



IF YOU ARE SUED ON A DEBT

If you are sued by a creditor (like a credit card company or a doctor's billing department or a debt collector), you must be served with a Complaint and a Summons. The Summons says that you have been sued. The creditor or debt buyer is the "plaintiff" and you are the "defendant". The Complaint explains why the plaintiff is suing you and what it is asking the court to do.

THIS IS NOT A CRIMINAL CASE

A lawsuit to collect an unsecured debt is a civil action, not a criminal charge. Losing a civil lawsuit for an unpaid debt does not mean you will go to jail.

FILING AN ANSWER

If you are sued in District or Superior Court, you have 30 calendar-days to file an Answer to the Complaint. If you do not file an Answer on time, the creditor can ask the Clerk of Court for a Default Judgment. (If you are sued in Magistrates or "Small Claims" Court, you do not have to file an Answer to avoid a Default Judgment.)

Every filing, including the Answer, should include the caption (which says who the plaintiff and defendant are) and the file number as they appear on the Complaint and Summons.

In an Answer, a defendant will usually write "admit", "deny", or "don't have knowledge to answer" for each paragraph in the Complaint. You should also include any defenses you believe you have. Common defenses would include that the debt is not yours, you've already paid the debt, the debt was discharged in bankruptcy, you don't recognize the plaintiff, or the amount the plaintiff claims you owe is incorrect. If you have not added to or made a payment on a debt for more than three years, you could write that the statute of limitations has passed for the creditor to sue you. Being unable to afford to pay a debt is not a legal defense.

There may be defenses you don't realize you have or other factors you should consider before you file an Answer. Also, a plaintiff will sometimes serve a defendant with documents asking for information (called "discovery"), including Admissions, Interrogatories, and Request to Produce Documents. Whenever possible, you should always speak with an attorney before you file an Answer or if you are served with discovery.

MORE TIME TO ANSWER

If you want more time to file an Answer, you can file an Application and Order for Extension of Time to Answer. The Application must be filed within 30 calendar-days of the date you were served with the Summons and Complaint.

FILING AT THE COURTHOUSE

An Answer or an Application and Order for Extension must be filed with the Clerk of Court on the third floor of the courthouse. You should also mail a copy of the filing to the plaintiff or its attorney at the address on the Complaint. To show the court you have done this, you should attach a Certificate of Service to the filing.

The SelfServe Center at the courthouse has Application and Order for Extension of Time to Answer forms and Certificate of Service forms. You can call the SelfServe Center at 704-686-0210 for more information.

There is no court cost to file an Answer or an Application and Order for Extension.

HEARINGS

If you file an Answer, you will likely receive Notice of a hearing in front of a judge or a court clerk. It is important that you attend because this is your chance to tell your side of the dispute. If you do not, the plaintiff may be awarded a judgment against you.

JUDGMENT COLLECTION

If a judgment is entered against you, the plaintiff cannot (with a few limited exceptions) have your wages garnished to pay for a judgment entered in North Carolina but can file papers to have the Sheriff garnish your bank accounts or seize your other assets.

First, though, you must be served with Notice of Rights to Have Exemptions Designated, because NC law protects (or “exempts”) your assets up to certain monetary values.

The Notice includes forms on which to list all of your assets (including your bank accounts). If you complete and file the forms according to the instructions and on time, your assets that are worth less than the protected maximum values are safe from seizure.

Also, generally, income from federal benefits (like Social Security, SSI, and VA Benefits) and some state benefits (including Unemployment) cannot be seized to pay a judgment.

There is no cost to file the Exemption paperwork.

You can call Legal Aid at 704-376-1600 to request help preparing the forms.

SET OFFS

If you also have a bank account with the creditor you owe, you may have signed a set off agreement allowing the creditor to take funds directly from your accounts to pay defaulted debts. Benefits income is not protected from set offs and you may want to consider opening an account at another institution to protect your assets.

THE LIFE OF A JUDGMENT

A judgment creditor can use the court to collect on a judgment for 10 years and can renew the judgment once for another 10 years upon proper notice and service on you. Judgments can appear on your credit reports during this time, but the major credit reporting agencies may choose not to include them in their reports. Civil judgments appear on courthouse records indefinitely.

IF YOU OWN YOUR HOME

If you own your home or other real estate, a judgment will attach to the property as a lien. This lien must be paid off before you can sell the property. Rarely, a creditor with a judgment lien (or

“lienholder”) may try to foreclose a property to satisfy a lien. If this happens to you, you should speak with an attorney.

PAYING THE JUDGMENT

If you decide to pay the judgment, you should make your payments through the Clerk of Court so that they will be recorded in the court file.

BANKRUPTCY

Sometimes, bankruptcy is a good way to deal with debts or judgments. Bankruptcies are complex legal procedures and you should not file one without an attorney. You can look for an attorney at the National Association of Consumer Bankruptcy Attorneys website, <http://network.nacba.org/advanced-search>.

This is general information only which may not apply to your specific case and is not a substitute for speaking with an attorney about your case.

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