

DEALING WITH LAWSUITS

The creditor may sue to get a court judgment against you for the amount owed. Even if you owe the debt, you may have several defenses. Many suits are filed by “debt purchasers,” who often cannot prove the amount owed or that they own the debt. You can also file a counterclaim if you have been abused, harassed, or threatened by the creditor or its collection agency. If you have been sued, it is best to consult with a lawyer.

If the creditor obtains a judgment against you, that company can file a lien against your property or garnish your wages. However, if you are “judgment proof,” the judgment will not make your financial situation any worse.

You may be judgment proof if: (a) you have no income or very low income; (b) you do not own a home or you owe more on it than it is worth; or (c) your only income is Social Security, unemployment benefits, pension, or other forms of public benefit income. If you receive income from employment, a creditor with a court judgment can “garnish” your wages. This means that your employer must withhold 20% of your weekly take home pay until the judgment is paid off.

There is a limit on garnishment: Weekly take-home pay may not fall below 30 times the federal minimum hourly wage or, currently, \$217.50. No other forms of income can be garnished. In summary, if you are in such dire circumstances that you are judgment proof, it may be best to use what little income you have to pay for food, shelter, and child care. ♦

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Drowning in Debt?



HOW TO STAY AFLOAT WHEN YOUR FINANCES ARE UNDERWATER

1. Bankruptcy – Depending upon your income and assets, you may qualify to obtain a complete discharge or a drastic reduction of all your credit card, medical bills, and other unsecured debts and still keep your house, vehicle, and other valuable belongings through bankruptcy. Even though recent changes in the law have made it harder for some persons to qualify, bankruptcy is still the least expensive, fastest, and most effective way to get relief from debts. It is not true that bankruptcy ruins your credit forever. Although bankruptcy stays on our credit report for 10 years, it offers you the →

opportunity to rebuild your credit because it relieves you from debts that cannot be repaid.

2. Debt Management Plans – If you have sufficient income to pay your debts but simply need a reduction on your monthly payment amounts or interest rates, you can consult with a non-profit credit counseling agency. These agencies can negotiate affordable payment plans, called “debt management plans,” with your creditors to bring your accounts “current” and give you a fresh start. If you seek credit counseling services, our office recommends that you contact an agency that has a physical office in West Virginia and that is affiliated with the National Foundation for Credit Counseling or American Independent Consumer Credit Counseling Agencies.

You can locate the nearest West Virginia office for these agencies by calling 1-800-281-5969. If you reside in the upper northern WV panhandle, you should call 1-800-220-3252.

3. Debt Settlement – If you do not have enough income to pay your credit card debts or to qualify for a debt management plan, you can



ask your creditors if they will accept less than the

total amount owed as a full settlement of your debt. You should avoid companies that fill the airwaves and Internet with slick ads promising to make you “debt free.” Many of these companies

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charge excessive start-up fees and promote only one approach: “stop paying your debts and put funds aside each month to be used later to settle your accounts.” Debt settlement is by far the *riskiest* option and is illegal in many states, including West Virginia, unless handled by a licensed lawyer. Studies have shown that debt settlement companies have poor success rates and rarely give refunds when they fail. But many banks will accept 50% or less of the amount owed to settle a defaulted account that they view as uncollectible. If you choose this option, we recommend that you contact your creditors to settle the accounts on your own.

4. Consult With A Lawyer – Consult with a West Virginia lawyer before choosing any of these options, especially debt settlement. You may find a lawyer qualified to assist you by contacting the West Virginia State Bar Lawyer Referral Service at (304) 558-7991. All lawyers who participate in this referral program have agreed in advance to charge no more than \$25.00 for the first half hour of consultation. You can also locate a lawyer by checking the yellow pages in your local phone book, where many lawyers list their specialty and often state that there is no charge for consultation. Low income persons may also call 1-800-642-8279 to see if they qualify for free assistance from Legal Aid of West Virginia.

5. Take No Action – If you are overwhelmed by debt, sometimes the best and only option is to take no action at all. There are

only three things a creditor can do to collect a debt from you:

- Refer a debt to a collection agency;
- Report a debt as an unpaid account to the credit bureaus; *and*
- File a lawsuit to obtain a judgment against you for the amount owed. ♦



DEALING WITH COLLECTION AGENCIES

If you can't pay the debt, there is no reason to speak to a collection agency. If you send a letter to the collection agency that says “Please do not contact me anymore about this debt,” federal law requires that agency stop all contact with you.

DEALING WITH CREDIT BUREAUS

There is no way to stop a creditor from reporting your unpaid debt to a credit bureau, but only accurate information may be reported. If you dispute the debt, you can contact the credit bureaus to ask that the debt be verified. If the debt cannot be verified, it must be removed from your credit report. The credit bureau must also note on your report that the debt is disputed. You can also file a statement of up to 100 words explaining why you dispute the debt that becomes part of your credit report. Although the reporting of the debt may hinder your ability to obtain new credit, if you are drowning in debt already, you probably cannot afford to repay any new loans. →