

Debt Consolidation Care

# Take Creditors and collection agents to small claims court



Learn how to sue for \$1000 or more

## Take Creditors and Collection Agents to Small Claims Court

By Debt Consolidation Care's Community Members

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## *Acknowledgements*

**Take Creditors and Collection Agents to Small Claims Court** is written by debtconsolidationcare.com community members.

These are the people who were hurt the most by illegal actions of collection agencies and creditors and they decided to fight back and won many cases against the creditors and collection agencies in the small claims court.

Now they have collaborated to write a book on how you can be benefited with their experience and make you aware of your rights and guide you how to enforce the current consumer credit protection laws.

We feel very proud having such wonderful and enthusiastic members in our community. This really gives us huge encouragement to serve our community in a better way. We are very thankful to them.

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## *About debtconsolidationcare.com*

Debt Consolidation Care is a premium quality website rendering its members with debt consolidation solutions along with free financial analysis and counseling. The site offers resources and guidance on debt related issues. Experienced [credit counseling](#) is arranged to analyze the best solution for every debtor, keeping in mind their present financial status. The article section in the site offers you a wide range of informative articles. Important synopsis on American State Laws & their proceedings are also helpful.

“[Do It Yourself](#)” guides the debtors to plan a budget, assess financial limits & consolidate debts, without the help of a debt consolidation company. A step by step guidance on bad credit repairing is also available in the site. Creditors’ database comprises of creditor’s information across all the States of America. There is also a varied range of sample letters written to the creditors for your requirements. A smart Reduction Calculator calculates the total debt amount & savings you are likely to have if you opt for debt consolidation. The forum is a joint for open discussions and useful advice on any debt related issues. It is also a place to chill out with mutual conversations between friends. The customers are handled with immense care and are rendered with prompt services and useful solutions.

The pivotal vision of debt consolidation care is to build a [debt free community](#) in the very near future.

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## *Our objective*

Our prime objective is to help people in avoiding any kind of harassment they face as a result of debt. We also had a tough time with the debt collectors and we want to share our knowledge with the readers

The creditors and the collection agencies often follow wrong and immoral methods in doing their business and dealing with the people whom they lend money. It is not unusual for them to lie and say just anything to get you to pay.

Sometimes people are harassed by the credit bureaus also when they prepare incorrect credit reports. As a result a person's reputation is badly affected in the credit market.

The creditors and the collection agencies follow many illegal methods when they deal with the consumers. They could do this because many of the credit consumers are innocent. Very few of them know about their rights. Some may not know that they can take the creditors to the court. Others might not know under what circumstances they can do so.

Our objectives can be listed in this way:

- Make the credit consumers aware of their rights.
- Guide them to file a claim against their creditors, the collection agencies or the credit bureaus in Small Claims Court.

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## *Why do you need to sue the credit bureaus and the collection agencies?*

The consumers are left in a critical situation because of the

- Carelessness of the credit bureaus when the credit report prepared by them contains inaccurate data.
- Unethical means followed by collection agencies to collect money from them.
- Refusal by the credit bureaus to update their database with the correct data of the consumer.

It becomes necessary to sue the credit bureaus and collection agencies when they create a problem for the consumers and refuse to amend it.

The mistakes of the credit bureaus in preparing your credit report reduce your credit score. It can make you ineligible for any further loans. A recent study has shown that about a one-third of all the credit reports prepared is faulty. This is because the credit bureaus database contains inaccurate information. This cannot be accepted because they are paid for their work, and they must maintain the desired standard.

Do not hesitate to go against the creditors, credit bureaus, or the collection agencies. You just have to find out whether they are at fault or not. If they have broken the laws, just go ahead because it's they who should be afraid, not you.

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## *What is Small Claims Court?*

Small Claims Court is a legal body meant to solve disputes for small amount of money. The amount claimed is generally less than \$3000, although it can vary. The one who files the claim is called the plaintiff and the other person is called the defendant.

The procedures of the Small Claims Court are quite informal. The parties involved in the dispute, represent themselves in the court hearing. Each party puts forth its own side of the story. Lawyers or advocates are not allowed, although some of the small claims courts allow them. There is a judge who finally resolves the matter without the help of any lawyer. Such courts do charge a small amount of money as the fee to file a claim. Later, there can be some other charges like payment to the witnesses and likewise. But still small claims courts are less expensive than the rest because hiring lawyers is not mandatory.

Small Claims Court deals with different kinds of cases. Examples include collection of money owed, damage caused in car accidents, any property damage, any landlord/tenant rent deposit dispute, compensation for poor goods and services provided.

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## *Benefits of filing a claim in the Small Claims Court*

- By filing a lawsuit against them, you will force the creditors, credit bureaus or the collection agencies to make changes in their way of doing business. In this process you will be helping many others who are unhappy and depressed because of their policies.
- Small claims court does not take too much of your time. The dispute is settled quickly.
- If you win, you get an amount of money as a compensation for the inconvenience caused to you.

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## *How do you know that its time for a legal action?*

You must understand that you should go for a court case, when one or more of the following happens:

- The collection agency does not validate your debt yet contacts you for collection.
- You have sent a 'cease and desist' letter to the collection agency. Still they call you up for payment.
- The collection agency does not update its records after you pay a part of your debt.
- The collection agency does not validate your debt yet reports to the credit bureaus.
- The collection agency withdraws money through your postdated cheque before the date on the cheque.
- The collection agency calls you up late at night.
- The collection agency annoys you, threatens you, uses offensive language, or uses violence.
- The collection agency calls up your friends and neighbors without your approval and discusses with them about your debt.
- The collection agency asks for your personal belongings without having got any judgment from the court.
- The collection agency calls you up at your office without your permission.
- The credit bureaus have incorrect information about you in their records and refuses to correct it even after you provide them evidence.
- The creditors pull out your file without any reasonable purpose.
- Your creditor does not report your credit history correctly.

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## *Go for the out-of-court settlement first*

Accept their proposal for out-of-court settlement if they give you one. Or else you propose them for the same before going to court.

The judge needs to understand that you are in a problem and that you have tried your best to resolve the matter on your own. Only after much harassment are you seeking the help of the court. The judge must get an idea of how much anxiety and stress you are going through. To achieve this, you must possess the necessary proofs of your negotiation with them.

### How to propose for an out-of-court settlement:

First of all, send them a letter asking for the necessary changes you want. You must be seeking a change in the credit bureaus' database or a change in the collection agency's policy of collecting debt.

If there is no response from their side, let them know that you are filing a court case against them. Send them a settlement letter mentioning the changes you want and the amount of money you demand in the lawsuit.

It's very likely that they will accept your proposal and try to solve the dispute personally instead of going to the court. It will save them from losing their time and their reputation. In this way they could also save the court fees and other charges, although they have to pay you.

### If your proposal is accepted:

- **Get the written document of the settlement:** Get hold of an original copy of the agreement with their signatures. You might not get the original copy since they can even fax the agreement to you. If they refuse to give a written form of the settlement, then you need to go to the court.
- **Read the terms and conditions of the settlement carefully before signing it:** The language used in the agreement letter or document given to you might contain legal jargon. You might not completely understand the clauses mentioned in the document. To be on the safer side, get in touch with a good lawyer. Sign the document only after comprehending it with your lawyer's help.

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For Example, there have been many cases where the agreement contained such clauses which states that the person has settled the dispute and will never sue the other party again. So if you sign the agreement and are harassed again, you will never be able to sue them.

- **Look over for the Liquidated Damages Provision in the settlement:** It is a provision which should be there in the document. Liquidated damages are the sum of money to be paid if a party violates the agreement. So always check it out.
- **Inform the court about the settlement:** If the dispute is settled out of court and earlier you have requested the court for a case, let the court know about it. In this case the court will dismiss your case.
- **Make sure that you get the payment before the date of the hearing:** You need to get the payment before the court date. If they do not meet with all the terms of the agreement before the date of hearing, go ahead for a court case against them.

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## *Steps to prepare yourself before you file a claim in the Small Claims Court*

### Get a proof of the harassment:

Collect and be ready with some evidences which say that you have been harassed by them. The debt collectors usually do not send or give you any written document to collect the money from you. They usually call you up over the phone.

#### **Record the telephonic conversation**

One thing which you can do is to record the telephonic conversations. But be careful because in some states such recording is illegal and you can be prosecuted. The states which do not allow secret recording of telephonic conversation are California, Florida, Massachusetts, Michigan, Montana, New Hampshire, Pennsylvania, Washington, Connecticut, Delaware, Illinois, and Maryland. These states do allow phone tapping but you have to take the permission of all the parties involved in the conversation. You can not do this privately. But there are other thirty-eight states including the District of Columbia which allow secret phone tapping. Just check out the laws of the state you belong to.

You can also have a video-recording during the interaction. But before that, go through the laws of your state regarding this. The states which do allow the secret use of video cameras in private places are California, Georgia, Hawaii, Michigan, Minnesota, New Hampshire, Utah, South Dakota, Alabama, Delaware, Kansas, and Maine.

#### **What if your state does not allow such recording?**

Keep a notebook to note the details of the conversation. You can present this notebook to the judge. This will help you to be clear and confident.

Note the following in your notebook:

- The Day and time of the conversation.
  - The Number and names of the people talking to you.
  - The phone numbers.
  - Whether you made the call or you were called up by the other party.
- A summary of the conversation.

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## Go through the ‘Inquiries’ section of your credit report:

You must have noticed that there is an ‘Inquiries’ section in your credit report. The inquiries indicate that certain companies have asked for a copy of your credit report.

What you have to do is: Study this list of companies. There you will also find the reason for their requesting your credit report. Just get to know why these companies have placed such a request.

The reason could be:

- The company wants to know if it can give you a loan.
- The company wants to know the status of your credit
- The company has got a court order.
- The company wants to know if there are other people with you.

If the reasons are other than this and if you find them unacceptable, you should proceed and file a case against them.

## Identify the other party properly:

Identification of the party against whom you are going is very important. It is your job to present his legal name, address, and phone number in the court. The information should be accurate. It should be very clear whether any association you named is partnership or a corporation.

There is a difference between partnership and corporation. A Corporation is a business association much bigger than partnership and involves selling of shares.

You can consult the Corporate Commission of your state to find the exact profile of the party. Or else contact the local clerk to get this information.

## If the company is in another state:

In this case, the courts usually do not allow filing a claim. Some courts may allow you if the agreement was signed in that state.

If you can find a representative of the company who is registered in your state, you can file a case against them.

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## *The actual procedure / steps of filing the claim*

- Go to your county courthouse and request the clerk to assist you. Ask him the procedure.
- Fill in the forms given by him.
- There will be a filing fees to be paid beforehand (usually between \$10 and \$50, although it can vary).
- In some counties, they can ask for a judge's signature in the form. In others, your signature done in front of the clerk is enough.
- The processing time varies from court to court.
- You will be informed of the date of hearing on the same day or later on by mail. It depends on the processing time taken by the court.
- You have to give a notice to the other party mentioning that you are filing a claim against it. This should be done by you or by the court, depending upon the court procedures.
- Mention your name and address properly in the notice so that you get the discovery notice sent by them.

### **What if they send you a discovery notice?**

A discovery notice means that the other party has received your notice and wants some information from you or has some questions to ask.

You must answer their questions and give them the required information. It is their legal right to ask you any question. But if you think that any question is not related with the case, you can ignore it.

Avoid mentioning any proof (for example, witnesses and/or documents) you have got, in the discovery response.

The intention of the other party in sending you a discovery notice can be anything. It could be that they actually want the information. Or else, they want to show you that they are prepared, so that you step back from the case.

### **If you do not get the discovery notice**

If they do not send you a discovery notice, there is a high possibility that they won't be participating in the trial. In that case you have a greater chance to win.

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## *How to prepare for the hearing?*

Be well documented for the day of hearing. Keep in mind all the events related to your case that occurred so far. Try to remember them, step by step in the order they occurred. Collect as many evidences as you can.

A good presentation in the court is necessary for you to win. Make a picture of the presentation in your mind. You must show your attempt for an out-of-court settlement with the other party in front of the judge.

Carry a printed copy of the laws (the FDCPA and the FCRA) on the basis of which you have filed the case because the judge might not know all the business laws.

### **On the day of the hearing:**

Don't hesitate because the hearing in Small Claims Court is very much informal. You will be called after you report to the court. There will be a swearing and after that you will be asked to explain your problem. Be short and precise. The judge may place his/her questions also and ask you whatever he/she wants to know. After listening to the defendant, and inquiring either party, the judge announces the decision.

### **What if either party fails to appear in the hearing?**

If, for any reason, you are unable to make it on the day of hearing, your case will be dismissed. On the other hand, if the other party fails to appear in the hearing, you will win the case and the other party has to pay the amount you claimed for.

### **When and how will I get my money?**

The Small Claims court does not appoint anyone to collect your money from the other party. If they fail to do the payment within 30 days or within the time decided by the court, you must take legal advice from an attorney. He/she may ask you to place a copy of the judgment in the civil docket of the court. Then you can claim their property (wages, bank accounts, cars and other personal belongings).

### **Can I go to other courts if I lose my case in the Small Claims Court?**

If you lose your case in the Small Claims Court, you can approach higher courts within a certain time limit. So get to know the last date of your filing the case from your county courthouse clerk. The fee charged by Superior courts is usually higher.

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## *Small Claims vs. other courts*

Sometimes the amount claimed is very high for Small Claims Courts to handle the case. If the sum of money you are claiming is huge, you have to approach the State Superior or Federal Court.

You can also obtain the lawyer's fee from the money you win. You can hire the lawyer on the condition that you will pay him, only if you win the case in the court.

In Small Claims Court you can represent your case but in others, lawyers represent your case. Many lawyers are unfamiliar with the business laws. You have to approach a good lawyer who understands business laws.

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## *Frequently Asked Questions*

### **I get phone calls late at night. Can I take any action to stop this?**

The collection agency is not supposed to call you up after 8 PM and before 9 AM [FDCPA Section 805(a) (1)]. You can ask them not to call you up late at night or early in the morning. If it does not work out, go for a legal action.

### **What if the Credit Bureau refuses to correct my information in their records even if I provide them the necessary proof?**

You should go to the court. You can actually sue the credit bureau for defamation and willful injury. This comes under the FCRA Section 623. If you win, a fine of an amount equal to the damage caused will be charged from them.

### **Can I file a claim against the creditors if they pull out my credit file without any reasonable purpose?**

Yes. You can sue them under the FCRA Section 604(A)(3) for causing injury to your credit report and credit score. They have to pay a fine of \$1000 if you prove them wrong.

### **My creditor presented my credit history in a wrong way and with incorrect data. What should I do now?**

Let him know that he has violated the US Court of Appeals, Ninth Circuit, No.0015946, Nelson vs. Chase Manhattan. They will be paying an amount equal to the damage caused (as deemed by the court) as fine.

### **I sent a letter to the credit bureau asking for some corrections in my credit report which they have prepared. But there is no response from them.**

The credit bureaus should respond to any written document sent by you within 30 thirty days. It can extend up to 45 days if they have to exchange information with the creditor during the first few days. But if they fail to do so, you can charge them for violating the FCRA Section 611Part (A) (5) (B) (ii) for \$1000.

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## **What is debt validation?**

Debt validation means checking and proving that you have taken a debt. The collection agencies hired by the creditors must be able to do debt validation. For this they should have the necessary proofs of your debt. Whenever you are contacted by a collection agency to make the payment, you can always ask them to validate your debt. It is your right.

## **I am constantly getting calls from an agency to repay the loan. When I asked them for debt validation, they were unable to do so. Still I get their calls.**

You have every right to ask for debt validation. If the collection agency is still calling you up, even on not being able to validate your debt, they are in a problem. You can file a claim against them for violating the FDCPA Section 809(b). According to this act they cannot even report to the credit bureaus if they cannot validate your debt.

## **What is a ‘cease and desist’ letter?**

Cease and desist means ‘to stop’. A cease and desist letter is sent to anyone asking him to stop a particular activity mentioned in the letter. Otherwise a legal action could be taken. You can send a cease and desist letter to your collection agency. This means that if they do not stop calling you up or bothering you in any way, you can take a legal action against them.

## **I have sent a cease and desist letter to my collection agency. Can I file a court case if they start calling me up again?**

Yes, definitely. They can be charged under the FDCPA Section 805(c).

## **I have made my payment by a post-dated cheque. But they have got it cashed it before the date mentioned in the cheque.**

According the FDCPA Section 808, this is a serious offence and your collection agency can be sued for this. They will be charged a fine of \$1000.

## **What are the other situations when I can file a case against the collection agency?**

Apart from the situations mentioned above, you can go against the collection agencies when the collection agency.

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- Calls you at your office knowing that your employer does not encourage such calls [**FDCPA Section 805(a) (3)**].
- Calls up your friends, relatives or neighbours [**FDCPA Section 805(b)**].
- Threatens you, uses violence, uses obscene language; Threatens, annoys, or abuses you without revealing its identity (**FDCPA Section 806**).

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## *Conclusion*

We believe that this book will be of good use to you. This book guides you and prepares you through the process of filing a case against the debt collectors or the credit bureaus in the Small Claims Court. We request you not to be afraid of the debt collectors or the credit bureaus. After all, you will be going against them for your own rights. Small Claims Court is an easy and informal way of filing a claim. It is faster than the traditional litigation system. So when you feel the need to sue them, go ahead and never let them harass you again.

**- Debt Consolidation Care Community Members**

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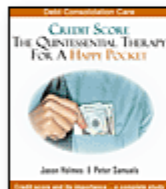
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## MORE E-BOOKS



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( A Complete guidance to write good letters to creditors )



### CREDIT SCORE THE QUINTESSENTIAL THERAPY FOR A HAPPY POCKET

( A Complete study on Credit Score and its importance )

## ABOUT THIS E-BOOK ...

- Learn from Debtconsolidationcare.com community members who were hurt the most by illegal actions of collection agencies and creditors. They decided to fight back and won many cases against the creditors and collection agencies in the small claims court.
- Get \$1000 or more by suing your creditors and collection agents if they cross the line.
- Learn in which circumstances you can file a case in small claims court and how much you can get when you win the case

## ABOUT DEBTCC COMMUNITY

We at Debt Consolidation Care is dedicated to build a debt free community by eliminating the burden of debt. We try to solve it collectively by sharing our knowledge and information. Apart from that our expert counselors provide 24x7 support to our community members.



## Debt Consolidation Care

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