

How to Answer a Summons and Complaint 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.

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 being sued for that debt.

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.

Guide to the Common Answer Form List Items

The common answer form helps you file an answer without an attorney. The common answer form consists of a list of defenses to the lawsuit. Simply check the box for each numbered defense or explanation that applies to your situation. Please note that your answer will need to be notarized. Local banks often have notaries on staff or you can call your local library to ask if they have a notary on staff.

1. General Denial: This means you are denying all the claims in the lawsuit. By doing this, you require the plaintiff to prove each part of their case. It's a way to contest the entire lawsuit without getting into specifics.

2. I did not receive a copy of the Summons and Complaint: If you never received the official documents notifying you of the lawsuit, this can be grounds to argue that the court does not have the power (jurisdiction) to proceed, as proper notice is a legal requirement. If you have questions about whether you were served properly, it's important to check with an attorney.

3. Incorrect service of Summons and Complaint: Even if you received the documents, they must be delivered, or served, in a legally correct manner. If not, the court may dismiss the case or require the plaintiff to serve you correctly.

4. It is not my debt. I am a victim of identity theft or mistaken identity: This defense claims the debt does not belong to you, often due to identity theft or mistaken identity. In this case, usually defendants check the "general denial" box, along with the "debt dispute" and "ID theft" checkboxes. The plaintiff would then need to prove you are the correct debtor.

5. I have paid all or part of the alleged debt: If you've already paid some or all of the debt, the plaintiff cannot collect more than what you actually owe. This defense requires you to provide proof of payment.

6. I dispute the amount of the debt: You are challenging the accuracy of the debt amount claimed by the plaintiff. They must then provide evidence to prove the exact amount owed.

7. I had no business dealings with the Plaintiff (Plaintiff lacks standing): If you have never interacted or had any agreement with the plaintiff, you can argue they lack “standing,” meaning they have no right to sue you. However, just because the name of who is suing you is unfamiliar does not necessarily mean that they do not have the right to sue you. Debt collectors will purchase the right to collect on your debt from your original creditor, such as a bank.

When a plaintiff creditor (like a debt collector or a company) sues a defendant (you), they need to show that they actually have the legal right to do so. This means they must prove they "own" the debt they are trying to collect from you. Think of it like a chain or a list of people who have owned something, one after the other. If a company is suing you for money they say you owe, they need to show that they have been handed over that debt from the original creditor (the person or company you originally borrowed from), and from everyone else who may have owned it before them. This is called the "chain of title." You can review whether the plaintiff has chain of title by:

- **Proof of Ownership:** Look for documents that show the debt was properly transferred to the company suing you.
- **Original Creditor:** Make sure the complaint names the original creditor (who you originally owed).
- **No Gaps:** Check that there are no missing links in the ownership chain — each transfer should be clear and documented.

8. There is no record of Plaintiff having a license to collect debt: In New York City and Buffalo, debt collectors must have a license. If the plaintiff lacks this license, they are not legally permitted to collect the debt.

9. Plaintiff does not allege a debt collector’s license number in the Complaint:

In New York City and Buffalo, debt collectors must include their license number in the complaint in certain areas. Failing to do so can invalidate the lawsuit or result in penalties.

10. Statute of limitations: There is a time limit (set by law) within which a lawsuit to collect a debt must be filed. If the lawsuit is filed after this period, it can be dismissed. The New York statute of limitations on debt is three years. This means that a creditor or debt collector only has three years from the date you defaulted on the debt to sue.

11. This debt has been discharged in bankruptcy: When a debt is discharged in bankruptcy, it means the court has eliminated your legal obligation to pay it. Trying to collect a discharged debt is illegal.

12. The collateral (property) was not sold at a commercially reasonable price: A deficiency case in consumer debt occurs when a lender sues a borrower to collect the remaining balance owed after a repossession or foreclosure. For example, if you have a car break down and the auto loan lender repossesses the car, sells it, credits the sale to what you owe and sues you for the rest, then that is a deficiency case.

If that property (such as the repossessed car or foreclosed home) is sold to cover what is owed, it must be sold at a fair market price. Defendants who have a deficiency case usually check this box to make the plaintiff (the lender) prove that the sale was conducted fairly and at a reasonable price.

13. Failure to give proper notice before selling collateral (property): The creditor must provide notice to you before selling any property used as collateral for the debt. Without proper notice, the sale may be invalid. The complaint should include a copy of the notice or notices as exhibits. Defendants usually check this box if the complaint did not include any copies of the notice.

14. Failure to mitigate damages: The plaintiff must try to minimize their losses. If they did not take reasonable steps to reduce the amount owed, you might not be responsible for the full amount claimed.

15. Unjust enrichment: This defense argues that the plaintiff is trying to collect more than what is fair, which would result in an unfair gain beyond the actual debt.

16. Violation of good faith and fair dealing: Every contract has an implied duty that both parties will act honestly and fairly. If the plaintiff violated this duty, the contract or debt may not be enforceable.

17. Unconscionability: If the contract terms are extremely unfair or oppressive, the court may find it unenforceable because it violates basic principles of fairness.

18. Laches: This defense argues that the plaintiff waited too long to file the lawsuit, causing harm or disadvantage to you. Courts may dismiss cases where delay has caused prejudice to the defendant.

19-a. Lack of personal jurisdiction (Outside NYC): The court may not have authority over you if you do not live, work, or have significant contacts in the city where the lawsuit was filed. You can check the top of the first page of the summons or complaint to see which court the case is filed in and whether it is the court where you live. This can help you determine if the court has the right to hear the case against you.

19-b. Lack of personal jurisdiction (Suffolk County): Similar to the previous point, this means the court does not have authority over you because of your residency or the location where the business transaction took place.

20. Defendant is in the military: If you are an active-duty service member, special protections under the Servicemembers Civil Relief Act (SCRA) may apply, such as postponing the lawsuit.

21. Other reasons: This is a space for any other defenses you may have that are not listed but are still legally relevant. For example, you can use the "wrong venue or jurisdiction" defense if the lawsuit was filed in a court where you don't live or work, or if the court doesn't have authority over you.

22. Please take note that my only source of income is _____, which is exempt from collection: Under New York State and Federal law, 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

23. Counterclaim: You are making a legal claim against the plaintiff, potentially to recover money or damages for harm you believe they have caused you.