



# I Owe Money and I Want to Set Up a Payment Plan With a Creditor. What Should I Do?

**THERE ARE A FEW IMPORTANT CONSIDERATIONS BEFORE YOU DECIDE TO MAKE A PAYMENT PLAN. ASK YOURSELF THE FOLLOWING QUESTIONS:**

- **Do you only have income and assets from government or disability benefits?** If so, it is likely that none of that income or those assets can be taken by a debt collector to pay a private debt. Look at the list at the end of this fact sheet or seek assistance from an attorney to figure out if all of your income falls into this category. If you make payments with those monies voluntarily, you cannot get them back.
- **Can you really afford to make payments?** If you think that you will not be able to pay for rent, food, utilities, medicine or other necessities, you should not agree to make payments. You are often worse off if you agree to make payments and then fail to make them, than you would be if you never agreed to make payments.
- **Is the debt the creditor is asking you to pay back your debt?** Do not be pressured into paying a debt that you do not owe. If you are not sure if the debt is yours, ask the creditor for more information about the debt by writing a letter.

**WHAT IF I CAN AFFORD TO MAKE SOME PAYMENTS AND I WANT TO SET UP A PAYMENT PLAN? HOW SHOULD I GO ABOUT DOING IT?**

- **Figure out how much you can afford to pay per month**, and do not agree to pay more. Also, your first offer does not have to be the absolute most you can afford, unless you are anxious to pay off the debt as quickly as possible.
- **Agree on a total amount you will pay off over a specific period of time.** This stops the interest from accruing and gives you certainty about when you will be done paying it off.
- **If you can, negotiate to make one lump sum payment.** This may mean that you have to wait and save some money before you contact the creditor. If you do this though, you will have more leverage and the creditor will often be willing to accept less money than it would accept if you wanted to make payments over time.
- **Get any agreement you make in writing.** Before making any payments insist that the creditor send you a copy of the agreement in writing. The NYC Department of Consumer Affairs requires creditors to provide written agreements. Once the creditor sends the agreement, review it to make sure that you understand every part of it. If the agreement says anything about a judgment, seek legal advice before signing it. A judgment would allow the creditor to freeze your bank account and take certain assets without your permission.
- **Include notice of default and opportunity to cure.** Try to include some flexibility in the agreement with regard to the timeline for payments. If possible, include in the agreement that you are entitled to notice of a default in payment (which means that the creditor must inform you that you missed a payment) and an opportunity to cure the default (this means that if you pay with the "grace period" you won't be considered to have defaulted). You should provide for at least 15 days to cure the default to ensure there is enough time for you to receive the notice of default and send in the missed payment.

- **Keep some proof of every payment you make.** A money order receipt and a cancelled check are good proof. Also, send the payments Certified Mail Return Receipt Requested if you can so that you have proof that the payment was received. If that is too expensive, a certificate of mailing from the post office is the cheapest way to prove that you sent something – it costs about \$1.30.
- **Advise the creditor in writing of any change in your address.**

### **WHAT MONEY IS EXEMPT FROM COLLECTION?**

Below is a partial list of monies that generally are exempt from collection or garnishment, meaning that if you cannot agree to a payment plan you can afford, the creditor will not be able to take these funds from you:

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| <ul style="list-style-type: none"> <li>• Wages of people who also receive SSI or public assistance</li> <li>• Public or private pensions</li> <li>• Social Security Disability benefits (SSD)</li> <li>• Unemployment benefits</li> <li>• Supplemental Security Income (SSI)</li> <li>• Public school teacher benefits</li> <li>• Public Assistance</li> <li>• Veterans benefits (including survivor's benefits)</li> </ul> | <ul style="list-style-type: none"> <li>• Workers compensation benefits</li> <li>• Social Security benefits</li> <li>• Child support</li> <li>• Maintenance (Alimony)</li> <li>• Railroad retirement benefits</li> <li>• Some insurance benefits</li> <li>• Life insurance policies</li> <li>• 90% of wages earned within the past 60 days</li> </ul> |
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**Note:** There are exceptions to the general rule that the above benefits are exempt from garnishment: some exempt funds may be garnished for purposes of paying child support or debts owed to the government, including taxes or student loans. If you owe these kinds of debts, you should contact an attorney to find out how these debts may affect your benefits.