

Debt Collection Practices and Lawsuits

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The Federal Reserve Bank of New York reported that in 2024, Americans owed a total household debt of up to \$17.94 trillion. The majority of this debt is from mortgages, but given inflation and rising costs of goods, average credit card debt increased by 17.4% from 2022 to 2023, [according to Experian](#). Although not all states make it easy to track how many debt collection lawsuits have been filed, [we do know](#) that more debt collection lawsuits are being filed now than ever before.

From the moment that a person defaults on a debt to the time a debt lawsuit ends, there are several consumer protection laws in place to ensure that you are treated fairly and justly. This extensive article provides a collection of legal information and resources regarding debt collection and debt collection lawsuits that may be helpful.

When a Debt Collector Contacts You

The Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) are key federal agencies dedicated to consumer protection. The FTC safeguards consumers by enforcing laws against deceptive advertising, fraud, unfair business practices, and antitrust violations, while also addressing issues like data privacy and identity theft. The CFPB regulates products like mortgages, credit cards, and student loans; ensures transparency; and prevents abusive practices by debt collectors (also called creditors).

Both agencies play a critical role in enforcing the Fair Debt Collection Practices Act (FDCPA), a federal law designed to protect consumers from abusive, deceptive, or unfair debt collection practices. The FDCPA sets strict rules for how debt collectors can communicate with consumers, prohibits harassment or false representations, and gives consumers rights to dispute debts.

The CFPB has several resources about your rights under the FDCPA when a debt collector is trying to contact you:

- [What information does a debt collector have to give me about a debt they're trying to collect from me?](#)
- [What can I do if a debt collector contacts me about a debt I already paid or don't think I owe?](#)
- [What laws limit what debt collectors can say or do?](#)
- [What is harassment by a debt collector?](#)
- [When and how often can a debt collector call me on the phone?](#)
- [Can debt collectors tell other people, like family, friends, or my employer, about my debt?](#)
- [How do I get a debt collector to stop calling or contacting me?](#)
- [SAMPLE LETTERS | What should I do when a debt collector contacts me?](#)

If you are having trouble with a debt collector, you can [submit a complaint with the CFPB online](#). If you are unable to submit a complaint online, you can submit one over the phone. More than 180 languages are available.

Call: (855) 411-2372

TTY/TDD: (855) 729-2372

The phone line is open 8 a.m. to 8 p.m. ET, Monday through Friday ([except federal holidays](#)).

When You Are Sued for a Debt

If you have been sued for a debt, the lawsuit typically starts with a summons and complaint. A summons is an official notice that you have been sued. A complaint is a written statement that starts a case. It states what the plaintiff says the defendant did and it asks the court for relief (help). The answer is your opportunity to tell the court your defenses, or reasons why the plaintiff must not win the case. Most of the time a law firm will represent the debt collector while the debtor does not have an

attorney.

When you are sued for a debt, it is a civil lawsuit, not a criminal lawsuit. Civil lawsuits for debt do not result in jail time. It is illegal to imprison someone because they are in debt and owe money to a company. You will not go to jail because you are in debt and owe money to a company.

Service of process ensures you are properly notified about the case against you. There are specific rules that must be followed to serve legal papers, such as delivering them to you in person or leaving them with someone at your residence or workplace under certain conditions. These rules are in place to protect your right to know about the lawsuit and respond. If the rules for service are not followed, the court may lack the authority to make decisions about the case. If you have questions about whether you were served properly, it's important to check with an attorney, as improper service could be a valid reason to challenge the lawsuit.

Service of process and when you are notified also may affect the deadline by which you must submit an answer. If the time limit to submit your answer has already passed, you can still try to submit an answer late to the court. You may want to include a note explaining why you are submitting the answer late. This may be because you did not receive the summons and complaint, you did not understand what submitting an answer meant, you were in the hospital, or anything else that helps you explain why your answer is late.

If you ignore the lawsuit, you may get a default judgment against you. A default judgment is a court decision in favor of the person or company that started the lawsuit (the plaintiff). This usually occurs where the person being sued (the defendant) fails to answer a summons or misses a court date. The default judgment may make it possible for the person or company suing you to garnish your wages, freeze your bank account, or take your property.

There is an Answer Form that you can use to answer the summons and complaint. This is a straightforward answer form designed for people to complete even if they do not have an attorney. [You can download a PDF of the Answer Form here.](#)

LawNY has created a guide to help you complete the Answer Form, [which you can download here.](#)

After the Debt Collection Lawsuit

The lawsuit ends when the court issues a ruling, or judgment. If a debt collector has obtained a judgment against you, meaning the court ruled in its favor, the debt collector can move forward with an “income execution.” Income execution is the legal process where a debt collector, using the judgment issued by the court, collects on your income via a wage garnishment, seizes your money via a levy on a bank account, or places a lien on your property. With a wage garnishment, your employer withholds a portion of your paycheck and pays it to the creditor. With a levy, the bank freezes your account, and the debt collector can withdraw funds from it. With a lien, the creditor places a legal claim that attaches to your real estate or other assets, such as a home, making it difficult to sell or refinance the property without first paying the debt.

In New York, debt collectors are limited in how much they can take from your bank account. The amount they must leave in your account is adjusted periodically. If your case started after April 1, 2021, but before April 1, 2024, debt collectors must leave at least \$3,000 in your bank account. This means that if you have, for example, \$5,000 in your bank account and owe a debt collector \$3,000, the debt collector could take \$2,000 from your account, leaving you with \$3,000. Because you had a debt of \$3,000 and the debt collector took \$2,000, you still would owe the debt collector \$1,000.

New York law also protects 90 percent of the income you earned in the 60 days prior to an income execution. To revisit our earlier example, this means that if you had \$5,000, owed a debt collector \$3,000, and earned \$1,000 from non-exempt income during the last 60 days, then the limit would be:

- Bank account starting balance: \$5,000
- Debt owed: \$3,000
- In 60 days prior, you made: \$1,000
- 90 percent of \$1,000 is protected: \$900 is protected
- New York state limit is protected: \$3,000 is protected
- Debt collector takes: \$1,100 ($\$5,000 - \$3,000 = \$2,000 - \$900 = \$1,100$)

- You are left with: \$3,900
- You still owe the debt collector: \$1,900

Before a debt collector obtains the funds from your account, your bank must notify you that the debt collector has a levy against your account. The bank may decide to freeze any funds above \$3,425 or freeze the accounts entirely. You will then have approximately twenty-seven days to dispute the levy with the bank.

Debt collectors also may garnish your income. In New York, wages cannot be garnished if disposable weekly wages are less than 30 times the New York minimum hourly wage. Disposable earnings are what is left after deducting taxes. As of January 2024, that amount is \$450 per week (\$15 minimum wage times 30). If a person makes less than \$450 per week after taxes are taken out, their wages cannot be garnished. If a person makes \$450 per week or more after taxes are taken out, their wages can be garnished. In general, only one creditor can garnish at a time, no matter how many people are owed. Generally, a creditor can only take up to 10% of a person's gross pay. A person cannot be fired by their employer for their first wage garnishment, but subsequent wage garnishments may be grounds for job termination.

However, some kinds of income and benefits can't be taken by a creditor and are protected from debt collection. This is called "exempt income." Here is a list of exempt income:

- Supplemental Security Income (SSI)
- Social Security
- Public Assistance (welfare)
- Spousal Support, maintenance (alimony) Ordered by a Court
- Child Support Ordered by a Court
- Unemployment Benefits
- Disability Benefits
- Workers Compensation Benefits
- Veterans Benefits (VA)
- Railroad Retirement Benefits
- Black Lung Benefits
- Public and Private Pensions
- Retirement Savings like a 401(k) and Individual Retirement Accounts (IRA)

- Private Trust fund principal and 90% of any payments
- 90% of your salary earned in the last 60 days

This also applies to all money derived from exempt income. For example, if a person has \$10,000 in their bank account and it is all from exempt income, that \$10,000 cannot be seized, or levied, from your bank account to pay a debt collector.

Finally, debt collectors can place the lien on your property. To do this, the debt collector typically files the judgment with the county where the property is located. Once the lien is in place, the debt collector doesn't automatically take your property, but they can use the lien as a way to secure payment. For example, if you try to sell the property, the lien will usually have to be paid off before the sale can go through. In some cases, debt collectors can also attempt to force the sale of the property through foreclosure, but this depends on the type of property and state laws. If you believe a lien has been placed on your property, you may want to consult an attorney to understand your rights and options.

Vacating a Default Judgment

Unfortunately, sometimes you may not find out there was a debt collection lawsuit and judgment issued against you until you receive notice that your wages are being garnished or money from your bank account is gone. In these cases, you may have had a default judgment issued against you.

When you miss a court date or fail to respond to a lawsuit with an Answer, the court may issue a default judgment against you. This is a court decision in favor of the other side (the plaintiff), which can have serious consequences. In a consumer debt case, a default judgment might be entered because the defendant (you) didn't respond to the summons and complaint or failed to appear in court.

If a default judgment has been entered against you, you can ask the court to vacate (cancel) it by filing the necessary paperwork. If the court agrees to vacate the judgment, it will reopen the case, giving you a chance to defend yourself at a new hearing. Once the judgment is vacated, the plaintiff can no longer rely on it to enforce payment, and the case will move forward as though the default never occurred.

Reasons the Court Can Vacate a Default Judgment

There are two common reasons the court might vacate a default judgment:

1. Excusable Default: This applies when you can show both a valid reason for missing your court date or not responding to the lawsuit (a reasonable excuse) and a valid defense against the plaintiff's claims. Examples of reasonable excuses include not receiving the summons, being ill, or being misinformed by someone that you didn't need to appear in court. Valid defenses in a debt case might include mistaken identity, statute of limitations, or proof of full or partial payment. Typically you have a year from the date the judgment was entered to request the court vacate a default judgment for an excusable default.

2. Lack of Personal Jurisdiction (Bad Service): The court can vacate a default judgment if you were not properly served with the summons and complaint at the start of the lawsuit. If the service was defective, the court never had the legal authority (jurisdiction) to issue a judgment against you. This type of request does not have a time limit, unlike excusable default claims.

Using the Vacate Default Judgment in a Consumer Debt Program

NYCourts.gov via LawHelp provides people without an attorney [an interactive tool](#) to help you ask a court to vacate the default judgment against you. If you have trouble using this online program, your local library, [legal aid organization](#), or [Court Help Center](#) may be able to assist.

If the judge accepts your request to consider vacating the default judgment, they will set a new hearing date (called the return date). On the return date, you'll have the opportunity to explain why the default judgment should be vacated. Make sure to arrive on time and prepared with all necessary documentation to support your case. If the court agrees to vacate the judgment, the case will start over, and you'll have the chance to defend yourself.

Prepared by LawNY®. Unless otherwise noted, source material is from LawNY®, NYCourt.gov, the CFPB, and the FTC

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