



*Helping Older Persons with Legal &
Long-Term Care Problems*

Debtor's Rights

1. I Owe The Debt, But Can't Pay. What Should I Do?

It is best to deal with the problem before the company (the creditor) refers the debt to a collection agency. You should call the creditor to explain your situation. Even if you cannot pay anything, your honesty may prevent further actions where the creditor knows collection efforts are futile. It is important, however, to know your rights before talking to the creditor.

For instance, some consumers may incorrectly assume they legally owe the debt, but in fact may not. Among possible legal defenses to a debt are lack of jurisdiction, statute of limitations, payment, accord and satisfaction, discharge in bankruptcy, forgery, identity theft and the debt is your spouse's obligation but not yours. [\[1\]](#) [\[2\]](#)

2. What Are My Rights As A Debtor?

You have rights under the Federal Fair Debt Collection Practices Act (FDCPA) if a collection agency is collecting money owed to someone else, such as a credit card company. [\[3\]](#) The FDCPA does not apply if the creditor is collecting its own debt. [\[4\]](#) However, Ohio's Consumer Sales Practices Act (CSPA) does apply to the creditor and contains similar prohibitions. [\[5\]](#) Harassment by debt collectors is against the law, and prohibited by both the FDCPA and the CSPA. For instance, debt collectors must not:

- Communicate with your employer, relatives or friends about your debt unless the court has given the collector permission to do so. There are some exceptions to this rule, such as they can talk to your spouse. [\[6\]](#)
- Contact you at work if the collector should know that your employer prohibits personal calls, or contact you at inconvenient times or places. [\[7\]](#)
- Falsely represent the character, amount or legal status of a debt. [\[8\]](#)
- Threaten to take actions that are illegal or not intended.
- Threaten criminal action.
- Use obscene or profane language. [\[9\]](#)

If you receive a debt collection letter, read it carefully. If you believe the debt is not valid, notify the collector in writing within 30 days that you dispute the debt and request verification that the debt is valid. [\[10\]](#) Send all correspondence by certified mail, return receipt requested, and keep copies of everything you send and receive.

3. If I Receive A Call From A Bill Collector, What Should I Do?

Understand that the debt collector's sole purpose is to do whatever it takes to get you to pay on your debt. They will prey upon your emotions of guilt, remorse, fear and anxiety to convince you to pay. It is possible to negotiate with collection agencies, but paying small monthly amounts by taking money needed for rent, food and utilities is not beneficial long term.

Frequently small payments merely pay the monthly interest being added to the debt, but do not reduce the amount owed. Before you agree to make any payments, determine what you have in income and assets that are vulnerable to collection. If you have nothing that the creditor can take from you, it may be best to save your money for rent, food, utilities and other necessities.

The FDCPA gives you the right to tell the collection agency not to contact you any further, but your demand must be in writing. [\[11\]](#) Call Pro Seniors Legal Hotline for a form letter and advice. Getting an unlisted phone number will help stop calls from debt collectors. Be very cautious about companies that claim they can repair your credit. Often they want you to pay them a lot of money for little or no results.

4. If I Don't Pay Them Anything, Will They Sue Me?

If phone calls and letters do not result in payments, the creditor must decide if it wants to sue you on the debt. Some creditors will not pay the court costs and attorney fees to sue if there is no possibility of collecting on the court judgment. If you have neither income nor assets that the creditor can take, then telling the creditor that you are uncollectible may prevent it from suing. Be aware that no one can garnish your wages or bank accounts or put liens on your home without first suing you in court, winning the lawsuit and obtaining a judgment against you.

A judgment is the court's finding that you owe the debt to the creditor. If the creditor does sue you on the debt, you will get a court summons and a copy of the lawsuit. If this happens, it is best to speak with an attorney or call Pro Seniors Legal Hotline for advice.

If the creditor wins the suit and gets a judgment against you, it can then attempt to collect on the judgment by taking any non-exempt accounts, income and assets you own to satisfy the judgment. [\[12\]](#)

5. Can The Creditor Take Some Of My Income?

Whether the creditor can take any of your income depends on the source of your income. The following income cannot be garnished by the creditor: Social Security, SSI, VA, workers' compensation, unemployment insurance, pension, railroad retirement and other public retirement benefits. [\[13\]](#) Additionally, private retirement accounts such as IRAs, 401(k)s, annuity and Keogh plans are also exempt from garnishment as long as they are necessary to support you and your dependents. [\[14\]](#)

If you work, the creditor can garnish some of your wages if your weekly take home pay is more than 30 times the current federal minimum wage of \$7.25 or if paid semi-monthly, more than 65 times \$7.25. [\[15\]](#) If your weekly take-home pay is more than \$217.50 then the court will order 25% of your take-home pay or the amount of your pay that exceeds \$217.50, whichever is less, be paid to the creditor. [\[16\]](#) Once started, a wage garnishment will continue until the debt is paid or you no longer work for that employer.

6. Are My Bank Accounts Safe From Garnishment?

Non-exempt funds can be garnished, but Ohio law provides that funds in your bank accounts that came from exempt income sources listed above remain exempt. [\[17\]](#) For example, Social Security income that is deposited into your checking account retains its status as Social Security income and therefore cannot be garnished. It does not matter how much or how long the money has been in the account. Nor does it matter if there are other non-exempt funds in the same account. Use the first-in first-out rule to trace the source of the funds in the account. However, if you have invested your Social Security income in a certificate of deposit, it loses its Social Security status and can be garnished. [\[18\]](#)

If a creditor garnishes your bank account, you have five business days from the date you receive the court notice to request a hearing to prove the funds in the account are exempt. [\[19\]](#) When you attend the hearing, take the following to prove the exempt nature of the account deposits:

- (a) Proof of your income such as Social Security and pension;
- (b) three months of bank statements; and
- (c) a printout from the bank showing all deposits up to the date of garnishment.

When the court is satisfied the funds are exempt, it will dismiss the garnishment. Ohio law also protects from garnishment the first \$475 in your account regardless of its source. [\[23\]](#)

In addition, if you receive Federal benefit payments, such as Social Security, SSI, Veterans, Railroad Retirement or Federal Government employee retirement benefits, a federal rule protects from garnishment the total amount of all exempt Federal benefits directly deposited into your account in the previous two months or the account balance on the day the bank receives the garnishment order, whichever is less. [\[20\]](#) [\[21\]](#)

7. What About My House, Car And Personal Property?

After judgment, the creditor can have the clerk of courts place a judgment lien on any real estate you own. However, your residence is exempt from a forced sale to satisfy a judgment lien for health care services or supplies. Furthermore, \$136,925 of each owner's interest in a residence is exempt from execution, as is \$3,775 in the value of one car, \$600 of individual household items and \$12,625 in all household items. [\[22\]](#) [\[23\]](#)

8. Should I File Bankruptcy?

Bankruptcy is appropriate when you have some assets or income to protect, such as when you are subject to a continuing wage garnishment. However, attorney fees and court costs make bankruptcy expensive to file. Plus, bankruptcy is unnecessary for those whose income is exempt and may not be a good choice for others who have non-exempt equity in their home. [\[24\]](#)

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Pro Seniors' Legal Hotline for Older Ohioans provides free legal information and advice by toll-free telephone to all residents of Ohio age 60 or older. If you have a concern that cannot be resolved over the phone, then the hotline will try to match you with an attorney who will handle your problem at a fee you can afford.

In southwest Ohio, Pro Seniors' staff attorneys and long-term care ombudsmen handle matters that private attorneys do not, such as nursing facility, adult care facility, home care, Medicare, Medicaid, Social Security, protective services, insurance and landlord/tenant problems.

This pamphlet provides general information and not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Hotline or consult an attorney in elder law.

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Endnotes: *[Click the endnote number "[1]" to return to the text]*

- [1] [O.R.C. § 2305.06](#) Statute of Limitations for contract in writing – 8 years
[O.R.C. § 2305.07](#) Statute of Limitations for contract not in writing – 6 years

The specific facts will determine which statute of limitations will apply. The statute begins to run from the date of the last credit card charge or payment.

- [2] [O.R.C. § 1303.40](#) – Accord and satisfaction by use of instrument - UCC 3-311.
- [3] [15 U.S.C. §§ 1692-1692p](#) – Fair Debt Collection Practices Act
- [4] [15 U.S.C. § 1692a\(6\)](#) – Definition of “debt collector”
- [5] [O.R.C. § 1345.01-13](#) – Ohio Consumer Sales Practices Act
- [6] [U.S.C. § 1692c\(b\)](#) – Communication in connection with debt collection – communication with third parties
- [7] [15 U.S.C. § 1692c\(a\)](#) – Communication in connection with debt collection – communication with consumer generally
- [8] [15 U.S.C. § 1692e](#) – False or misleading representations
- [9] [15 U.S.C. § 1692d](#) – Harassment or Abuse
- [10] [15 U.S.C. § 1692g](#) – Validation of debts
- [11] [15 U.S.C. § 1692c\(c\)](#) – Ceasing communication

I am writing to request that you stop contacting me about account number _____ with [name of creditor] as required by the Fair Debt Collection Practices Act 15 U.S.C. section 1692c(c).

- [12] [O.R.C. § 2716.11](#) – Commencement of proceeding for garnishment of property
[O.R.C. § 2329.66](#) – Exempted Interests and rights

[13] [O.R.C. § 2716.13\(C\)\(1\)\(a\)](#) – Scheduling of hearing; notice to garnishee and judgment debtor; request for hearing

[14] [O.R.C. § 2329.66\(A\)\(10\)](#) – Pension and retirements accounts exempt from garnishment

[15] [O.R.C. § 2329.66\(A\)\(13\)](#) – Wages exempt from garnishment
Note: \$217.50 = 30 x \$7.25 (Fed. Minimum wage)

[16] [O.R.C. § 2716.03](#) – Commencement of [wage garnishment] proceeding; exemption for debts subject to debt scheduling agreement

[O.R.C. 2716.07](#) – Garnishee's payments on continuous [wage garnishment] order; interim report and answer [the employer's form]

See also, [The Employer's Guide to Processing Continuous Orders of Garnishment](#), developed by the Ohio Judicial Conference, 1/2015

[17] [Daugherty v. Central Trust Co., 28 Ohio St. 3d 441](#) – Personal earnings which are exempted by [O.R.C. 2329.66](#) from execution, garnishment, attachment or sale by judgment creditors retain their statutory exemption when deposited in a bank checking account.

“[I]f the exempt monies have been commingled with nonexempt monies, exempt monies [must be traced] to establish their existence and identity as of the time of garnishment. In *Bethesda Hospital v. Wolf*, [1979 WL 208644 (Ohio Ct. App. 1st Dist. Hamilton County 1979)] the First District Court of Appeals used a first-in, first-out (FIFO) approach to trace such funds. There seems to be a growing trend [at least in Ohio Bankruptcy courts] to use the “Lowest Intermediate Balance Test” (LIBT), however.” Oh. Consumer L. § 20:15.

“[U]nder the LIBT, a debtor's expenses are first attributed to nonexempt funds, with any exempt funds held in a type of reserve. However, if the debtor's withdrawals cause the account to drop below the amount of exempt funds, the lowest balance the account reaches becomes the new exempt balance, even if the debtor deposits additional funds.” *In re Karn*, 72 Collier Bankr. Cas. 2d (MB) 48, 114 A.F.T.R.2d 2014-5790, 2014 WL 3844829, *9 (Bankr. N.D. Ohio 2014).

[18] “Additionally, we note that appellee's funds on deposit in her checking account retain their exemption because they meet the test set forth in *Porter v. Aetna Cas. & Sur. Co.* (1962), 370 U.S. 159, 162. Appellee's funds were “readily available as needed for support and maintenance,” retained their quality as monies and were not converted into a permanent investment.” [Daugherty v. Central Trust Co., 28 Ohio St. 3d 441 at fnnt 3.](#)

[19] [O.R.C. § 2716.13](#) – Scheduling of hearing; notice to garnishee and judgment debtor; request for hearing

[20] [31 C.F.R. 212.3](#) – Definition of “lookback period”

[21] [O.R.C. § 2716.13](#) – Scheduling of hearing; notice to garnishee and judgment debtor; request for hearing

[22] [O.R.C. § 2329.66](#) – Exempted interests and rights

[23] [Adjusted Exemptions from Execution, Garnishment, Attachment, or Sale](#), The Ohio Judicial Conference, March 14, 2016, to be used to satisfy a judgment or order under RC 2329.66 from April 1, 2016 through March 31, 2019

[24] [Bankruptcy Court Fee Schedule](#)