

## What Is Debtor-Creditor Law?

Debtor-creditor law involves the legal interactions between those parties that owe money and the parties to which the money is owed. Often an aspect of everyday life with little involvement by courts and lawyers, when debtor-creditor situations become more complicated, the legal entanglements and implications grow.

That is when a competent and experienced debtor-creditor lawyer becomes an essential ally in reclaiming financial security, whether you are a debtor or a creditor. If you have debt-related legal questions, call one today.

### Creditors' Legal Remedies to Help Collect Debts

When a debtor fails to pay a debt, the creditor or the person or business to which the debt is owed, has several available remedies to help collect the money. These methods include nonjudicial self-help remedies and remedies that involve the courts. Self-help remedies include simply contacting the debtor directly and demanding payment. If informal attempts fail, the creditor may transfer the debtor's account to a debt-collection business, usually called a collection agency.

Creditors may also repossess or foreclose on goods pledged as collateral for secured debts if debtors default on loan payments. The creditor can take back the property, sell it and apply the proceeds to pay off the debt. If the sale price is not enough to cover the full amount owed, the debtor may still be liable for the remainder. Typical types of secured debts that may be collected via repossession include:

- **Motor-vehicle loans.** When a person purchases a car on credit, the lender puts a lien on the car, which allows the lender to repossess the car if the borrower fails to make payments on time.
- **Store purchases.** When consumers charge something that they purchase at a department store, the store may retain a security interest in the item purchased based on the agreement that the consumer signed when he or she first opened the account.
- **Finance-company loans.** When a borrower obtains a loan from a finance company and is asked to list things that he or she owns, it is possible that the finance company will obtain a security interest in the items listed, depending on the contract.

Foreclosure, like repossession, involves the taking back of property that is secured by a loan, but foreclosures generally involve real property, such as a house or cabin. Foreclosures may be either nonjudicial remedies or involve the courts, depending upon the exact agreement between the lender and the borrower and upon the law of the particular state. Three other common creditors' remedies that will probably involve the court are replevin, garnishment and attachment, which like repossession involve taking back property, usually with the help of the court.

If all of these remedies fail, the creditor can sue to collect the debt. The creditor will be entitled to an enforceable judgment if it proves its case or if the debtor fails to contest the claim. If even

that tactic is unsuccessful and the debtor owes a substantial amount to several creditors, the creditors may be able together to initiate an involuntary bankruptcy proceeding.

### **Limits on Creditors' Rights Help Protect Debtors**

The practices of debt collectors are regulated in order to avoid abuses. Under the federal Fair Debt Collection Practices Act (FDCPA), for instance, a debt collector may not:

- Unless he or she has permission from the debtor or a court, contact third parties other than the debtor's attorney or a credit bureau for any reason other than to locate the debtor. During such contact the collector must state his or her own name but cannot give the collection agency's name unless asked directly. He or she cannot state that he or she is calling about a debt.
- Contact the debtor directly once he or she knows the debtor is represented by an attorney, unless the debtor, a court or the attorney gives the collection agency specific permission to do so or if the attorney is nonresponsive.
- Contact a debtor at work if it is known that the employer bans collection calls while on the job; contact debtors before 8:00 a.m. or after 9:00 p.m. or at another inconvenient time or place; or make phone contact without identifying himself or herself.
- Threaten or use violence against the debtor or another person or use obscene or profane language.
- Publish a debtor's name on a "blacklist."
- Lie about the debt, their identity, the amount owed or the consequences for the debtor or send documents that resemble court papers.

Creditors have various legal rights, both through self-help and court intervention, to help them collect moneys lawfully owed to them. But debtors, too, are entitled to legal protection and there are clear legal bounds on creditors' conduct. If you have questions about enforcing a valid debt or if you are the subject of debt-collection attempts, contact an experienced debtor-creditor law attorney to learn how to protect your legal rights.

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