

## WHAT TO DO WHEN THE COLLECTOR CALLS

The practice of making phone calls to arrange payments on a debt has become so widely used in the collection industry, it must be effective. It prompts many people to be concerned about what happens if they cannot work out something with the collection agency.

Remember first that collection is a business. The people who are making those phone calls usually work on a commission and make money by getting payments out of you for their customers.

You do not have to talk to them, but may want to on the first call or two to honestly explain your situation and see if there is anything that can be negotiated. Do not promise payments higher than you will be able to make. Refuse their request to send in post-dated checks. These can lead to their cashing the check even if your income changed and you no longer have the money. The financial consequences of delivering a check that cannot be cashed are much worse than the original debt.

Understand that the collection agency cannot garnish your pay or attach your bank account until the case has gone to court. Many creditors are very good at saying just enough to make you afraid of what will happen next.

If you inform the bill collector in writing that you refuse to pay the bill or that you do not want the bill collector to contact you anymore, they cannot continue to contact you about paying the bill. Kansas Legal Services has an interactive interview that will help you create this letter. Go to [www.kansaslegalservices.org/node/1178](http://www.kansaslegalservices.org/node/1178) to complete the interview. You will answer some questions in a guided interactive interview. In order to use this program to make this document, you will need the following software on your computer: Adobe Flashplayer: This is very standard software that you can download free. Click [here](#). If you aren't sure if you have it, try to download it. The program will let you know if you have the software already. Microsoft Word or Word Perfect are software used for developing documents. If the computer you are using uses Notepad or some other program for word processing, you may have difficulties with your documents.

Debt collectors are also not allowed to harass or abuse you, call earlier than 8:00 a.m. or after 9:00 p.m., make false or misleading representations or talk to other people about your debt situation, except to find out where you live or work. If you believe that a debt collector has done one of these things, then you may have a complaint against them under the Fair Debt Collections Practices Act. You may wish to contact an attorney about a possible legal action. You have one year from the date the event occurs to bring a lawsuit against the collector. You should keep detailed notes about the time of the call, any phone number associated with the call (from caller ID, if you have that service), the name of the person who called, if you can or the company that placed the call. The Federal Trade Commission accepts and investigates complaints about violations of the Fair Debt Collections Practices Act. They will not take action about your personal debt. You can file a complaint at [https://www.ftccomplaintassistant.gov/FTC\\_Wizard.aspx?Lang=en](https://www.ftccomplaintassistant.gov/FTC_Wizard.aspx?Lang=en).

**Regarding Credit Reports:** Creditors can make all information about you available to a credit reporting service. These "services" are businesses that make money by selling credit information to people who are thinking about giving out loans. In many cases, your financial situation is a bigger limitation on your getting credit than the credit report. There are laws

which restrict what can be on a credit report, and allows you to get accurate information on your report. A report of past slow or late payments is a fact that may be on your credit report. The collection agency doesn't grade you or your credit. You can access your free credit report online at [www.annualcreditreport.com](http://www.annualcreditreport.com). (This is a free report that you are entitled by law to access from each company once a year. Avoid any option that charges you a fee for access.) If you find mistakes in your credit report, use this interactive interview to seek a correction: [www.kansaslegalservices.org/node/1177](http://www.kansaslegalservices.org/node/1177)

**Regarding Court Actions to collect money:** A court action to collect money is begun by sending you a summons either in the mail or through the Sheriff. Generally, you have few days to go to court and ask for a trial. You may wish to ask for a trial to get time to try to work something out. If you do not go to court and request a trial, a court judgment is granted for the amount of money that the creditor is seeking and the court costs (\$40. - \$100). In addition, interest is added each month to the amount the creditor is collecting. If your source of income is only Social Security, Federal Law protects your check as it comes to you and a bank account in which only Social Security funds are deposited. It is your bank's responsibility to protect two month's worth of Federal benefits from garnishment. If your bank account is attached, first contact your bank. If you do not do this and an amount equal to two month's benefits is not released, you can still ask the court to stop the garnishment by proving that only Social Security money is in your account. This will require filing a motion with the court to stop the attachment within 10 days of your getting notice of the attachment. There is not a form for this. Help at this stage may be available from the Access to Justice Advice Line at **1-800-675-5860**.

Garnishment of wages is possible once a case has gone to court. People who earn less than minimum wage (now \$7.25 an hour in 2011), 30 hours a week are protected from garnishment. People above that amount can have their paychecks garnished for 25% of their income. Once a garnishment is put on wages, in most court cases it stays on until the amount is paid. For this reason, you may wish to make payment arrangements with the creditor after they have filed a lawsuit and have a court judgment.

If a creditor does not know where you work or where your bank accounts are, they may get that information from you by having the court order you to appear at a "Hearing in Aid of Execution". While that term may seem scary, it simply means a hearing for the creditor to get information to help them in collecting (or executing on) a judgment. At that hearing, you can be required to tell the creditor where you work, where you bank and other information. It is important for you to attend any Hearing In Aid of Execution of which you are notified. If you do not attend the hearing or arrange with the creditor not to appear, you can be held in contempt of court and arrested for failing to appear at the hearing.

It is not possible for a creditor to take one automobile, a home in which you currently live, or personal property for not paying a debt. It is also not possible for a creditor to have you put in jail for not paying a debt.