wrong. For example, sometimes a company buys your debt from another lender. Because of that, they don't know the right date. In that case they cannot make up a date and should not be reporting your debt.

### **What can I do about debts that I owe?**

Bad debts can keep you from buying a house, getting a credit card, or renting an apartment. Creditors may be able to garnish your wages or bank accounts. If you can make a plan to pay off the debt, do it. But your first priority is taking care of your current situation – paying your rent or mortgage and your utility bills in full and on time.

On the other hand, not every old debt will stop you from getting credit. A bank or other business might care more that you have a steady job than that you have an old debt.

Even if you agree that you owe the money, you may want to explain why. Maybe you were laid off. Maybe your ex-husband ran up a big bill right before you divorced him. Maybe you had a serious illness and no health insurance. Write up a statement explaining the situation and give it to businesses or landlords that are getting credit reports about you.

If you can afford to pay off old debts, you may want to work out a payment plan. To get help with this, call the Consumer Credit Counseling Service at 1-(800) 431-8157.

If you want to buy a house, talk to a home ownership program. They can help you work on your credit. To find someone to help, call United Way at 2-1-1 statewide or 800-543-7709. You can also send a text message with your zip code to 898-211 or chat online at [www.211unitedway.org](http://www.211unitedway.org).



In some cases, you should think about bankruptcy. Bankruptcy makes sense if you have no way to catch up on your bills, and your creditors are taking action against you – like garnishing your wages or bank accounts.

### **What is a “credit repair” scam?**

Watch out for “credit repair” companies that offer to help you hide bad credit or “create a new credit identity.” It is a crime to make false statements on a loan or credit application or to misrepresent your social security number. Some credit repair companies advise people to get Employer Identification Numbers and use them instead of social security numbers. If you do this to hide bad credit, it is illegal. In general, beware of any group offering “credit repair.” They may charge you money for bad or illegal advice or for things you could do yourself or with the help of a non-profit credit counseling service for free.

***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***

*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

© 2023 Minnesota Legal Services Coalition. This document may be reproduced and used for non-commercial personal and educational purposes only. All other rights reserved. This notice must remain on all copies. Reproduction, distribution, and use for commercial purposes are strictly prohibited.

## Free Credit Report Request

Use this form to ask for your free (once every 12 months) copy of your credit report.

Full Name:

(First, middle initial, last) \_\_\_\_\_

Current Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Previous Address (if you have been at your current address for less than 2 years)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Birth:     /     /     Social Security # \_\_\_\_\_

I am requesting my free copy of my credit report that I can get every 12 months.

- ☐ I want a credit report from all three credit reporting companies.
- ☐ I want a report from Equifax
- ☐ I want a report from Experian
- ☐ I want a report from Trans Union

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Mail this completed form to:  
Annual Credit Report Request Service  
PO Box 105281  
Atlanta, GA 30348-5281



## Credit Report Request

Use this form to get copies of your credit report if you already got your free one.

Full Name:

(First, middle initial, last) \_\_\_\_\_

Current Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Previous Address (if you have been at your current address for less than 2 years)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Birth:     /     /     Social Security # \_\_\_\_\_

I am requesting my free copy of my credit report that I can get every 12 months.

- ☐ I want a credit report from all three credit reporting companies.
- ☐ I want a report from Equifax
- ☐ I want a report from Experian
- ☐ I want a report from Trans Union

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Mail this completed form to the Credit Reporting Company you want to contact. Use the address listed in this fact sheet. Don't forget to include a copy of your photo ID and a copy of a current utility bill or other document that shows your name and address.



**Education for Justice**

A project of the Minnesota Legal Services Coalition  
[www.mnlegalservices.org](http://www.mnlegalservices.org)