

Unpaid Consumer Bills

Dealing with Unpaid Bills

Collection Agencies

Collection of Judgments

Considering Bankruptcy



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This booklet gives information about consumer debts -- debts for personal and household items and services for individuals and families. There are separate rules that apply to other kinds of debts such as business debts, child support obligations, unpaid taxes, school loans, and unpaid mortgages on houses and land. The information in this booklet applies **only to consumer debts.**

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IMPORTANT! This booklet is for general educational use only. *It is not a substitute for the advice of an attorney.* If you have a specific legal question, you should contact an attorney. The information in this booklet is accurate as of July, 2008. Please remember that the law is always changing through the actions of the courts, the legislature and agencies.

WHEN YOU HAVE UNPAID CONSUMER BILLS

When you do not pay your bills on time or are not able to do so, the creditor (the person who is owed money) can do several things to try to collect an unpaid bill. There are also things that the creditor **cannot** do to get payment. This booklet gives information about the laws that apply when people have unpaid consumer bills. (When we talk about consumer debts we mean only debts for personal and household items and services for you and your family).

What can you do if you believe that you do not owe the bill?

If you disagree with the amount the creditor says you owe, you should contact the creditor. Send copies of receipts, cancelled checks, and other proof of what you really owe. Keep copies of everything you mail. Writing "paid in full" on your check usually will **not** take care of the problem. If the creditor is a collection agency, see page 2 of this booklet.

If you find out that the item you purchased is different from what you thought (for example, the item was used when you were told it was new), contact a law office for information about your responsibility for the bill. (Other defenses are listed on page 6 of this booklet.)

If you are getting bills that you feel your spouse or former spouse should pay, contact a law office for information about your responsibility for the bill.

What can you do if you can't pay your bills?

If you know that your payment on your bill will be late, you should call or write the creditor and explain why. Creditors are sometimes more understanding if you let them know about your situation. But there is no law that says that creditors **have** to be understanding. When you purchase something and agree to pay a certain amount of money each month, the creditor does not have to let you make late payments or smaller payments later.

What can you do if you can't pay your medical bills?

Check to see if you have health insurance that covers the medical cost. If you do, be sure to submit the

bills to your insurance company. Ask the hospital or clinic for any special programs or "charity care" they have for low-income patients. Try to get a copy of any application you fill out for charity care or other type of program.

If you are on welfare or Medicaid, you should tell this to the hospital or clinic when you get medical care. You should not be billed for the medical costs; a doctor or hospital cannot try to collect medical bills that are, or should be, paid by Medicaid. If you do not tell them that you are on welfare, you may still have the bill paid through Medicaid. You have to let welfare know about the bill within one year of getting the medical treatment.

If you have a divorce decree that orders your former spouse to pay medical bills for your children, you should try to have the hospital or doctor send the bill to your former spouse.

Hospitals and doctors sometimes charge interest on late bills. If you have a written agreement that you signed, they can charge the amount of interest that is stated in the agreement. Without a written agreement, you can only be charged a 9% interest rate on the late bill.

If you owe money to a hospital operated by the state, such as Oregon Health Sciences University Hospital, the state may keep your state tax and renter's refunds to pay the bill if you don't pay according to your agreement with them.

Do creditors ever agree to take smaller payments?

In most cases creditors do **not** have to accept smaller payments or late payments even if you have a very good reason for not paying or even if you need only a little time to catch up on your bills. Usually, creditors can require you to make the payments that you agreed to when you made the purchase. (If your loan is insured by FmHA, HUD, the VA, or is a government insured student loan, special rules may apply.)

Sometimes creditors will arrange a special payment

plan that has smaller monthly payments. Before you agree to a new payment plan, make sure you can afford to make the payments. Any payment plan you have with the creditor should be in writing. The written plan should say that the creditor will not file a lawsuit against you as long as you are making those payments. Before signing any written contract, make sure that you know about all the payments and costs you are agreeing to. If the creditor won't give you a written contract, send the creditor a letter that lists all the things you both agree to. Keep a copy of the letter.

Where can you get help to pay your bills?

A consumer credit counseling agency may be able to get your creditors to accept smaller monthly payments. Most of these agencies will only be able to help you if you have a regular income that pays enough so you will have some money to pay bills after you meet your basic needs.

But be sure to investigate before you sign up for services with a credit counseling or debt management agency. Some of these agencies charge expensive fees for their services even though they claim to be non-profits. People who have signed up for help from one of these agencies can end up owing even more money.

Before you sign up for credit counseling or a debt management plan, you should find out what services the agency will provide, whether the agency will charge you for its services and how much it will cost. Read all written agreements carefully before you sign them. Do not be afraid to ask questions before you sign. Do not sign the agreement if you are not satisfied with how the agency answered your questions.

Sometimes you can borrow money to pay off bills. But loans with high interest rates and high monthly payments may not help you get out of debt for very long.

Be especially careful of short cash loans like payday and car title loans. Both of these kinds of loans usually have very high interest rates. If you renew (“roll over”) a payday or car title loan, then the amount you owe will increase. It may be hard to pay off the bigger debt.

What will happen if you can't work things out with the creditor?

If you are not able to work out your dispute with the creditor or agree to a new payment plan, the creditor might turn your bill over to a **collection agency** (*see below*) in some cases **repossess** (take back) the item you purchased (*see page 4*); or **take you to court** (*see page 5 of this booklet*).

COLLECTION AGENCIES

When you stop making full payments on your bills, a creditor may turn your account over to a collection agency, a business that specializes in collecting unpaid bills. It is legal for a creditor to turn your bill over to a collection agency even if you've offered to make small payments on your bill and even if you've told the creditor that you would make full payment as soon as you could.

What can collection agencies do to try to get payment for a bill?

Collection agencies can send you letters and call you at home and ask you to pay the bill. But they must stop contacting you if you send a letter that either asks them to stop, or tells them that you will not pay the debt. If you send this type of letter, the collection agency can

contact you only one more time, and only to tell you either that they will stop contacting you or that they may take some kinds of legal actions. Always keep a copy of the letter that you send, and make a note as to the date, time, and location from which you send it.

Collection agencies can collect interest and late charges on the debt that is owed if there is a written agreement (contract) that allows this. If there is no contract, they can collect interest of up to 9 percent each year on the amount of the unpaid bill. They cannot charge you for their own collection costs, such as long distance phone bills.

There are some things that collection agencies **must do** when trying to collect a bill. There are also federal

and state laws that say that there are things collection agencies **cannot do** to collect a bill. See below.

What you can do if a collection agency is harassing you?

Write a letter to the collection agency and tell them to stop contacting you. Always keep a copy of the letter, and make a note as to the date, time, and location from which you sent it. If possible, it is a good idea to send your letter by certified mail. If the collection agency continues to call and write you or does other things they legally cannot do, keep a record of what happened, who you spoke with and what was said. Try to have someone listen in on phone conversations you have with the agency so you have a witness. Keep any

collection notices you receive in the envelopes in which they were mailed. Do not write on them.

You can sue the collector if they do anything illegal when trying to collect a bill. If you win your case, the collection agency will have to pay you money damages plus your lawyer's fees. Contact a lawyer if you think the creditor did anything unlawful when trying to collect the debt.

Original creditors are subject to Oregon law that, on a more limited basis, prohibits certain types of abusive conduct by creditors. Contact a lawyer for information.

What Collection Agencies Legally MUST Do

Identify themselves and say why they are calling within the first 30 seconds of the call.

Stop letters and phone calls if you send a letter that demands they stop contacting you or that says you will not pay the bill. (Send by certified mail and keep a copy.)

Within five days after they first contact you, send you written notice that says how much money you owe, to whom it is owed, and what rights you have if you don't think you owe on the bill.

Register with the state.

Contact your lawyer, not you, if you told the agency you have a lawyer.

Stop collection attempts until they give you a written verification of your debt if you dispute the debt in writing within 30 days of receiving the first notice.

What Collection Agencies Legally CANNOT Do

Threaten you with arrest for nonpayment. It is not a crime to have unpaid bills.

Threaten to use force or violence against you or your family.

Talk or even threaten to talk to your employer about your debts.

Tell other people about your debt.

Use vulgar language when talking to you or your family.

See or call you at work (unless unable to contact you at home or reach you by mail or some other way).

Try to collect money when they know or should know that the person they are contacting does not owe them money.

Send notices that look like court papers or other official papers but really are not.

Send collection notices by postcard or have "collection" appear on the envelope.

Call you at a time they know is inconvenient for you. Usually, this means they can't call you before 8:00 a.m. or after 9:00 p.m.

Threaten to take your property to pay off a debt without telling you a court hearing is first required (when a hearing is required).

Fail to do any of the things listed on the chart to the left.

REPOSSESSION

When you buy something on credit, usually you sign an agreement (contract) that lists the payment amounts and when to make the payments. Often this contract says that the creditor may repossess (take back) the item if you miss any of the payments or do something else which breaks the contract.

What the creditor must do for a repossession to be legal:

1) **Signed contract** — The creditor must have the legal right to repossess your property. This means that the creditor must have a written document that says that the creditor has the title to your property. If you signed a contract with the creditor, the contract will often say that the creditor has a “security interest” in certain property. The security interest must be in property that is described in the contract or document. Even though the creditor has a security interest in your property, you have the right to keep the property as long as you make the required payments in a timely manner.

2) **Advance notice** — The creditor does **not** have to, and usually won't, give you advance notice or take you to court before a repossession. But the creditor **can** go to court and get a court order that requires you to give up the property. See "Repossessions with a Court Order" in the next column on this page.

3) **Use of Force** — Creditors and their employees cannot themselves use force, even with a court order. If the creditor does use forceful actions in a repossession (such as entering your garage or house without permission if there is no court order, or driving or towing a car away with you inside even with a court order), you can sue to make the creditor pay you money damages.

4) **Items you own** — Any items that you own that are taken when something is repossessed should be returned to you. When a car is repossessed, you can keep any of your things that are in the car. If a creditor refuses to return your possessions after you contact them, you may be able to sue for damages.

Defenses to Repossession

Repossession is not allowed unless the creditor has a security interest in the property, **and** unless you have broken your contract. If an item is repossessed when there is no contract that allows this, you may be able to sue the creditor. You might also have a defense to a repossession if the creditor usually accepted late or partial payments from you, or if there is a disagreement over whether you owe payments. Contact a lawyer if you have questions about repossession.

Can a repossession be stopped?

If the creditor does not have a court order, you legally can stop a repossession attempt by refusing to let a creditor into your house. This will block repossessors from taking items such as furniture, appliances or a vehicle in your garage. You cannot stop repossession of a car parked outside your home simply by locking it. But the creditor cannot damage your other property, such as a gate, to get to your car. If you do refuse to allow repossession, the creditor can get a court order requiring you to give up the item they want.

Another possible way you can get out of a repossession problem is to sell the item on which you owe money before it is repossessed. You do not necessarily need the creditor's permission to sell the item. But, if you sell the item, you will have to pay the creditor the amount of your debt, since the creditor is still the legal owner of the item. If you do sell an item yourself, be sure you make enough money from the sale to pay off your debt.

Before making decisions about repossession, such as whether you should refuse a repossession attempt or sell an item yourself, you should get advice from a lawyer.

Repossessions with a Court Order

Creditors sometimes get a court order to carry out a repossession. With a court order, the creditor can get police officers or sheriff's deputies to help in repossessing an item. The creditor might also get a court order that makes you pay money penalties instead of returning the item.

You should obey any court order the creditor gets. If you do not, the court can "hold you in contempt," which could mean fines and/or jail time for you.

Sales of Repossessed Items

A repossessed item may be resold privately or at a public auction. Money from the sale is used to pay off the debt plus repossession and resale expenses. The law says you must receive any money that is left over.

You must be sent a written notice that gives the time and place of the sale. Any time before the sale, you can get the item back by paying off the entire debt (not just the missed payments) plus repossession charges. You may also make a purchase offer or bid when the item is sold. The time and place of the sale, as well as the price of the item, must be reasonable. If not, you can sue the

company. But repossessed items are sometimes sold for less than fair market value in auctions and resales. A low selling price alone is not the basis for a winning lawsuit.

Can you be sued after a repossessed item is sold?

Yes. If the creditor sells the repossessed item, the creditor will take the proceeds of the sale and apply them to the costs of repossession, the costs (if any) to repair any damage to the repossessed item, and the unpaid balance of your debt. If the sale of the property does not generate enough money to pay the unpaid balance of your debt in full, you are liable for the remaining balance. This balance is often called the *deficiency*. Of course, if there is money left over after the property is sold and your debt is paid in full, the creditor must return this surplus to you.

IF THE CREDITOR TAKES YOU TO COURT FOR UNPAID BILLS

If you owe money on unpaid bills, the creditor may sue you in court for the full amount you owe. You can be sued for an unpaid bill even if you offer to make small payments on your bill or even if you've told the creditor you would make full payments as soon as you could.

You will know that you are being sued, taken to court, when you are:

Served — court papers are delivered to you or to someone at your home. (In small claims court cases, you can be served by certified mail.)

The court papers you will receive are the:

Summons — a paper that says you are being sued in court and tells you how many days you have from the date you were served to respond (usually 30 days, or 14 days if you are sued in small claims court); and

Complaint — a written statement that says that the creditor believes you owe a specific amount of money. If you have a written contract with the creditor, the complaint may also say that you owe attorney's fees and court costs. The complaint may also say you owe interest on the amount of the unpaid bill.

The name of the county and court where the lawsuit is filed are written on the summons and complaint.

If the lawsuit was filed in small claims court, the summons and complaint is called a "claim and notice of claim."

To respond to the summons or notice of claim, you must file an:

Answer — a paper that you give to the court that gives your defenses to the complaint (for example, that you don't owe the money) or that includes your counterclaims against the creditor.

How do you file an answer?

In a small claims court case, along with the claim and notice of claim, you will be served with a form you can use to file an answer. The clerk at the courthouse will also have copies of this answer form.

The court normally charges a fee to file an answer. But if your income is below a certain level, you will either be allowed to file the papers without paying or be allowed to pay the fee later.

Contact a law office or go to OregonLawHelp.org (listed in the resources section) for more information on small claims court. If the case has been filed in a regular Circuit Court, and not in small claims court, you will probably need a lawyer to file an answer.

Defenses and Counterclaims

One defense in an unpaid bills case is that you do not owe any money on the unpaid bill. In a lawsuit for unpaid bills, it is **not** a defense that you can't afford to pay the debt.

Examples of defenses in unpaid bills cases:

- *You don't owe the creditor any money on the unpaid bill;*
- *In some cases, you were not 18 years old when you signed the agreement to buy the item;*
- *The creditor is suing you later than the time the law allows.*

In a counterclaim, you are saying that even though you owe money on an unpaid bill, the creditor owes you money because the creditor did something wrong. When you put a counterclaim in your answer, you are asking for money damages from the creditor that will reduce or cancel out the amount you owe on the unpaid bill.

Examples of counterclaims in unpaid bills cases:

- *The creditor or collection agency did something illegal in trying to collect the bill.*
- *When you made the purchase, the creditor told you something that was untrue about the item (for example, that it was new when it really was used).*
- *The creditor promised to provide a service (such as make a repair) and did a poor job.*

See an attorney if you have questions about whether you owe money on the unpaid bill or if you might have another defense or a counterclaim.

What happens if you file an answer?

If you file an answer, the court will set up a time for you and the creditor to go to court. The question the judge will ask in the case (unless you've filed a counterclaim) is whether or not you owe the money, not whether you can afford to pay the debt. Unless you can prove that you do not **owe** the money (or win because of another defense or a counter-claim), the creditor will win the case and get a **judgment**.

In a few cases, especially in small claims court, the judge might require the creditor to accept payments from you, but the judge is not required to do this.

What happens if you don't file an answer?

If you don't file an answer, the creditor will win automatically by default. The creditor will get a **judgment** for the amount of money the creditor asks for in the complaint. (If there is a judgment against you for a case involving an auto accident, you could lose your driver's license. You should see a lawyer.)

You will usually not be sent or handed any papers except the summons and complaint. But you can get a copy of the judgment from the county courthouse named on the court papers.

What is a Judgment?

A judgment in a case for unpaid bills is a judge's decision that says you owe a certain amount of money to the creditor. If you don't file an answer, or if you don't prove in court that you don't owe the money, the judgment will be for the amount of the unpaid bills, court costs, attorney's fees (in some cases) and interest on the unpaid bill.

The amount of the court costs and attorneys fees will be higher if you go to court and lose than it would be if you don't go to court. **If you agree that you owe the debt - even if you can't afford to pay it -it will probably be less expensive for you not to file an answer and go to court.**

But if the debt is an old one and you have not made payments recently, you might want to talk to a lawyer to see if this gives you a defense. Sometimes creditors try to sue for debts even though the time allowed by law to file the lawsuit has already passed. You usually need to do something to raise this defense before the 14 or 30-day deadline to file an answer. You should consult a lawyer before this deadline.

Also, you should be aware that when you make a payment on a debt, this restarts the period of time that the law allows for the creditor to file a lawsuit to collect that debt from you. So if you make a partial payment on an old debt, this may give the creditor more time under the law to sue you for the remaining balance.

COLLECTION OF JUDGMENTS

NOTE: There are different rules for collecting unpaid child support payments, taxes and business debts. This booklet and these collection rules apply only to consumer debts.

Once a creditor has a judgment against you for unpaid bills, the creditor can try to collect the judgment through garnishment of your wages or bank account or by taking your property through a sheriff's sale. But, in many cases, your wages, income, or property may be exempt from collection, which means that it cannot be taken from you.

Garnishments

Garnishment is a legal action that a creditor can use to make your employer pay part of your wages directly to the creditor. A bank account may also be garnished.

If you owe money for consumer goods or services, a creditor cannot garnish wages or bank accounts until the creditor goes to court and gets a judgment against you. (See "If The Creditor Takes You to Court" on page 5.)

It is not legal for wages or bank accounts to be garnished for unpaid consumer debts if there is no judgment against you. If your wages or bank accounts have been garnished in these situations without a judgment, you should contact a lawyer right away.

Once the creditor has a judgment against you, the creditor can get a "writ of garnishment" — an order that tells your employer or bank to garnish your wages or account. You are not given advance notice of the garnishment. A copy of the garnishment writ will be mailed to your last-known address after it has been given to your employer or bank.

Wages

The amount of money that may be taken out of your paycheck and sent to the creditor depends on the amount of your **disposable earnings**.

Disposable earnings is the amount of money that is left from your paycheck after all the deductions required

by law are taken out. The required deductions include federal and state income taxes, and social security, but not voluntary deductions such as payments to a credit union or for health insurance premiums. The amount of your disposable earnings includes only your wages and not other income or money that you have.

Some wages are **exempt**, which means they cannot be garnished:

If your disposable earnings are less than \$183 per week, your wages cannot be garnished. Starting on January 1, 2009, creditors will not be able to garnish your wages if your disposable earnings are less than \$196 per week.

If your disposable earnings are more than \$183 per week, creditors must leave you with 75 percent of your paycheck or \$183 per week, whichever is more. Starting on January 1, 2009, creditors will have to leave you with 75 percent of your paycheck or \$196, whichever is more.

Examples: (Note: these examples use the \$196 exemption amount that will apply starting January 1, 2009. The calculations are done in the same way for the \$183 exemption amount that applies through December 31, 2008.):

- 1) You have disposable earnings of \$200.00. 75% of \$200 is \$150. \$196.00 is larger than this, so you get to keep \$196, and the creditor gets the rest (\$4.00).
- 2) You have disposable earnings of \$300. 75% of \$300.00 is \$225.00. \$225.00 is larger than \$196.00, so you get to keep \$225.00, and the creditor gets the rest (\$75.00).

The garnishment papers your employer fills out should list your wages for one week only. If your employer lists your wages for a period of more than one week, the creditor might garnish more wages than the law allows.

If you are paid once every two weeks, then your

wages can be garnished only if you earn net wages each pay period of more than \$366. On January 1, 2009, this will change to \$392.

If you are paid twice each month, you can be garnished only if you earn net wages each pay period of more than \$394. On January 1, 2009, this will change to \$420.

If you are paid once each month, you cannot be garnished unless you earn net wages of more than \$786. On January 1, 2009, this will change to \$840.

If you earn more than these amounts, the creditor can garnish either 25% of your net wages, or the amount that your net wages exceeds the figures that are listed above - whichever is less.

Remember, a creditor cannot garnish your wages unless the creditor has a judgment against you.

If exempt wages are garnished, you will need to file a Challenge to Garnishment to get back the wages that should not have been taken. You should be sent Challenge to Garnishment papers when you are sent a copy of the writ of garnishment. See page 11.

It is against the law to fire you because your wages are garnished. If you think you were fired because of a garnishment, contact a lawyer.

Other Exempt Income

Some kinds of income are exempt, which means that they cannot be garnished at all by creditors for consumer debts. For example, welfare, unemployment, veterans benefits, Social Security, workers' compensation, pensions, and child support payments that you receive cannot be garnished for consumer debts. If a creditor tries to garnish these kinds of income, you must file a Challenge to Garnishment to protect your funds. See "How to File a Challenge to Garnishment" on page 11.

Bank Accounts

Exempt income (income that legally can't be taken from you) is still exempt when placed in a bank account, as long as the source of the income can be identified. If you have a bank account, you should not have exempt and non-exempt income in the same account.

If a creditor has a judgment against you and garnishes your bank account, checks you have already written may bounce. The bank can charge you handling fees on the returned checks. If you have only exempt income in your bank account, you might be able to stop the creditor from garnishing your bank account by writing to the creditor who has a judgment against you and explaining that all of the money in your bank account is from exempt income.

Taking Your Property (Sheriff's Sale)

Once a creditor has a judgment against you, he or she can take some of your personal possessions and have them sold by the sheriff to pay the judgment. But there are limits on what a creditor can do in collecting a judgment.

Property the Creditor Cannot Take

A creditor cannot take **exempt property**, property which the law says cannot be taken from you under any circumstances. See the chart on page 12.

A creditor cannot force the sale of your home to collect a **judgment which, at the time it was entered was \$3,000 or less**.

If exempt property is taken, you must file a Challenge to Garnishment with the court and ask the court to set a hearing to get it back. See page 11.

If your home and land are exempt, or if the judgment at the time it was entered was \$3,000 or less, the creditor cannot force the sale of your home. But the creditor can put a "lien" on your house and the land. This means that you will need to pay the debt before you can complete the sale of your home and land.

If the **same creditor** has two or more judgments against you and the **total** amount of those judgments at the time they were entered was more than \$3000, then the creditor could still force the sale of your home.

Property That is Not Exempt

Some of your property may not be exempt because you have a written agreement with the creditor that gives the creditor the right to repossess (take back) the property if you don't make the payments. See page 4.

Property also may not be exempt because your equity in it is higher than the amounts the law protects. "Equity" is the part of the property that belongs to you only, and not to someone else, like a bank, or co-owner. The following example shows how to figure your equity in something you own.

How to Figure the Equity in Something You Own

Example: You have a car you can sell for \$5,000, but you still owe the bank \$3,000.

	<i>Market value of your car</i>	<i>\$5,000</i>
(less) -	<i>What you owe the bank</i>	<i>\$3,000</i>
	<i>Your equity</i>	<i>\$2,000</i>

Once you know your equity in your property, look to see the amount that is exempt on the chart on page 12. For example, for your car to be totally exempt (protected from collection) your equity in the car can only be \$2,150 or less. If your equity in your car is more than \$2,150, a creditor can take and sell your car. After deducting the cost of the sale, the creditor must give you \$2,150 (the exempt amount) of the sale money. The rest of the money goes to the creditor to pay your debt.

Judgment Debtor Exam

If your creditor doesn't know how to find your property, bank account or employer, or does not know what your property is worth, the creditor can get a court order that requires you to appear in court to give them that information. You may be able to fill out a questionnaire about your financial situation instead of going to court. Ask the creditor about this if you get

served with papers for a judgment debtor exam.

At the court hearing, the creditor will ask about your income and any property you own. Although you cannot be sent to jail for failing to pay debts or judgments for consumer debts, you can be arrested and brought before a judge for failure to show up for a judgment debtor examination.

What it Means to be Judgment Proof

If all of your income and all of your property is exempt, you are "judgment proof." See the chart on page 12 for a list of exempt income and property (which cannot be taken from you).

Being "judgment proof" means that even if a creditor has a judgment against you, you have no property and no income that the creditor can take from you at this time to pay off the judgment.

A judgment lasts for ten years and can be renewed for another ten years, so even if you are judgment proof right now, your situation could change. For example, if you get a higher paying job or a more expensive car, your new wages or property may not be exempt, and you may no longer be judgment proof.

Even if you are judgment proof, the creditor can take back specific items if you have signed a written agreement that allows repossession if you don't make the payments. See the section on Repossession on Page 4.

WHEN YOU ARE CONSIDERING BANKRUPTCY

Bankruptcy is a legal action that you can take to free yourself from all or part of your debts.

In a straight bankruptcy ("Chapter 7" or "Liquidation" bankruptcy) a debtor is released or "discharged" from some or all of the debts. A debtor is allowed to keep exempt property. For Oregon residents, the exemptions you can claim in bankruptcy are mostly

the same as the exemptions from garnishment listed on page 12. All other property is sold to pay off the debts. Property that you are buying on credit usually must be returned to the creditor.

If you previously discharged your debts through a Chapter 7 bankruptcy, you will not be allowed to discharge new debts through another Chapter 7

bankruptcy for eight years. The eight years starts to count on the date you filed for bankruptcy in the earlier case. If you filed for bankruptcy under "Chapter 13" during the last six years then you **may** also have to wait before you can discharge new debts in a Chapter 7 case. Bankruptcies may affect your credit rating for ten years.

Questions you should ask if you're thinking about filing for straight bankruptcy.

1) Are your debts larger than your income and the value of your property?

If not, you may not be able to discharge your debts.

2) Are your debts for child support, spousal support, taxes, or school loans?

Usually you cannot discharge unpaid child support.

Personal income taxes may be discharged if (1) you filed a tax return for the year in which you earned the taxable income; (2) the return was not fraudulent; (3) more than two years have passed since you filed the return; (4) more than three years have passed since the tax was due to be paid (taxes usually must be paid on April 15th of the year following the year in which the income was earned); and (5) the Internal Revenue Service assessed the tax at least 240 days before the date you filed bankruptcy. For example, taxes for income earned in 1998 were due to be paid on April 15, 1999. Three years from April 15, 1999 is April 15, 2002. If you filed your tax return sometime before April 15, 2000, you could usually discharge your tax liability in a bankruptcy filed on April 16, 2002.

Most educational debts, such as student loans, are not dischargeable in bankruptcy unless you are able to prove that the denial of a discharge would cause you and your dependents an *undue hardship*. This means that (1) your income does not exceed your expenses by such an amount that you can pay the debt and still maintain a minimal standard of living; (2) you have made a good faith effort to increase your income and reduce your expenses; and (3) there are special circumstances that make it unlikely that your inability to make payments on your debt will continue for the term of the debt. Even if all of these elements exist, you must raise and prove them in a special proceeding during the bankruptcy process.

3) Do you expect to have more debts soon?

If so, it may not be a good idea to file for bankruptcy at this time. Your bankruptcy petition should include all the debts that you have. You can only file for straight bankruptcy once every eight years; you won't be able to bankrupt any additional debts during that eight year time period.

4) Are you judgment proof?

If so, it is probably not a good idea to file for bankruptcy at this time. If you owe money for unpaid bills, your creditors can get judgments against you. But, if you are judgment proof, creditors cannot collect on the judgments. As long as you are judgment proof, you don't need bankruptcy to protect your income and property from your creditors. See page 9.

5) Are you entitled to tax refunds?

If you file for bankruptcy before you receive and spend any state or federal tax refunds to which you are entitled, the right to these refunds will transfer to the bankruptcy trustee. In this situation, you may exempt the first \$400 of any refunds (or usually \$800 if you are married and you and your spouse file bankruptcy) to which you are entitled on the date you file bankruptcy, but the trustee would be entitled to any excess amount. So, if you expect to receive a refund of state or federal taxes which will exceed \$400 (or \$800 if applicable), you may wish to consider delaying bankruptcy until after you receive and spend the refunds. The right to receive a federal earned income credit is totally exempt. This can be a complicated matter. If you received more than \$800 in tax refunds in the prior year, contact a lawyer who specializes in bankruptcy for advice about this issue.

For more information about the answers to these questions and for advice as to whether bankruptcy is a good idea in your situation, you should talk with a lawyer who specializes in bankruptcy cases.

What is a Chapter 13 Plan?

A Chapter 13 plan is another type of case you may file in bankruptcy court. With a Chapter 13 plan the judge can require your creditors to take payments through a payment plan that lasts three to five years. You must have a regular income to make payments under the plan.

With a Chapter 13 plan, you usually don't have to pay all of your creditors the full amount that is owed. You may also be able to keep non-exempt property.

Do you need a lawyer in a bankruptcy case?

Many companies sell forms and booklets for people to use in filing for bankruptcy on their own. But bankruptcy rules can be complicated and mistakes might mean that you still owe on bills that you thought were

bankrupt. It is a good idea to consult with an attorney.

In addition, bankruptcy can affect your ability to buy a car, a house, or other property for at least ten years. An attorney can help you decide if filing for bankruptcy is the best solution in your situation.

For information about bankruptcy or for help in a bankruptcy case, you should contact a lawyer who specializes in bankruptcies. See page 13 of this booklet.

HOW TO FILE A CHALLENGE TO GARNISHMENT

The law says that some property, wages, and money are **exempt** from collection - this means they cannot be taken from you to pay unpaid consumer debts. See page 12 for a list of exempt wages, money, and property. If you believe that the creditor is garnishing exempt wages or money or is taking exempt property, you may file a Challenge to Garnishment so you can keep the money or property. You should only file a Challenge to Garnishment if you have good reason to believe that one of the exemptions listed on page 12 applies to your wages, money or property.

After you file a Challenge to Garnishment there will be a hearing in court and a judge will decide if you will be able to keep the money or property.

Where Do I Get a Challenge to Garnishment Form?

You will get the Challenge to Garnishment papers when your wages or bank account are garnished (see page 7) or when the sheriff takes your property (page 8).

When Should I File a Challenge to Garnishment?

To challenge a garnishment of your wages or salary, you must file the Challenge to Garnishment form within 120 days of receiving the papers. For a garnishment of any other money or property, you must file the Challenge to Garnishment form within 30 days of getting the papers. You should file the form as soon as you can.

How Do I File a Challenge to Garnishment?

- Fill out the Challenge to Garnishment form. The creditor's name should be written on the line for the "plaintiff" and write your name on the "defendant" line. List the property or money that you believe is exempt and should not be taken. To explain why the property is exempt, look at the list on page 12 and copy the exemption that applies.
- Make a copy of the completed form for you to keep. Take the original to the court clerk at the courthouse or mail the claim to the clerk at the address listed on the garnishment papers.
- Ask the court clerk when your court hearing will be held.
- Get ready for the hearing by making sure you can give evidence about the value of the things you are claiming and which exemptions apply. You write notes to use at the hearing.
- Go to the hearing on time. If you can, bring someone with you for personal support.
- Present your information to the judge clearly and briefly. Answer questions politely. Keep calm.
- Give the order signed by the judge to the sheriff or person holding your things and claim them. You should argue that you do not owe storage costs because that would defeat the purpose of the exemptions, which is to make sure that you can keep your basic necessities of life.

EXEMPT WAGES, MONEY, PROPERTY

1. Exempt wages: If you are paid weekly, \$183 per week of your disposable income, or 75% of disposable wages, whichever is more. On January 1, 2009, the \$183 will change to \$196. Wages paid every two weeks - \$366. On January 1, 2009, this amount will change to \$392. Wages paid twice each month - \$394. On January 1, 2009, this amount will change to \$420. Wages paid once a month - \$786. On January 1, 2009, this amount will change to \$840.
2. Social security (including SSI).
3. Public assistance (welfare).
4. Unemployment benefits.
5. Disability benefits.
6. Workers' compensation benefits.
7. Exempt wages, Social Security, welfare, unemployment benefits, disability benefits, and other specific types of government benefits when placed in a checking or savings account (up to \$7,500).
8. Spousal support, child support, or other support if necessary to support you or your dependents.
9. A house with land you own and that you or certain family members live in up to \$30,000 (\$39,600 if more than one owner owes the debt). Includes proceeds from sale for (1) year (if you intend to use funds to buy another home).
10. A mobile home and land you own and you or certain family members live in up to \$23,000 (\$30,000 if more than 1 owner owes the debt). A mobile home or houseboat you own and that you or certain family members live in with no land owned up to \$20,000 (\$27,000 if more than one owner owes the debt). Includes proceeds from sale for (1) year (if you intend to use funds to buy another home).
11. Household goods, furniture, radios, 1 television set, and utensils to \$3,000.
- 12.* Automobile, truck, trailer or other vehicle to \$2,150.
13. Tools, implements, apparatus, team, harness or library necessary to carry on your occupation to \$3000.
- 14.* Books, pictures and musical instruments to \$600.
- 15.* Clothing, jewelry and other personal items to \$1800.
16. Domestic animals and poultry for family use to \$1,000 and their food for 60 days.
17. Provisions (food) and fuel for your family for 60 days.
18. One rifle or shotgun and one pistol to \$1000.
19. Public or private pensions.
20. Veterans benefits and loans.
21. Medical assistance benefits.
22. Health insurance proceeds and disability proceeds of life insurance policies.
23. Cash surrender value of life insurance policies not payable to your estate.
24. Federal annuities.
25. Other annuities to \$250 per month, excess over \$250 per month subject to same exemption as wage.
26. Professionally prescribed health aids for you or your dependents.
- 27.* Your right to receive, or property traceable to:
 - a. An award under any crime victim reparation law.
 - b. A payment, not exceeding \$10,000, on account of personal bodily injury, (not including emotional pain & suffering or compensation for actual monetary loss) of you or an individual of whom you are a dependent.
 - c. A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.
- 28.* Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.
29. The difference between what you actually owe the creditor and the total amount due listed in the writ of garnishment, if the amount listed in the writ is larger.
30. Your right to receive the federal earned income tax credit.
31. Elderly rental assistance payments received from the Oregon Department of Revenue.
32. Equitable interests in property.
33. Security deposits or prepaid (last month's) rent payments held by your landlord.

* If two or more people in your household owe the judgment, each may claim the exemptions marked by *. Note: The values listed represent your **equity** in the property.

RESOURCE SECTION

LAW OFFICES & OTHER ORGANIZATIONS

Legal Services Offices and Volunteer Lawyer Programs

These offices provide legal assistance to low-income persons who live in the counties that are listed.

Albany Regional Office

(Linn, Benton)

(541) 926-8678

1-800-817-4605 (for long-distance calls only)

Legal Aid Services of Oregon
433 Fourth Ave., SW
Albany, OR 97321

Bend Regional Office

(Jefferson, Crook, Deschutes)

(541) 385-6944

1-800-678-6944

Legal Aid Services of Oregon
1029 NW 14th Street, Suite 100
Bend, OR 97701

Center for NonProfit Legal Services

(Jackson)

(541) 779-7291

225 W Main
P.O. Box 1586
Medford, OR 97501

Columbia County Volunteer Lawyers

(Columbia)

(503) 397-1628

P.O. Box 1400
St. Helens, OR 97051

Coos Bay Office

(Coos, Curry, Western Douglas)

(541) 269-1226

1-800-303-3638

Oregon Law Center
295 S Tenth, Suite 5
P.O. Box 1098
Coos Bay, OR 97420

Farmworker Office

(Mid-Willamette Valley farmworkers)

(503) 981-5291

1-800-662-6096

Legal Aid Services of Oregon
397 N First Street
Woodburn, OR 97071

Grants Pass Office

(Josephine)

(541) 476-1058

Oregon Law Center
424 NW 6th Street, Suite 102
P.O. Box 429
Grants Pass, OR 97528

Hillsboro Regional Office

(Washington, Columbia, Tillamook, Clatsop)

(503) 648-7163

1-888-245-4091

Legal Aid Services of Oregon
230 NE Second, Suite A
Hillsboro, OR 97124

Klamath Falls Regional Office

(Klamath, Lake)

(541) 273-0533

Legal Aid Services of Oregon
403 Pine Street
Klamath Falls, OR 97601

Lane County Legal Aid and Advocacy Center

(Lane)

(541) 485-1017

1-800-422-5247 (for long distance calls only)

376 E 11th Avenue
Eugene, OR 97401

Lincoln County Office

(Lincoln)

(541) 265-5305

1-800-222-3884 (for long distance calls only)

Legal Aid Services of Oregon
304 SW Coast Highway
P.O. Box 1970
Newport, OR 97365

Marion-Polk Regional Office

(Marion, Polk)

(503) 581-5265

1-800-359-1845

1655 State Street
Salem, OR 97301

769 N Main Street, #B
Independence, OR 97351
(503) 606-3284

McMinnville Office

(Yamhill)

(503) 472-9561

Legal Aid Services of Oregon
720 East Third
P.O. Box 141
McMinnville, OR 97128

Multnomah County Office
(Multnomah)
(503) 224-4086
1-888-610-8764

Legal Aid Services of Oregon
921 SW Washington, Suite 500
Portland, OR 97205

Native American Program
(assistance to tribal governments)
(503) 223-9483

812 SW Washington, Suite 700
Portland, OR 97205

Ontario Office
(Malheur, Harney, Grant, Baker)
(541) 889-3121
1-800-250-9877

Oregon Law Center
225 SW 1st Avenue, #6
Ontario, OR 97914

Oregon City Regional Office
(Clackamas, Hood River, Sherman,
Wasco)
(503) 655-2518
1-800-228-6958

Legal Aid Services of Oregon
421 High Street, Suite 110
Oregon City, OR 97045

Pendleton Regional Office
(Gilliam, Morrow, Umatilla,
Union, Wallowa, Wheeler)
(541) 276-6685
1-800-843-1115

Legal Aid Services of Oregon
365 SE Third Street
P.O. Box 1327
Pendleton, OR 97801

Roseburg Regional Office
(Douglas)
(541) 673-1181

Legal Aid Services of Oregon
700 SE Kane
P.O. Box 219
Roseburg, OR 97470

Other Organizations

Lawyer Referral Service
Oregon State Bar
(503) 684-3763 in Portland , or
1-800-452-7636 toll free in Oregon

This service gives you the name of an attorney in your community. There is a fee of \$35 for the first meeting with the lawyer. LRS also operates the Modest Means Program, which makes referrals to lawyers who provide reduced-fee legal services on some cases to clients that meet eligibility guidelines. Call for information.

The Consumer Hotline is run by the Financial Fraud Section of the Department of Justice. They help to enforce the Unlawful Trade Practices Act, the primary consumer protection law in Oregon. They provide help in instances where the seller has not met their obligations. They also enforce most other laws regulating the commercial markets, antitrust, charitable trust, and charitable solicitations laws. To reach the Hotline, from Portland call (503) 229-5576, from Salem call (503) 378-4320, and from elsewhere in Oregon call toll-free at 1-877-877-9392. Hotline hours are 8:30 a.m. to 4:30 p.m. You can also file a consumer complaint online at www.doj.state.or.us.

Oregon Law Help

This is a state-wide legal aid website full of free legal information pertinent to low-income Oregonians, including an extensive consumer law section.

Go to www.oregonlawhelp.org.