



PHONE:

(603) 271-3641

EMAIL:

DOJ-CPB@doj.nh.gov

ONLINE COMPLAINT FORM:

<https://www.doj.nh.gov/consumer/complaints/index.htm>

DEBT COLLECTION: WHAT ARE YOUR RIGHTS AND WHERE CAN YOU TURN FOR HELP?

This special edition of NH Consumer Insight is the result of a collaboration between the New Hampshire Department of Justice and 603 Legal Aid. The article is intended to highlight how both agencies can help consumers who are having trouble with a creditor or debt collector.

At this time of year, many people find themselves with large credit card bills following a busy and expensive holiday season. Due to the increased expense of paying these bills, it is easy to fall behind on these and other bill payments. Failure to pay bills or other debts on time can lead to your debt being transferred to a debt collector. Once your debt is transferred to a debt collector, you may be subject to harassing calls, letters, and even lawsuits over your unpaid debt. This article will provide you with the information you need to know your rights when you are being pursued by a creditor or debt collector and where you can turn for help if you can't navigate the situation on your own.

If you have experienced or are experiencing any unfair, deceptive, or unreasonable practices by a debt collector, you are encouraged to contact the Consumer Protection and Antitrust Bureau at (603) 271-3641 or DOJ-CPB@doj.nh.gov. You may also file a Consumer Complaint by following the instructions here: <https://www.doj.nh.gov/consumer/complaints/index.htm>.

Low-income individuals in need of legal assistance may contact 603 Legal Aid by applying online at <https://www.603legalaid.org/apply> or by calling (603) 224-3333. If you are not low income, call Lawyer Referral Service (LRS) at (603) 229-0002 to obtain the name of an attorney (there may be a nominal fee for the referral made by LRS).

WHAT IS A CREDITOR AND WHAT KINDS OF DEBT ARE THERE?

A creditor is any person or organization to whom you owe money, which has a finance charge added to the unpaid balance or is scheduled to be repaid in installments. Any money you owe a creditor is a debt, and there are two kinds: "secured debt" and "unsecured debt."

- Secured debt means the creditor has interest in property, like your home or your car, to guarantee payment of the debt. If you do not make your payments, the creditor can take back (foreclose on or repossess) the property used to guarantee the debt. Mortgages and car loans are the most common types of secured debt, and, along with other basic necessities like food and utilities, it is essential that you pay those bills first because your house or your car can be taken away if you do not pay.

- Unsecured debt is debt which is not secured by property. Personal loans, medical bills, and credit cards are typical unsecured debts. Creditors must sue you and obtain a court order before they can collect an unsecured debt. These creditors know this and will likely try the hardest to collect the debt without having to resort to the time and expense of filing a lawsuit. If you do not pay your bills, the creditor may hire debt collectors, like collection agencies or attorneys, to contact you about repaying your debt.

WHAT CAN YOU DO WHEN YOUR DEBT IS TRANSFERRED TO A DEBT COLLECTOR?

Within 30 days of receipt of a notice from a debt collector about a debt, you may write a letter requesting proof of the debt if you disagree with the amount (including the total balance, interest charges, or late charges). The debt collector must stop all contact until you receive written proof of the debt. If the debt collector cannot provide written proof, he or she cannot contact you again. Keep a copy of all letters you send and receive about the debt. If you do receive written proof of the debt and you disagree with the amount, you should write a letter telling the debt collector that you dispute the amount.

Debt collectors are limited by law as to how and when they may communicate with you to collect overdue bills. When a debt collector calls, always write down the person's first and last name, and the name of the company he or she represents. Also write down the date and time called and notes about what the person said.

You do not have to talk to debt collectors. If they use language that offends you, accuse you of fraud, or otherwise insult or pressure you, hang up. A creditor or debt collector cannot send you to jail or take your children away from you.

Debt collectors may call your family or friends as a third-party source but are limited as to what they may say. They may call to confirm your address or contact information, but they must identify themselves. They may not talk to anyone except you about the repayment of the debt. If you're being represented by an attorney, debt collectors must contact your attorney directly. Debt collectors may not call you at work if you tell them not to call you there. If you tell a debt collector not to call you at work, follow up with a letter. Remember to keep a copy for yourself. Debt collectors calling you at work must abide by the following rules:

- Debt collectors may call you at work only if they cannot reach you at home.
- Debt collectors may not call you more than once a month at work without your written permission.
- If debt collectors leave messages for you at work, they must indicate their name and the name of the company they represent.
- Unless specifically asked by your employer, debt collectors may not indicate that the call is about an unpaid debt.

Under federal law, if you send a letter to a debt collector requesting that all letters and telephone contact be stopped, the debt collector must comply with your request. This is called a "cease letter." Make two copies of the letter. Send the original by first class mail. If you can afford the added expense, mail one copy by certified mail return receipt requested. When you receive the return receipt, staple it to your copy of the letter. Be sure to keep one copy for yourself. After you write a cease letter, the debt collector must stop all contact. The creditor then must decide whether to sue you in court to collect the debt. Debt collectors who contact you after you have sent a cease letter are breaking the law. It is important to keep a record of all contact including the time called, the caller's full name, who he or she represents, and what was said.

WHAT CAN YOU DO WHEN A DEBT COLLECTOR IS PRESSURING YOU TO REPAY A DEBT?

Debt collectors may repeatedly call you and send you letters in an effort to get you to repay your debt. While debt collection is a lawful profession, you have the right to be free from debt collection practices that have been deemed as unfair, deceptive, or unreasonable. In New Hampshire, RSA 358-C:3 provides a comprehensive list of practices that are prohibited for *anyone* who is attempting to collect a debt. Those acts include the following:

- Harassing you by repeatedly or continuously calling
- Using profane language in an attempt to abuse you
- Calling or writing to you at your place of employment under certain circumstances
- Threatening use of force or violence
- Contacting you by phone or letter and failing to identify themselves or the person for whom they are attempting to collect the debt
- Making any materially false representation or implication about the debt

You may also be contacted by companies who offer to settle your debt for less than the amount that is due or may offer to assist you in resolving your debt for a fee. Be very cautious when engaging with a company that is offering to assist you with your debt collection issues for a fee. While there are legitimate debt relief companies, there are also numerous fraudulent companies that may be looking to take advantage of you when you are vulnerable.

Do not allow yourself to be bullied or harassed by debt collectors. If you feel that a debt collector may be using unlawful tactics to get you to pay your debt, you should file a complaint with the Consumer Protection and Antitrust Bureau and report the conduct. Consumer complaints can be filed by visiting the following link

[Consumer Complaints | New Hampshire Department of Justice](#)

WHAT CAN YOU DO IF YOU ARE SUED BY A CREDITOR?

Never ignore a lawsuit! Do not ignore mail received from a court, and make sure you respond to the lawsuit or contact an attorney before the "return date," which is the deadline for answering a lawsuit.

In New Hampshire, you may be sued in Superior Court or Circuit Court, District Division. If you are being sued for \$10,000 or less, the creditor may commence a small claims action against you in Circuit Court. Small claims actions are less formal than other lawsuits in Superior Court or Circuit Court.

When you respond to a lawsuit, you may challenge the amount of the debt the creditor claims you owe, whether the creditor actually owns the debt, or the amount of attorney's fees requested by the creditor. If you ignore the lawsuit, you will lose any rights you may have to challenge the debt.

If the judge decides that you owe the debt, this is called a judgment. If a judgment is entered against you, you will likely receive a notice to appear at a periodic payment hearing to set up a reasonable repayment plan. At the hearing, you will have a chance to show that you are unable to pay the debt by filling out a statement of assets and liabilities. You must go to the periodic payment hearing to keep this right. If you do not attend the periodic payment hearing, the court could issue a warrant for your arrest.

BE AWARE THAT SOME OF YOUR INCOME MAY BE EXEMPT FROM COLLECTION

Certain income is protected or “exempt” by state and federal law, and it cannot be taken by creditors through a lawsuit. For example, you cannot be forced to use Social Security, welfare benefits, veterans’ benefits, or certain portions of your pension, unemployment benefits, or workers compensation to pay your debts. If your only income comes from these sources, mention it in your cease letter to the debt collector. You can also write a separate letter indicating that your only income comes from “exempt” sources. In addition, certain amounts of your home, your vehicle, and household items cannot be taken by creditors after a lawsuit. If you have questions about whether your income is exempt from collection, you may wish to consult with a private attorney who can help you understand and protect your rights.