

MANAGING YOUR DEBT



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This material is provided to answer general questions about the law in New York State. The information and forms were created to assist readers with general issues and not specific situations, and, as such, does not replace the legal advice or representation of an attorney. Because of this and because of unanticipated changes in the law, the Rural Law Center of New York (RLC) makes no claim that this information will achieve the results you desire. Also, the RLC disclaims any responsibility for actions taken based on this material. If you are seeking advice about a specific legal issue, you should contact an attorney licensed to practice in New York State.

You may contact the Rural Law Center of New York, Inc. as follows:

BY MAIL: 22 U.S. Oval, Suite 101, Plattsburgh, New York 12903

PHONE: (518) 561-5460

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WHAT TO DO WHEN YOU CAN'T PAY YOUR BILLS: MANAGING YOUR DEBT

A GUIDE DESIGNED AND PREPARED BY
THE RURAL LAW CENTER OF NEW YORK, INC.

This pamphlet is designed to give you general information about how to manage consumer debt. This guide cannot replace the advice of an attorney regarding your individual situation. We suggest you consult with an attorney when trying to resolve a particular situation of consumer debt.

SEVENTEEN IMPORTANT QUESTIONS

1. What are the first steps I should take when I cannot pay all of my bills?

If you owe money on a debt and are not able to make the payments, you may want to take the following steps:

- tell the company about the problems you are having and ask for an extra month or couple of months to make the payments;
- ask the company or another company if there is a way to refinance the loan to make the payments possible for you to pay;
- ask the company if it would be willing to accept back the merchandise you purchased and cancel the balance still due;
- make regular, partial payments to show that you are making a good faith effort to pay.

2. My creditors are harassing me when I don't pay my bills. Can they do that?

If you do not make payments and the company is not willing to make arrangements with you, you may begin to receive harassing telephone calls. If the creditor turns the collection of your bill to a collection agency or attorney, federal law limits how they may contact you. Bill collectors **CANNOT**:

- contact you if you tell the agency in writing to stop further contact (see attached sample letter);
- contact you before 8 a.m. or after 9:00 p.m.;
- contact you at work if the agency is told that your employer does not allow that communication;
- contact other people (such as employers, relatives or neighbors) about the debt except to obtain your address and telephone number;
- contact you if you have a lawyer;
- be harassing and abusive.

3. What can I do if my creditors won't leave me alone?

If a bill collector takes any of the above prohibited actions, you should write a letter to the agency requesting that there be no further contact with you (see attached sample letter). If the abusive actions continue, you may have an action under federal law against the collector. You should contact an attorney.

4. If I do not pay my bills, what action can a debt collector take against me?

If you do not make the payments required, and if the company lent you money to buy a specific piece of merchandise like a refrigerator or a car and that company had a security interest in that property, the company may be able to seize that property without going to court first. Depending on what your contract states, the company may be able to sell the property seized from you and then sue you for the difference between the purchase price you agreed to pay and the amount the company received from the resale. Thus, it is important to note even if you give the property back, you may still owe money to the creditor.

If you are unable to make payments on a loan, a creditor may commence a court action against you. There are different kinds of actions for different kinds of debts. For example, an action against someone who signed a mortgage against their property for a loan is called a foreclosure proceeding.

5. What should I do if I get served with court papers?

If an action has been started, you will probably receive a summons and complaint from a sheriff or other process server. Read all legal documents carefully. You will probably have 10 or 20 days to answer the complaint. If you do not answer within the time period specified, the court will probably enter a **default judgment** against you. This means that the creditor will be able to obtain all of the relief requested against you. Consult an attorney regarding whether to file an answer and what defenses you can raise. If you do not have time to consult an attorney before the answer is due but believe you may have some defenses, you may want to file an answer by yourself to avoid a default judgment. (See sample answer attached)

A foreclosure action is similar to the proceeding described above except that there may be additional defenses and remedies. Because this matter is more complicated, and the case involves greater stakes, contact an attorney. Defenses may include filing for bankruptcy, or claiming violations of federal and state laws such as Truth in Lending Act, Home Ownership Equity Protection Act, Real Estate Settlement Procedures Act, and New York State General Business and Banking Laws. Remedies may include rescission (which means voiding a contract) and money damages.

6. If I lose in court, what will the judge do to me?

If a creditor proves to the judge that you owe a certain amount of money to the creditor, the judge will probably issue a judgment in favor of the creditor against you. **In a collection action, the judge will never send anyone to jail. The only time someone may face jail for failing to pay a debt is when there is a willful violation of a child support order.**

7. What are the ways a creditor can enforce a judgment against me?

Creditors can enforce judgments in the following ways:

1. Garnish your wages
2. Seize your bank account
3. Place a lien on your property

8. How much and what kind of income can the creditor garnish?

Generally, a creditor can only seize 10% of your income (more can be taken out for child support obligations). In New York State, a creditor can garnish the lesser of 10% of your gross wages or 25% of your disposable income to the extent that this amount exceeds 30% of minimum wage. If your disposable income is less than 30 times minimum wage, it cannot be garnished at all. **The following income cannot be garnished by a creditor** (except to enforce a child support order, to recoup overpaid governmental benefits, or to pay for government student loans in certain circumstances:

- Any public assistance benefits;
- Your SSI check;
- Your Social Security Check;
- Your unemployment check;
- Your Veterans Administration check;
- Child support or spousal support ordered by a court.

9. When can a creditor take money from my bank account?

A creditor can freeze and then seize any funds from your bank account that are not from a protected source. You will probably not receive notice before your account is frozen. As soon as you find that your account is frozen, you should contact any person to whom you issued a check to try to avoid bounced check fees.

Funds in your bank account cannot be frozen or seized if they can be shown to be from one of the protected sources listed above in answer to the previous question. If the only funds in the account are from a protected source, contact the creditor's attorney right away with proof that the only deposits made into the account are from the protected income source. You will probably need to show proof of receipt of the protected funds (such as your SSI award letter and several months of bank statements which you can obtain from the bank).

IMPORTANT: It is more difficult to show the account only has protected funds in it if you make other deposits into the account. Please note that while the creditor should release the hold after you submit sufficient proof, you still may be subject to bank fees and bounced check fees. You can negotiate with the bank to try to eliminate or reduce these fees. You also may be able to negotiate with the creditor in order to release the funds.

10. What kind of property can a creditor take?

If you own a house or a valuable piece of property such as a car or boat, even if that property was not involved in the loan the creditor may be able to place a lien on the property. A lien means that the creditor can ask a judge to sell your house, car, etc. to get the money you owe. Or a creditor will get part of the sales price when you sell your home. However, under New York State law a creditor cannot place a lien on your house if your equity in the house is \$10,000 or less. The equity in the house is the value of the house minus any money owed on the home.

11. Can a creditor take my personal property?

Under New York State law, there are some kinds of property that may not be seized by a creditor:

- clothing
- most furniture and appliances
- wedding rings
- school books

This exemption does not apply to property for which the creditor has a security interest. For example, if you took out a loan to buy a refrigerator, you probably signed a contract that gave the creditor a security interest in the refrigerator. If you do not make payments, the creditor will be able to seize the refrigerator.

12. When can I rescind (get out of) a contract?

Pursuant to state law, you have the right to rescind (get out of) a contract for which a lien could be placed on your home within 3 days of signing the contract.

13. Should I declare bankruptcy?

Bankruptcy is a process under federal law to help people get protection from their creditors. If you file for bankruptcy, creditors are prohibited temporarily from taking steps against you except through the bankruptcy process. Bankruptcy can permanently wipe out your obligation to pay many of your debts or it can give you the opportunity to catch up on a debt. Bankruptcy is a complicated proceeding. You should obtain prompt legal advice if you wish to pursue this option.

14. How can I stop receiving telemarketing calls?

To stop unwanted telemarketing calls, you can:

- Call (888) 5OPT-OUT to have names removed from consumer credit lists provided to telemarketers by credit reporting agencies;
- Demand to be removed from telemarketers' lists by writing to the Direct Marketing Association's Telephone Preference Service, P. O. Box 9008, Farmingdale, New York 11735-9008;
- Tell any unwanted telemarketer to put you on their "DO NOT CALL" list.

15. How can I avoid abusive financial transactions?

The best way to avoid a situation where you cannot pay your bills is to be very careful about how and when you enter into debt.

- Do comparative shopping
- Make sure you know the exact terms of the agreement
- Know the interest rate of the loan and whether it is fixed rate or variable
- Make sure you can afford the monthly payment
- Read every document you are asked to sign carefully before you sign it
- Know the signs of Predatory Lending

16. What is predatory lending?

Predatory lending is when a mortgage lender or broker imposes excessive and unreasonable charges on

homeowners. Often, predatory mortgage lenders will structure a deal such that the borrower will never be able to pay off the loan and will lose his or her home. There are many different kinds of predatory lending practices. Some of the practices include:

- Door to Door solicitation
- Balloon Payments (a large payment at the end of a contract)
- Home Improvement Contracts Mortgage Broker Fees and Kickbacks Steering to High Rate Lenders Making Unaffordable Loans
- Falsified or Fraudulent Applications Adding Co-signers
- Incapacitated Homeowners
- High Annual Interest Rates/High points Negative Amortization
- Credit Insurance – Insurance Packing Padding Closing Costs
- Inflated Appraisal Costs Padded Recording Fees Bogus Broker Fees
- Excessive Prepayment Penalties Mandatory Arbitration Clauses
- Paying Off Low interest mortgages and entering into High Interest Mortgages
- Shifting Unsecured Debt into Mortgages Making Loans in Excess of 100% Loan to Value

17. What can I do if I feel I have been treated unfairly by a creditor?

There are many state and federal laws to protect consumers against unfair and dishonest creditors. If you feel you have been treated unfairly, contact an attorney or the Attorney General's Office 1-800-771-7755. Prompt attention makes problems much easier to solve.

DRAFT OF ANSWER TO COMPLAINT

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CLINTON

-----X

NORTH BANK

Plaintiff

ANSWER

-against-

Index No. 00- 38

MARY SMITH

Defendant.

-----X

Defendant, MARY SMITH, appears in the above action and alleges for her answer as follows:

1. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in paragraphs 1, 3b, 3c, 3d, 3e, 5, and 7 of the complaint.
2. Defendant admits the allegations made in paragraphs 2 and 3a of the complaint.
3. Defendant denies the allegations made in paragraphs 4 and 6 of the complaint.

WHEREFORE, Defendant prays for judgment in her favor:

1. Dismissing the complaint;
2. Ordering such other and further relief as the Court may deem just and proper.

Dated: Plattsburgh, New York
_____, 20____

Yours, etc.

 Mary Smith
 12 Court Street
 Anytown, New York

SAMPLE LETTER TO COLLECTION AGENCY
REGARDING EXEMPT INCOME AND NO CONTACT

June 26, 20 _____

American Collection Agency
P.O. Box 911
Abusory, New York 00000

RE: First National VISA Account No. 534332555

Dear Sir or Madam:

I am writing in regards to the above numbered account number. I am writing to inform you of my financial status, and my desire not to receive communications or telephone calls from your office.

Please note that my sole income is SSI benefits. None of the monies paid or payable under Title II or Title XVI of the Social Security Act are subject to execution, levy, attachment, garnishment, or legal process. See 42 U.S.C. Section 407(a); 42 U.S.C. 1383(d).

Please also note that I do not wish to receive further telephone calls or letters concerning the debt I allegedly owe to your client. The Fair Debt Collection Practices Act requires you to respect this request. See 15 U.S.C. Section 1692(c).

Thank you for your attention to this matter.

Sincerely,

Mary Smith
P.O. Box 000
Anytown, NY 10000