

WHAT CAN A CREDITOR DO TO COLLECT A DEBT IN CALIFORNIA?

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Creditors and debtors have a contractual relationship. The debtor agrees to repay money that the creditor lends, based on the terms of their specific contract. The contract may take the form of an agreement that a debtor signs when he applies for a credit card. Mortgage loan documents are also a form of a contract that specify the terms of repayment and that dictate the cost of borrowing and the consequences of default.

When a debtor fails to pay back a creditor, the debtor fails to fulfill his legal obligation. The creditor may pursue a variety of different remedies depending upon the specific type of debt that is owed. However, there are certain limitations on what a creditor may and may not do. Creditors need to consult with an attorney for advice on the legal steps they may take to try to collect a debt, while those who owe money may also need legal assistance in dealing with creditor actions.

Options for a Creditor to Collect Debt



A creditor has the best option to collect debt if the loan is a secured loan. When a loan is a secured loan, this means that there is collateral guaranteeing that the debt will be paid back. The creditor has a security interest in, or a claim to, some specific property of the debtors.

Common types of secured loans include mortgages and car loans. When a debtor takes on a mortgage, the debt is secured by the home and the home acts as collateral. If the debtor fails to repay the loan as agreed, the creditor can take the house through the foreclosure process. The creditor can then sell the house, collect the money from the sale to pay debts and fees, and must distribute any remaining proceeds from the sale to the debtor homeowner. When the debtor takes on a car loan, then the car is the collateral and the creditor can repossess and sell the vehicle if the debtor does not pay.

In some cases, the money generated from the sale is not enough to repay the debt in full. The creditor may sometimes be able to pursue a claim against the debtor for the remaining balance. In the case of a foreclosure where the house sale does not pay enough to repay the

mortgage, the creditor can seek to obtain a *deficiency judgment* to get back the balance owed. This is not permitted in all states in the case of foreclosure.

If the debtor does try to collect funds above-and-beyond those generated by the sale of collateral for a secured loan, the remaining balance of the debt is not considered secured debt. In other words, there is no more collateral guaranteeing repayment. The debtor can typically get the remaining balance discharged in bankruptcy proceedings, just as he can with most other unsecured debts, if he qualifies to file for bankruptcy.

If the debt is not secured, then there is no collateral attached to it for the creditor to take and sell. For example, personal loans, medical debt and credit card debt are all unsecured debt. The creditor cannot take back the medical treatment received, or the items bought with personal loan. Instead, the creditor may try other collection tactics.



A creditor may post negative data on a debtor's credit report if the debtor does not pay bills on time, which can significantly damage a credit score. A creditor can also call a debtor to try to collect a debt; however, the Fair Debt Collection Practices Act limits the steps a creditor can take as part of the collection effort. For example, creditors cannot call very late at night or early in the morning and they cannot trick a debtor into believing they have taken legal action if they haven't.

If collection calls and requests to pay do not work, a creditor can go to court and get a judgment against the debtor. Once the creditor has had a court declare that the debtor is in default and owes money, the creditor can go back to court to get help collecting the judgment if the debtor still does not pay. For example, the creditor could seek to have wages garnished to satisfy a judgment or could have a lien put on property. Creditors often do not go to this trouble, unless larger amounts of money are owed.

An experienced attorney can assist both creditors and debtors during the debt collection process. It is advisable to contact an attorney as soon as possible when a debt is not being paid in order to protect your interests.

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