



## Creditor Lawsuits Handbook

In Magisterial District Court

A Handbook for people dealing with  
creditor lawsuits, including information on  
such suits and common defenses.

*Legal Advocates For  
Low-income Families*

**NPLS**

NORTH PENN LEGAL SERVICES

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## Introduction

This guide provides general information for Pennsylvanians who are facing debt collection lawsuits in Pennsylvania Magisterial District Courts (referred to in this handbook as district court). **Note:** District court is a small claims and neighborhood court. It does not apply to courts outside the State of Pennsylvania. It is not a substitute for obtaining legal advice in your individual case.

Your local legal services program may not be able to represent you due to limited staff. This booklet may help you respond to a debt collection lawsuit. This booklet does not tell you everything about how to handle such a suit. It only describes the steps that should be taken in the simplest cases. It may be difficult to handle a defense without a lawyer. After reading this booklet, you may decide that it is too complicated for you to do by yourself. Before you make that decision, you should read this entire booklet.

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# I. The Basics of Defending Creditor Lawsuits

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## The Basics

### **1. What is a Creditor Lawsuit?**

Creditors - banks, credit card companies, other organizations to which you owe money - can sue you in order to collect debts. These types of lawsuits are quite common. In Pennsylvania, the creditor typically files the lawsuit in the county where you live. In addition to creditors, debt buyers (companies that buy and collect old debts) may sue you to collect the debt. This common practice is also legal.

### **2. Do I need a lawyer?**

In an ideal world, every defendant in a debt collection lawsuit would be represented by a lawyer. Practically speaking, most low income Pennsylvanians who have been sued over a debt will be unable to obtain free legal representation. Hiring a private attorney will often cost almost as much, if not more than, the debt itself. Unfortunately, most low income Pennsylvanians have no choice but to represent themselves in court.

You should **not** ignore a debt collection lawsuit because you cannot afford an attorney. Hundreds of low income Pennsylvanians defend themselves in debt collection cases every single day, and many do so successfully. A debt collection case is relatively simple and straightforward compared to other kinds of legal problems. Debt collection attorneys often rely on the fact that unrepresented defendants do not know their rights. *Fight back by educating yourself!* Read the information in these pages to familiarize yourself with the court process and the issues you will face as a pro se defendant (“pro se” means “without a lawyer”). If possible, consult with an attorney to obtain specific advice about potential defenses. A little information goes long way.

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## Definitions

A “**plaintiff**” is the party who files the lawsuit. If a creditor or debt buyer files a lawsuit against you, the creditor or debt buyer is the plaintiff.

A “**defendant**” is the party who is sued by the plaintiff. If a creditor or debt buyer files a lawsuit against you, you are the defendant.

A “**debt buyer**” is a company that specializes in buying and collecting old debts. If you fail to repay a debt, your creditor might sell it to a debt buyer. The debt buyer will then try to collect the debt from you. This practice is legal. Debts are often bought and sold more than once.

A “**complaint**” explains why you have been sued. It contains the facts and the legal claims that are the basis for the lawsuit. In debt collection cases, the complaint is often very short and may provide very little information.

A “**Court of Common Pleas**” is a Pennsylvania trial court that operate at the county level.

Written “**answers**” are not allowed by district court procedures in Pennsylvania.

A “**cross-complaint**” is a claim that you have against the plaintiff. The plaintiff may owe you money, or the plaintiff may have violated your rights or caused you some other kind of harm for which you want to recover money damages within the jurisdiction of the magisterial district judge. You always have the right to file a cross-complaint against the plaintiff. If the cross-complaint is filed within 5 days before the date set for the hearing, there will be no filing fee for filing since it is considered a “responsive pleading.” (See Rule 315) Your cross-complaint should be filed as soon as possible if you want to have the judge hear all claims on the same trial date.

The “**burden of proof**” is the responsibility to provide evidence in support of a legal claim.

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# How a Creditor Lawsuit works

## 1. Dealing with a Complaint

### **What should I do if I receive a complaint?**

DO NOT IGNORE IT. You should always respond to a summons and complaint. The correct way to respond is to telephone or go to the district court office listed on the complaint and tell the clerk that you want to file a Notice of Intention to Defend.

### **Is there a time limit for filing a Notice of Intention to Defend?**

No. If you were served with the complaint, you must telephone or file your Notice of Intention to Defend immediately to the District Court. Many times the Court will reschedule the hearing date to allow enough time for the case. If you attend the hearing without giving your Notice of Intention to Defend, the District Judge will continue the hearing to give the plaintiff the opportunity to attend.

### **What if I failed to notify the District Court of my intention to defend?**

You should go to the Court and ask to have the case continued to a new hearing date. As long as there is no judgment entered against you, the other side will not be prejudiced by the setting of a new hearing date because they were not planning to come to court on the original hearing date.

### **What will happen if I ignore the complaint?**

If you ignore the complaint, the plaintiff will almost certainly ask the court to award a judgment against you. The plaintiff in a civil action does not even have to come to court if the defendant does not notify of their intent to defend. This kind of judgment is called a “default judgment.” A default judgment usually awards the plaintiff everything that it asked for in the complaint, plus interest and court costs. The judgment will appear on your credit report. The judgment also gives the plaintiff the right to try to collect money from you by seizing your personal property and selling it. Personal property includes such things as a car, computer equipment, furniture, electronic equipment.

The plaintiff may also file the default judgment with the Court of Common Pleas thirty days after the district court enters the Notice of Judgment. This would allow the plaintiff to collect the judgment by freezing your bank account as well as selling personal property. You can avoid a default judgment in district court by giving your Notice of Intention to Defend and appearing at the district court hearing.

## **2. What happens next?**

After you give Notice of Intention to Defend, the court will notify the plaintiff or its attorney of your intention to defend. The hearing date will not necessarily change, but the district court may need to continue the hearing if the court has not set aside enough time for the hearing. It is very important that you attend this court date. If you fail to attend, the court will award a default judgment against you.

## **3. The Burden of Proof**

### **Who has the burden of proof in a debt collection case?**

The plaintiff (the creditor or debt buyer) ALWAYS has the burden of proof in a debt collection case. This means that the plaintiff has to come up with evidence to prove to the court that (1) the plaintiff has the right to sue you; (2) the debt is yours; and (3) you owe the exact amount of money that the plaintiff claims you owe. You do not have to prove that you do not owe the money. Rather, the plaintiff has to prove that you DO owe the money.

*(continued on page 8)*

### **Know Your Rights!**

As a defendant in a court case, you always have the right to “put the plaintiff to its proof.” That means that you can insist that the plaintiff come up with actual evidence to prove that you owe a debt. Although you should always be truthful in court, you do not have to admit that the plaintiff’s allegations are correct.

### **3. The Burden of Proof, continued**

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#### **What kind of evidence does the plaintiff need to present in order to meet its burden of proof?**

If you admit that the plaintiff's allegations are correct, the plaintiff can rely on your admission to win the case. But if you challenge the plaintiff's right to sue you, the existence of the debt, or the amount of the debt, the plaintiff must prove the following evidence in court:

- Proof that the plaintiff has the right to sue you. In the case of a debt buyer, the debt buyer must prove that it owns your debt by showing the court the contract of sale. This contract is called an "assignment." The assignment must mention your debt specifically. If your debt has been bought and sold multiple times, the debt buyer must present a chain of assignments that goes all the way back to your original creditor.
- Proof that the debt is yours. Usually, this means an original contract with your signature.
- Proof that the amount demanded in the lawsuit is correct. Usually, this means a complete set of bills or account statements.

All of this proof must come in a specific format, or else it is considered "hearsay," not admissible in court. If the plaintiff fails to meet its burden of proof by coming up with admissible evidence of your debt, the court must dismiss the case.

#### **How can the burden of proof help me get a better outcome in my case?**

The plaintiff has to present quite a lot of evidence in order to meet its burden of proof. This evidence is often difficult or expensive for the plaintiff to produce. If your debt is old, or if it has been bought and sold multiple times, evidence of your debt may not exist at all. It is almost always much easier and cheaper for the plaintiff to negotiate a settlement with you than to come up with all the evidence needed to meet the burden of proof. This is why the plaintiff will often want you to agree to a settlement.



## Know Your Rights!

If you believe you do not owe the debt, never agree to a settlement. Insist on your defenses and put the plaintiff to its proof. If you have a solid defense, you have a good chance of winning the case.

If you would like to negotiate a settlement, use your knowledge of the burden of proof to make sure you get a settlement that works for you.

If you cannot afford to make a settlement agreement, or if your income is exempt from debt collection, you should put the plaintiff to its proof. There is a good chance that the plaintiff will be unable to meet its burden, and the case will eventually be dismissed.

**Remember: If you do not appear in court, you will automatically lose. Showing up is more than half the battle!**

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## More Information

You should always make several copies of every paper you file with the court, and keep one copy for your own records.

You must always give or mail a copy of every paper you file with the court to the other side. This is called “serving” the paper on the other side. Neatness counts. You should **print or type all documents** to make sure that they can be understood. Some of the documents you will have to prepare may be forms that have several copies; if so, use a typewriter or press hard.

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## II. Common Defenses to Creditor Lawsuits

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### Definitions

Generally, a “**defense**” is a reason why the plaintiff should not win its case. In a debt collection lawsuit, a defense is a reason why (1) the plaintiff failed to prove its case, or (2) you do not owe the money. If one of your defenses is successful, the plaintiff will lose and you will win.

*See page 5 for additional definitions*

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### Answers to Common Questions

#### **What is NOT a defense?**

- The reason you fell behind on your bills
- The reason that you cannot pay the debt today
- The fact that the creditor or debt collector refused to make reasonable payment arrangements in the past
- A statement that you want to settle the case or make a payment agreement

#### **Do most defendants have defenses to creditor lawsuits?**

Yes. One or more of the common defenses discussed below probably applies to your case. Each of the defenses discussed below - if it applies to your case - is a reason why the plaintiff should lose and you should win. If you have questions about whether a particular defense might apply to your case, you may call North Penn Legal Services at 1-800-9-LEGAL-0.

#### **What is the best way to present my defenses to the court?**

To alert the court to your defenses, you might give the court your notice of intention to defend at least 5 days before the date set for the hearing. The District Judge’s office will send their Notice of Intention to Defend to the plaintiff’s attorney.

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## Common Types of Defenses

### 1. Identity Theft or Mistaken Identity

These defenses apply when you believe that the debt for which you are being sued is not your debt.

**Identity theft** occurs when someone steals your name and personal information and opens up credit accounts in your name.

**Mistaken identity** occurs when you have been confused with someone else who has a similar name or other identifying information.

Remember that the burden of proof is on the plaintiff to establish that you made or authorized each and every charge. You do not have to prove that the debt is not yours.

NEVER agree to a settlement if you are a victim of identity theft or mistaken identity.

### 2. Statute of Limitations

**Statute of limitations** is the time limit that a creditor has to file a lawsuit against you. That time begins from approximately the last time you made a payment. In Pennsylvania, the statute of limitations on a credit card debt is four years, and the statute of limitations on an auto loan or store card (like a Sears card) is four years.

If it has been more than four years since you paid your credit card debt (or more than four years since you made a car payment), the statute of limitations on that debt has expired.

The statute of limitations is an absolute defense -- the court must dismiss a case if the debt is past the statute of limitations.

Any payment, no matter how small, can reset the statute of limitations. To be safe, NEVER make a payment if you want to assert the statute of limitations as a defense. You may want to have some written evidence of the date that you last paid on the account if you intend to use the statute of limitations defense.

### 3. You were only an Authorized User

This defense may apply if you are being sued for a card that you shared with someone else.

The defense hinges on the difference between a **cosigner** and an **authorized user**.

If another person gave you permission to use his or her card, and you never agreed to be responsible for paying for that card, you were an **authorized user**. As an authorized user, you cannot be held responsible for that credit card debt.

However, if you signed a credit card agreement in which you agreed to be jointly responsible with someone else for a credit card, you are a **cosigner**, and this defense does not apply to you. As a cosigner, you can be held responsible for the debt, even if none of the charges were yours.

### 4. Payment

If you have paid all or a part of the debt, and you believe you have not been credited for the payment, you can raise the defense of payment.

### 5. Dispute the Amount of the Debt

If you believe that the amount of the debt is incorrect, you have the right to dispute it.

Remember that the plaintiff has the burden to prove that you owe the amount for which you have been sued. The plaintiff must prove that the principal, interest, collection costs, and attorneys fees are all correct, agreed to in your contract, and lawfully charged. You always have the right to insist that the plaintiff come up with your original contract, account statements, and even purchase receipts, to prove the amount of the debt.

## **6. Lack of Standing (No Business Relationship with the Plaintiff)**

This is a defense that applies when the plaintiff is a debt buyer, not your original creditor.

Because you never signed a contract directly with the debt buyer, you have the right to challenge the debt buyer's right to sue you (also known as "standing"). The plaintiff will not be able to prevail unless it can prove to the court that it owns your debt. To do this, the debt buyer will have to produce a contract of sale (also known as an "assignment") that mentions your debt specifically. If the debt buyer bought your debt from another debt buyer, it has to provide a chain of assignments going all the way back to the original creditor.

If the debt buyer cannot or will not provide these documents, the court must dismiss the case.

## **7. Bankruptcy**

If you previously declared bankruptcy, and the debt for which you are being sued was discharged as part of that bankruptcy proceeding, you do not owe it anymore.

Bankruptcy is an absolute defense to a debt collection lawsuit. You may need a copy of your Discharge Order from the Bankruptcy Court to show to the court.

(If you have a number of creditors, you may want to consider filing bankruptcy as an option. Make an appointment for a consultation with a bankruptcy attorney or call North Penn Legal Services to see if you are eligible for its services. Legal Services provides limited direct representation in bankruptcy cases.)

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## What if I lose? Where do I appeal to?

After the hearing before a district judge, the losing side has the right to appeal to the court of common pleas. The appeal is “**de novo**” which means that the case starts over and will be heard as if the district judge’s hearing never happened. The appeal must be filed with the court of common pleas within 30 days of the date the District Judge enters judgment. See the pamphlet “How to Appeal from Magisterial District Court” for further information.

The rules in the court of common pleas are more formal and complex than those used by the district court and you may find that you will need the advice of an attorney.

### **Disclaimer**

**This pamphlet provides general information for consumers. This pamphlet does not provide legal advice, which you can only get from an attorney.**

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## Notes



**For more information, visit the NPLS  
website at [www.northpennlegal.org](http://www.northpennlegal.org)**