

Five minute guide to being sued & wage garnishment

First, it is important to distinguish between actually being sued and having creditors threaten to sue you. The difference is important.

We have seen over the years a number of people who are very frightened and come to us concerned that a creditors will take their next paycheck or wipe out their bank account the next time they are paid.

“The creditor told us that they would start the garnishment on Friday!” our frightened clients tell us.

Upon investigation, we find out that the threat is coming from a bill collector who has:

- no intent to file any kind of a lawsuit,
- no ability to garnished wages,
- cannot possibly attack a bank account, and
- is simply trying to scare the wits out of our clients.

It's a scare tactic.

They are trying to get the consumer to voluntarily pay money.

If the creditors are successful in doing this, they get to save all the money that they would otherwise have to pay to an attorney. Creditors don't want to pay to go through all the legal process that's necessary to file a complaint against the consumer, prosecute that complaint into a judgment, and then follow the legal steps necessary to collect on that judgment.

It's a long process and it's very expensive. It's much more quick and efficient for creditors to lie to consumers and threaten to do things

they can't legally do. Just try to see if they can scare money out of the consumers. And you know, it works very well.

So, the first thing you have to pay attention to is this: are you actually being sued or have you already been sued? If it's just at the threat stage you really don't have anything to worry about, yet.

You will know that you are being sued when you get a certified mail letter from the clerk of courts. Sometimes you will get the lawsuit delivered to you by the sheriff but that is less common than certified mail. So, rule number one would be to pick up your certified mail.

Some people mistakenly believe that they don't pick up their certified mail to the creditor can't do anything. This is not true. What will happen is the creditor will simply report to the court that you are refusing to pick up your certified mail and the court will allow the creditor simply send you the lawsuit by regular mail.

Another thing that sometimes happens is that children and even strangers have been known to sign for your certified mail. It doesn't matter in most cases who signs for the certified mail, so long as somebody does. Once the certified mail is signed for, or if it's been ignored long enough they send regular mail notice to you of your lawsuit, the clock starts to tick. This is the 28 day answer clock.

If you just received the lawsuit it is important that you pay attention to it. You will notice of the lawsuit gives you 28 days to file an answer. The answer is a written document that you have to actually type up, or you can hand write it, and you actually have to take it or mail it to the clerk of courts where the lawsuit was filed.

The answer is a special kind of legal document. The answer supposed to admit or to deny that you owe the money that is being sought in the lawsuit. Most of the time you actually do owe the money or part of it anyway and so likely even if you did contest the lawsuit you would end up still having a judgment against you.

However, if you contest the lawsuit for any legal valid reason, you will certainly be able to buy yourself more time to prepare to deal with the suit when it becomes a judgment.

Some people try to defend their own lawsuits. While it is legal to represent yourself in court, it's not always a good idea. Unless you are trained in the law, you are at a significant disadvantage to a trained attorney.

The court is supposed to enforce the rules equally no matter whether or not a lawyer is involved or someone is representing themselves.

Therefore, it is not a bad idea even if you don't intend to file a bankruptcy or even challenge the lawsuit seriously, to talk to an attorney to find out more about how the process works and what you need to look out for.

Sometimes creditors sue the wrong person, and if you are sure that you have a valid legal defense to being sued, for example, if you're not the person who owes money and never had an account with this particular creditor, it will make a lot of sense for you to defend it.

But it doesn't make a lot of sense for you to defend it without an attorney. For this reason, sometimes it's better off to pay a little bit of money to an attorney to get some advice and representation rather than face the possibility that you will lose in court and get a court order that you have to pay that really you should never have to pay.

I've seen this on more than one occasion and when the creditors get their accounts mixed up and sue the wrong person, they should lose. But they won't lose unless you fight them.

It is always good advice to seek legal counsel if you have received a lawsuit. Sometimes by taking proper steps before the lawsuit process gets too far underway, you are able to save your property and yourself a lot of headaches.

Unfortunately, if too much time passes, judgments can be rendered against you that, if properly and successfully defended, would never of been approved by the judge.

Judgments are serious. Judgments allow creditors to take all kinds of collection actions that they are not allowed to do without the

judgment. With a judgment creditor is able to take your wages, Levy on your bank account, file a judgment against your real estate, even foreclose on your house. I've actually seen credit card judgments turn into foreclosures against people's homes.

If your wages are being garnished, this means that you have already been sued. Sometimes people don't realize that they have been sued. The reason for this is that sometimes is not clear to people from the papers they get in the mail. Unfortunately, these lawsuits are very difficult to read and it is not very clear exactly what you're supposed to do. Therefore, in many instances, people ignore them. When this happens, the creditor gets judgment against you by default. Now the judgment is used by the creditor to collect against you.

The way that most creditors collect is by garnishing wages. There are other ways. Sometimes they go after your bank account. This is called a bank account levy or garnishment. Bank account levies can wipe out your entire bank account. There is no advance notice.

Wage garnishment on the other hand does involve a notice period. You are supposed to get a 15 day warning before your wage is garnished. The document you receive is called "payment to avoid garnishment." You are permitted to pay the amount that would be taken from your wages by the creditor voluntarily. If you do this the creditor is not supposed to garnish your paycheck. Most of the time the creditors follow these rules but sometimes they do not.

A bankruptcy can help you even after you've been sued and a judgment has been taken against you. Some people are of the mistaken opinion that if they've already been sued, and a judgment has been issued, that they cannot discharge this debt and bankruptcy. This is simply not true.

A bankruptcy filing will, of course, stop all lawsuits instantly after it is filed. The wage garnishment and can also stop repossession or other collection actions. In fact, there are very few kinds of debt collection that will not be stopped by a bankruptcy.

If you have any questions about whether or not the collection activity that is being taken against you can be stopped by bankruptcy, simply call our office and schedule a free consultation over the phone. In a few minutes you will know whether or not a bankruptcy might be a good idea, or whether you should follow some other kind of a non-bankruptcy action like seeking a private attorney to fight the lawsuit.

Just as we go to a doctor when we have a medical problem, we need to use a lawyer when we have questions about what's best for us in a legal matter. Because of the ability of creditors to take part of your paycheck, wiped out bank accounts, and take property, even your home, it doesn't make sense to rely on the advice of friends and family in these matters.

This is particularly true when you can get a consultation with a bankruptcy attorney at no charge.