

Got Debt?



A report from YourLegalLegUp.com

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GOT DEBT?

by Kenneth Gibert, YourLegalLegUp.com

How Debt Problems Begin

Consumer debt problems usually begin with a credit transaction. The most obvious credit transaction is a purchase made with a credit card, but other credit transactions which often lead to problems can also include gym memberships, cell phone bills, and hospital bills – things you may not even think of as “credit.” Of course any bill that goes unpaid is trouble.

If you are facing debt trouble, **the first question you must ask yourself is whether the debt trouble is *strictly temporary* or *likely to be long-term***. You must answer this question realistically and honestly; wishful thinking or simple miscalculation at this point could be disastrous. If you are *sure* the problem is strictly temporary, then there is no need to be strategic. You can contact your creditor and make arrangements, and you can share information if asked.

If the creditor is a credit card company (bank), however, and their collection department is contacting you, there is [little sense in sharing](#) information with them even at this stage. Their collection decisions are controlled by policy, and as far as I've ever been able to see, it doesn't matter what you tell them. They will, however, ask you for information and act surprised if you withhold it.

Why does the credit card company ask for information if their decision is not going to be based upon your answer? For two reasons. First, they are trying to establish personal accountability between you and the collection agent. And second, because as soon as you miss a payment they begin to prepare to sue you, both in practical and psychological ways. As everybody knows by now, the [banks' model for good business](#) is to lure people into increasing debt trouble and more and higher fees. When that's your business model, you have to expect to sue a lot of people. They *do* expect that, and they start preparing for it early in the process – in many cases long before you may think you have problems.



Ken Gibert practiced law for fifteen years in St. Louis, Missouri before founding Your Legal Leg Up. He has written two full-length books on debt - ***Special Issues in Debt Litigation***, and the ***Your Legal Leg Up Litigation Manual*** – as well as dozens of articles and videos on how regular people can defend themselves from the debt collectors and protect what's theirs.

Today I received a "Stipulation of Dismissal with Prejudice." It's a done deal. Your litigation materials were clear, vital and necessary tools for me to win. All the examples, logic and powerful arguments presented in your materials helped me beyond belief! I am eternally grateful, and right now quite ecstatic! Your materials are simply the best anywhere for pro se defendants facing debt lawsuits!
Thanks Ken,

Frank

What Are the Collectors Up To?

When bill payers first start calling you, of course, they simply want you to pay – the bill could have slipped your mind, or you could be having slight difficulties. The more troubled your payment history looks, however, the more debt collection becomes a long-range plan to rearrange your priorities – to pay them before you pay other people you owe, to lay a foundation of guilt they can use to pressure you, and to collect information they can use against you.

Being “Strategic”

Being “strategic” means to keep your eyes on your own goals, and to act consistently with *your own* best interests. **If it looks like your difficulty in paying is going to be longer than a very short time, you do need to be strategic.** If the debt problems are strictly short term, then it is in your strategic best interests to try to keep the bill collectors happy by giving them reasons that future creditors will find plausible and excusable. But this changes somewhat when your problems are deeper or longer lasting.

What do you need to do to be strategic? Two things: you need to make such payments as you do make in a way that maximizes their benefits and minimizes their harm to you; and you must control the flow of information to your creditors and debt collectors. We will discuss both of these aspects of strategic behavior below.

Making Payments “Strategically”

Making payments strategically means that you prioritize your payments very carefully, keeping in mind that **not all debts are the same**. You must take account both of the nature of your purchases and the debt that is created by it, and do a kind of balancing act. To speak generally, you should pay very close attention to (1) debts that cannot be discharged in bankruptcy, (2) debts that are not much helped by bankruptcy, (3) debts attached to essential services, and (4) all other debts. You must also keep in mind the age of the debts, because after debts reach a certain age, they may become uncollectable because of statutes of limitations, and that under certain circumstances a payment of a bill can “renew” it and moves the statute of limitations further away.

In short, to make payments strategically means paying first the bills you have the least chance of successfully avoiding if worse comes to worst. Why? Because if it turns out you cannot pay these debts at all, they would do you the most harm for the longest time. Also, because these debts stick to you, it is much harder to get the person you owe to accept less in payment – they have less incentive to negotiate and more incentive to sue you. Conversely, all the other debts are less hazardous to your future because you *could* get rid of them one way or the other. Remember also that making a payment is different than the purchase that created the debt in the first place – you can ask the debt collector to do something in exchange for your payment, like reducing interest rates or fees, or deleting negative credit references. You won’t always get them, but it doesn’t hurt to ask, and you will get them sometimes.



Debts that Cannot Be Discharged in Bankruptcy

For the most part, the following debts cannot be discharged in bankruptcy: taxes, child support, alimony in some cases, gambling debts, and student loans. Also debts that come as a result of some action you take that is deliberately intended to cause harm to someone else – punitive damages or the like. I say “for the most part” because most concepts in the law are at least somewhat flexible. Governments will generally *negotiate* for lower payment even if you couldn’t get rid of the debt through bankruptcy, for example, because like most creditors they believe a bird in hand is worth two or more in the bush. And the courts are allowed to discharge student loans if they are “unreasonably burdensome” or some similar standard – a standard that has historically been *extremely* difficult to meet. I’m not aware of any way to discharge the other debts mentioned here in bankruptcy. So, practically speaking, you’re going to have to pay these debts eventually – if there’s any debt you can’t pay right now, you should not pay the one you might eventually be able to get out of paying.

Am I suggesting that you should plan not, and eventually refuse, to pay? Am I suggesting some sort of elaborate way to rip off your creditors? Not at all. Not paying can have dire consequences and is, in general, also morally wrong if you can avoid it. But we are talking about a time of extreme financial distress. And it is also true that the tougher it is for someone to sue you, the more likely you’ll be able to work out an arrangement without being sued. I also believe that banks, which have marketing plans designed to encourage and bring about failure, and debt collection companies which exist to profiteer off the misery of others, have little claim to any *moral* duty, whatever else they may have.

Debts that Are Not Helped Much by Bankruptcy

Most consumer debt is called “unsecured” debt. That means that there is no collateral, and the only way the person you owe can get it is by suing you, getting a judgment, and then collecting. The other kind of debt is called “secured” debt, which means that there is some property that acts as collateral – stop making payments on your house, for example, and they can take the house away in foreclosure. There are other kinds of secured loans, too: car loans, title loans (where you make your car security for a loan), pawn-shop loans, and certain appliance loans. In each of these cases, not making payments means that the thing is likely to be taken away through foreclosure or repossession. Because the courts have generally felt that collateral really belongs to the lender rather than the borrower, they do not give much protection to a

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person going into bankruptcy – they usually (and quickly) “lift” the automatic stay which protects bankrupt people from collections and let the creditor take the collateral. In plain English, that means that if you do not pay your mortgage or car payment, they could quickly be taken away from you.

At the same time, these are things that a bankruptcy court would rarely take away from you so long as you are making the payments. Therefore, if you need these things, you must keep paying for them.

Debts for Essential Services

The debts in this category are utilities like phone, gas and electricity. Stop making payments on your electricity bill, for example, and the electric company will cut off your service pretty quickly. On the other hand, gas and electric companies often offer help of various sorts to people having trouble paying them. *It is strategic to seek help with your utility bills so that you can pay non-dischargeable debts with the money you save on them.*

All other Debts

All other unsecured debts give the creditors much less power over you, and therefore thinking strategically means that you pay them last, if you pay them at all.

The Age of the Debt Matters

Other things being equal, as between debts you have not paid on for some time, you normally want to *pay the debt you most recently paid on first*. That is, if you owe money on two credit card balances, and you made a payment on one of them a month ago, but the other one a year and a half ago, you pay the one you’ve been owing for a month and *not the other one*. Why? Because the older debt is worth less to the debt collector (according to their books) and because debts have a [statute of limitations](#) that will eventually eliminate the debt even if you do not pay it. Or to put it slightly differently, if worse comes to worst, you will be able to get rid of an old debt much more easily than a newer one. *That’s strategic thinking.*

If you do not think strategically about your debts, and your situation gets a little bit worse, some debts could do real damage to you in the future and for a long time.



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In summary, to pay debts strategically, you pay in this way:

Debts You've Paid on More Recently	Debts You've Paid on Less Recently
Pay Sooner	Pay Later
1. Debts that Can't be Erased through Bankruptcy	
2. Secured Debts of Things You Need	
3. Essential Services/Utilities	
4.	Unsecured Debts

As a general rule, any debt you've paid on recently also gets paid sooner (all other things being equal) because (1) the other debts are already hurting your credit report, and it matters how many bad debts you have, so if you can keep some from becoming bad, that's a good thing, and (2) the longer the debt has gone without being paid the sooner the statute of limitations (time limit for the debt collector to sue you) and the 7-year period of credit reporting on bad items.

If, on the other hand, you paid in the opposite way and paid the debt collectors for older bills, you can stretch out the time you could be sued – and the time they could be reporting – on your debt for many years.

A large part of the debt collector's job is to prevent you from paying strategically, and instead to get you to pay more in this order:

Debts You've Paid on Less Recently	Debts You've Paid on More Recently
Pay Sooner	Pay Later
1. Debts where debt collector has most recently yelled at you	Debts where the debt collectors have not already bugged you
2. Debts where debt collectors call you the worst names	Nice people
3. Debts where you feel guiltiest about not paying (see categories above)	

Debt collectors know you don't have much money. Their goal is to prevent you from thinking about your own interests and get you, instead, to think in terms of *their* interests. An individual debt collector, of course, is just trying to get you to pay his or her company, but because debt collectors tend to be more aggressive about older debts – and because you may feel guiltier about older debts, the net effect may be to reverse the order of payment that is reasonable for *you*.

Controlling the Flow of Information

Another goal of debt collectors is to collect information from you that would make it easier for the company to sue, and eventually **collect** from, you. A major component of *your* strategic thinking, therefore, is controlling the flow of information. That means that you always remember that the person on the other side of the phone is possibly recording, and almost certainly making notes and collecting information about you, your job, and your resources. The company itself may be gathering information about you from other sources as well. That means *you must [control the flow of information](#) to them as much as possible.*

Remember that they already have, and will always keep, any information you have given, or will give, to them. That includes credit applications, previous checks, and previous bills. If you applied for credit, they probably have or can get your credit report and are not reluctant to check it for information and to use that information against you in their collection efforts.

On the other hand, the less the debt collection company knows about you, the less they can pressure you and, eventually, the riskier suing you for money is likely to appear to be. They don't know if they'll be able to make you pay them back even just the amount of money it costs them to hire a lawyer. And this in turn makes it less likely the company will sue you, and more likely that they will work out an arrangement with you if need be.

It is never a bad idea to [get another checking account](#) (at a different bank) and start paying bills with money orders. Or get another checking account but keep paying with the old account you have already used. Why do I suggest this? Again, NOT because I think it's a good idea to stiff your creditors in general. However, sometimes you cannot or should not pay the person bugging you for money. You must make this decision on your own terms rather than the terms of a debt collector if possible, and if a debt collector gets your banking information, they may take all the money out of it at one time when you're least expecting it, a result that can be financially devastating. Putting your money in different accounts, and withholding this information from the debt collectors reduces the risks of this happening to you.

Why Should You Be Strategic?

As I pointed out above, strategic thinking dictates that you pay the bills you are *most likely to have to pay* first. You control the flow of information to make it *harder* and *riskier* for the debt collectors to pursue you – i.e., it costs more money that they are less likely to recoup for them to chase you. In general, *strategic thinking requires that you make it harder for the debt collectors to get the money from you and easier for them to lose the right to sue you.* Doing this shapes the terms of any discussions you have with creditors. It causes them to be more polite and reduces the chances that you will be abused, harassed, or sued, and it increases the chance that the debt collector will negotiate with you so you can reach a satisfactory arrangement. It is just a fact of economic life that people and companies will treat someone standing up for himself or herself better than someone who gives up.

Further in the Debt Trouble Stage

The need for strategic thinking begins with the first sign of debt trouble and continues until your debt troubles are actually over. Relaxing your control for even a short time could cause long-range consequences.

At some point, the original creditor may get tired of waiting to get money from you and decide to “write-off” the debt. Credit accounts at banks are often insured, and this is the way the banks collect their insurance. And sometimes the banks use tax accounting that pays income tax (or would pay income tax if banks ever did pay income tax) before you actually pay them. Writing off the debt is the way they adjust their accounting to reflect that you haven't paid.

Writing off Your Debt Is not a “Get out of Jail Free Card”

The creditor's “**writing off**” your account **does not affect your debt**. They may continue to harass you for money, or they may sell the debt to a “junk debt buyer.”

Junk debt buyers are scavenger companies that buy huge quantities of debt that people supposedly owe for very small amounts of money. These companies exist for the sole purpose of squeezing and harassing distressed consumers and forcing them to pay money on the debts. They are ruthless and, for example, do not care (much, if at all) if you really owe, or ever owed, the money. Nor do they care if you or your children would starve to death if you paid them the money. They only care about whether they can get you to pay. **These junk debt buying companies, which purchase debt which is in default of payment terms, are defined by the law as “debt collectors” under the Fair Debt Collection Practices Act.**

They may start with letters and phone calls (but they don't have to). If they do call or write, they must do two things. They must warn you that any information you give them will be used for the collection of the debt, and they must tell you your right to seek verification of the debt.

Make Every Debt Collector Verify the Debt

You should [make them verify the debt](#). The burden of verification is very easy, and some courts have held that just a phone call by the debt collector to the supposed original creditor is enough (no independent information necessary, in other words). But as easy as that is, it will often cause the debt collector to go away. Perhaps it is because so many people do not require this that they take it as a sign it will be more trouble than it's worth to go after you. And for you, it is always good to get into a habit of knowing and asserting your rights. To do this, all you need to do is tell them you contest the debt and you request them to verify it. They are not allowed to take further action against you to collect the debt until they verify it. You have a right to require *every* new debt collector (if they sell the debt to someone else) to verify the debt separately, and you should probably do that because sometimes more than one company thinks it has the right to sue or otherwise collect from you.

Make Them “Cease Communication” with You

If the debt collectors are telephoning you, you can make them stop doing this. It is illegal under the Fair Debt Collection Practices Act for a debt collector to call you at work if your company does not allow personal calls. In addition, you can make them stop contacting you at all by writing a “cease communications” letter in which you simply tell them to stop contacting you. Of course there are reasons you might, or might not, want to draw that line. In any event, by the time the debt is in the hands of a junk debt buyer, you should be extremely stingy with any information you give them.

If They File Suit

Next step is the Law Suit. In most states this begins when they file the suit in court (Minnesota has a very unusual rule called “pocket service” where the process is essentially reversed), but you will probably not know about it until they serve the suit on you. There are two parts of most suits: the summons and the petition. The summons is a document theoretically generated by the court (but actually often generated by the law firm suing you – they’re allowed to do this). It tells you where and when you’re supposed to show up in court and what happens if you don’t. The summons is what makes a case an official judicial case.

Attached to the summons is the petition. The petition consists of “allegations” which are supposed to show that you owe money – how much and why. It may be divided into different “counts” which seem to argue that you owe the same amount of money more than once. Actually, though, they are just stating different legal “theories,” such as breach of contract, unjust enrichment, etc. In order to make the case go away, you’re going to have to beat them on all the counts they brought. They bring multiple counts to scare you as much as anything else.

Beware the Right to Verify on a Petition

The Petition may well also include a statement that you have a right to seek verification. I’m not sure whether you do or not – some courts have taken different positions on that question. **But if you seek verification and do not answer the petition, you will probably be defaulted in the case.** Many people have reported to me that they *received a summons and requested verification rather than filing an answer*. The case then seems to go away, but this is only because a plaintiff does not have to continue to notify a defaulting party of any further court action. There *is* further court action, though, and a default judgment. Then the consumer learns of the default later when the debt collector starts trying to garnish wages or bank accounts.

When you are served with a law suit, you face a choice: do you give up? File bankruptcy? Or fight back? Considering these options fully is beyond the scope of this report, but for now you must keep two things in mind: (1) the petition ***really is a communication from the debt collector***; and (2) **if you don't file an answer you will be in default**. Why do I put it like that? Because (1) the petition contains allegations (that may or may not be true) that the debt collector very well may *not be able to prove* in any event (so you should not be overly intimidated even if you think you owe someone some money), and (2), you will lose the case if you do not defend

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yourself. These things never correct themselves: the judges aren't looking out for you, and the debt collectors are not trying to do the "right" thing when they file suit. They file suit to get your money, and they will not stop unless you make them.

Debt Collectors Make Money When People Don't Fight

Debt collectors make their money by causing consumers to pay whether the debt collectors have a right to the money or not. It is a lot easier, faster, and more profitable for the debt collectors to collect if you do not fight back. Therefore, **the debt collectors do everything they can to make you give up without fighting back.** You must be aware that there is a substantial advantage for the debt collector to make you think they have what they need to have in order to beat you in court whether they do or not. And there is a substantial advantage for them to make it look like it will cost you a lot of money to fight back.

The petition and any documents they attach to it are designed to scare you into giving up more than it is designed to state any legal rights or withstand a legal challenge. Somewhere between 80 and 90 percent of people do give up without a fight. If you choose to fight you start to change the way the debt collectors look at you and your case. Things begin looking up immediately. Telling you how to fight for yourself is beyond the scope of this report, but you can get help from my [site](#).

Conclusion

By the time paying your bills becomes more than just a small, very temporary, problem, the bill and debt collectors will begin planning to sue you. You need to think strategically, too. If worse comes to worst and the debt collectors sue you, it makes sense to defend yourself. There are resources to help you in doing this.

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