

Negotiating With Creditors

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This NebGuide discusses what you can do when you get behind in paying your bills.

Many people get behind on bills at least once during their lifetime. One of the following situations might sound familiar:

- Bills are past due because of job loss, large medical bills or some other unexpected event.
- Promises made to creditors can't be kept, checks bounced and threats of a lawsuit or turning the account over to a collection agency were received.
- Income isn't enough to pay *all* bills.

Who to Pay First

The first thing to do when bills are past due is to be sure basic needs such as food, rent and utilities are met. Child support payments are another top priority. If income has dropped a lot, think about asking the court to change the amount of child support. However, don't ignore any support order. Once a month's payment becomes due, no judge can reduce it.

To pay other bills, consider which ones are the longest overdue and whose services might be needed again the soonest. Another clue to which bills could wait is this question's answer: who is likely to be patient? But even patient creditors need to be paid eventually.

To develop a debt repayment plan, the Web site www.paydowndebt.unl.edu might help.

Keep in Contact

Once behind on a bill, contact the creditor and attempt to negotiate a new repayment plan. Whether creditors work with the consumer depends on whether they believe the new agreement will be honored. An important step in convincing them is to remain in contact with creditors. Don't refuse to answer the telephone or ignore letters. When a payment is long overdue without any communication from the consumer, creditors become worried they will never be paid. Be honest and open with creditors. Explain the situation. Contact them as soon as possible and always before they call. Answer their questions quickly.

Early communication with creditors may avoid the need to deal with a collection agency. Once an account is turned over for collection, the original creditor loses control over what would be an acceptable payment plan so any good relation-

ship from past personal contact with the original creditor is lost. Collection agencies usually are more aggressive and less willing to compromise. Since they frequently bring lawsuits against consumers to collect debts and are more familiar with the legal system, they may be more willing to go to court than the original creditor. A better negotiating position usually is possible with the original creditor. Don't wait until the debt is turned over for collection.

Letter Is Better

Should negotiation with creditors be in person, by phone or by letter? Going to see the creditor in person is probably the least favorable to the debtor, with phone contact second. While something can be said for the value of the good faith shown by a personal contact, there are some real drawbacks. The consumer might forget an important point, choice of words may not be the best, and questions must be answered on the spot, with no time to think about the advantages, disadvantages and alternatives.

When dealing with a collection agency, in-person negotiations should be avoided. Collection agency personnel frequently are very aggressive and demanding. Their manner, either in person or on the phone, may make a person afraid or nervous. But the force of their personality is greatly reduced in a letter. Although the letter may threaten a lawsuit or repossession of property, threats are made easier in person or over the phone. Another advantage of a letter is that an answer is not required immediately, giving the consumer time to think about whether the collection agency is able or likely to carry out any threat.

Seek advice from an attorney or free legal services for people with limited resources before answering any letter received from a creditor or collection agency. Always keep a copy of the promises and concessions. Make copies of any letters sent to creditors or collection agencies, as well as keeping their replies. Keep detailed notes about any conversations.

Consumers have certain rights under the Fair Debt Collection Practices Act when it comes to dealings with debt collectors. Collectors are prohibited from:

- Making any false statements, such as implying:
 1. They are attorneys or work for a credit bureau or the government when they do not.
 2. The consumer will be arrested when they will not be.
 3. Property or wages will be seized, garnished or attached.

4. Property will be sold unless they intend to do so and it is legal to do so.
- Engaging in unfair practices such as
 1. Making the consumer accept collect calls
 2. Depositing a post-dated check prematurely
 3. Publishing a list of people who have not paid their debts
 - Using threats of violence or harm or profane and obscene language
 - Misrepresenting the amount of the debt
 - Giving false information to anyone including a credit bureau
 - Using a false name
 - Contacting a consumer at inconvenient times (before 8 a.m. or after 9 p.m.)
 - Contacting consumers at work if employers disapprove
 - Telling anyone not responsible for the debt that someone is past due on a debt

This law applies to any personal, family or household debt and covers debt collectors who regularly collect debts for others, but not creditors themselves or their lawyers.

To learn more about this law or to complain about collectors other than banks and other financial institutions, go the Federal Trade Commission Web site at <http://www.ftc.gov>.

Be Polite

Although a creditor may be rude, offensive or threatening, it never helps to respond in the same manner. The creditor may use rude behavior intentionally trying to provoke someone into saying something that will be regretted later. When interacting with creditors, always try to keep cool.

Be Specific

Never tell a creditor, "I'll pay you what I can." Even with the best of intentions, such words promise the creditor nothing. Creditors would rather know they will get something rather than nothing. Most would rather be *guaranteed* a smaller sum than be promised the *possibility* of a larger amount.

Be Practical

Don't promise a payment that can't be afforded. The creditor typically tries to get the consumer to pay as much as possible, but failure to make the agreed-on payment greatly harms any future chances to renegotiate. Figure out what really is affordable to pay *every* month, and promise the creditor only that amount.

Make a List

Make a list of income and expenses including each creditor and list how much will be paid. Creditors are likely to feel they are getting a square deal by showing them what is being paid to all creditors. Avoid showing favoritism for one creditor over another. This doesn't mean every creditor must receive the same monthly amount. It's reasonable to make larger payments for larger debts.

Monthly vs. Weekly Payments

While creditors would rather get some payment rather than nothing, there comes a point when the cost of processing multiple payments (including secretarial time, copying, postage, stationery, etc.) outweighs the benefit received. Most creditors would rather have one monthly payment than several weekly ones.

Formality Not Needed

A written repayment agreement doesn't have to be prepared by a lawyer. There are no "magic words" that make an agreement an enforceable contract. All that needs to be written down is what each party agrees to do including names and addresses of the creditor and the debtor, how much is currently owed, and how much will be paid, how often, and for how long. Make clear what the creditor will (or won't) do in return for the payments, or what will happen if the payments aren't made as promised. Both the creditor and the consumer should sign the agreement.

Offer Services

If a decent-sized payment is not possible and the creditor is local, consider offering services instead of money. A debt can be paid off by whatever means agreed to by the creditor. Cleaning the house or office, washing car(s), making minor repairs, painting, music lessons, meals, babysitting, and mowing the lawn are examples of services needed by most people including creditors. If the consumer can perform needed services saving creditors out-of-pocket expenses, they may accept services as a way to pay debts. Even if the offer of services is not accepted, it shows good faith and intent on the part of the consumer to pay the debt. Be sure to specify in the written agreement what the dollar value of services will be. Keep detailed records of services provided. Such written proof shows the debt is being reduced if the debt is turned over to a collection agency at a later date.

Voluntary Wage Assignment

A voluntary wage assignment is a written contract where the consumer agrees that a certain amount will be deducted from every paycheck to pay a creditor. Talk to the employer first to see if this arrangement is acceptable. Some employers refuse to handle voluntary wage assignments because doing so complicates their payroll procedure and costs them time and money. If acceptable to the employer, voluntary wage assignment is usually better than a garnishment. Many employers consider voluntary assignment as a sign the employee is taking responsibility for meeting obligations rather than being forced to pay debts. However, some employers do find reasons to suspend or fire employees if their wages are garnished or voluntarily assigned.

Penalty Clause

A creditor may be more willing to negotiate repayment of past due bill if a penalty clause is included in the agreement. The penalty clause states that if the consumer fails to make any payment, the creditor will be owed an *additional* amount of

money besides the original debt. The penalty should be sizable to serve as a real incentive for keeping payments current. A penalty clause also demonstrates an honest intent to pay.

Even with its positive aspects, a penalty clause can be dangerous for a consumer. The due date for a negotiated payment is inflexible. If a payment is one day late, the creditor can collect the penalty. Consider writing some flexibility into the agreement such as a “grace” period beyond the due date, excluding “acts of God” (tornado or fire leveling a home, etc.), or other unforeseeable circumstances beyond the control of the consumer.

Will Creditors Sue?

Although creditors don’t have to take smaller, negotiated debt payments, many will because of the costs required to sue someone in court. These costs include court filing fees, a lawyer’s fee, the sheriff’s fee, possibly a collection agency fee plus hours of the creditor’s time.

Even though creditors may get judgments against a consumer, they may not be able to collect if someone doesn’t own a home, is unemployed, doesn’t have money in the bank, or possessions aren’t worth much. Remember the days of “debtors’ prison” are gone. Someone can’t be put in jail for inability to pay debts. Even after getting a court judgment, the creditor can only collect by going after wages and bank accounts (garnishment) or by taking property (execution). In either case, creditors can’t take everything. Laws set limits on the amount of the property and wages which creditors can take. Contact an attorney or legal services for current limit amounts and to determine how a specific situation would be treated under current law.

Debt Consolidation Loans

Small loan companies may encourage people to borrow money to consolidate their bills if payments are late or missed. With a bill consolidation, the loan company pays off all individual bills owed. But the new consolidation loan probably will cost more money because of a higher interest rate than original debts, and because of the longer time involved to repay the new loan. Collateral such as household goods, a vehicle or a house is usually necessary as security for debt consolidation. Consumers who take on consolidation loans risk losing any items used as collateral. Think long and hard before taking on this kind of loan.

Consumer Credit Counseling Services

Sometimes consumers don’t feel they can negotiate with creditors or collection agencies by themselves. Legitimate credit counseling services are available to help consumers negotiate with creditors. The best known is Consumer Credit Counseling Services (CCCS), a nonprofit agency. CCCS

usually meets with clients in person initially, but may handle further meetings by telephone to save travel expenses.

Legal Services and CCCS Contact Information

Legal services for people with limited resources are available from:

Legal Aid of Nebraska at 1-877-250-2016 or call or visit one of the following offices.

Bancroft Office
415 Main Street
Bancroft NE 68004
(402) 648-3457

Grand Island Office
207 West Third Street
Grand Island NE 68802-1078
(308) 381-0517

Lincoln Office
941 O
Lincoln NE 68508
(402) 435-2161

Norfolk Office
214 North 7th Street
Norfolk NE 68701
(402) 644-4761

North Platte Office
102 East 3rd Street
North Platte NE 69101
(308) 532-5793

Omaha Office
1904 Farnam Street
Omaha NE 68102-1969
(402) 348-1069

Scottsbluff Office
1423 1st Street
Scottsbluff NE 69363-1365
(308) 632-4734

Legal help also may be available by calling the Nebraska Bar Association’s Volunteer Lawyer Project at (402) 475-7091.

Low-cost financial counseling is available for everyone at CCCS located in the cities below. Find additional offices at <http://www.debtadvice.org/takethefirststep/locator>.

Nebraska
Beatrice
Bellevue
Grand Island
Lincoln
Norfolk
North Platte
Omaha
Scottsbluff

South Dakota
Rapid City
Vermillion
Yankton

Colorado
Sterling

Resources Used:

Federal Trade Commission at <http://www.ftc.gov/bcp/online/pubs/credit/fdc.shtm> Retrieved Aug. 13, 2007.

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Index: Financial Management Credit and Debt

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