

I Am Being Sued For A Debt: What Should I Put In My Answer?

HAVE RECEIVED A SUMMONS AND COMPLAINT THAT SAYS I HAVE TO FILE AN ANSWER. WHAT IS THAT?

An answer is a response by the defendant (the person being sued) to the claims made by the plaintiff (the party who filed the lawsuit) in the complaint. An answer should include defenses, which are reasons why the plaintiff should not win.

HOW DO I FILE THE ANSWER?

If you were served with the summons and complaint in person (someone handed the court papers to you), you have 20 days to file your answer. You have 30 days if you received them any other way (for example, if you received them in the mail or they were left with someone you live with). You must go to the **clerk's office in the civil courthouse** in the county where the case was filed. This information can be found at the top of the first page of the summons and complaint, and should be the county in which you live. Be sure to take some form of identification with you.

You can use the interactive form at: lawhelpny.org/consumer to fill out and print your Answer before you go to the clerk's office. Or, you can go to the clerk's office and the clerk will provide an answer form for you. Most of the time you will tell the clerk which defenses you want to assert, and the clerk will print out three copies of your answer. The clerk's office will give you one copy, will mail the plaintiff's attorney one copy, and will keep a copy for the court.

WHAT SHOULD I SAY IN MY ANSWER?

You must be truthful in your answer, but there is no reason to provide more information than necessary. You can include as many defenses as you can truthfully assert, including any of the following:

General Denial: A general denial means that you deny the allegations in the complaint.

Service

- **I did not receive a copy of the summons and complaint:** If you never received a copy of the summons and complaint, you can assert this defense. If you only received a one-page notice from the court in the mail, that is not the summons and complaint, and you should say you did not receive the summons and complaint.
- **I received the summons and complaint, but service was not correct as required by law:** Even if you have received the summons and complaint, you may not have received it according to the procedures required by the law. Generally, there are three correct ways to be served: (a) in person, where the process server gave you the summons and complaint directly, (b) by "substituted service," where the process server gave the summons and complaint to another adult at your residence or place of business and mailed you a copy, or (c) by "nail-and-mail," where the process server attached a copy of the summons and complaint to the door of your residence and mailed you a copy. If you received the summons and complaint by any other method, or only received the summons and complaint in the mail, you should indicate that service was not correct.

NOTE: If you assert either of the service defenses, **you only have 60 days after filing the answer to ask the court to dismiss the case** because of improper service, or you waive that defense.

Affirmative Defenses

These are defenses that must be made in an Answer. If you don't state them in your Answer, you can't state them later. Although not all of them may be relevant to your case, you should review each of these carefully to assure that you don't miss any.

- **I do not owe this debt.** This defense is available when you believe you do not owe the debt for which you are being sued.
- **I am a victim of identity theft or mistaken identity. I am not responsible for this debt.** This can be used in two instances: **identity theft** is when you are being sued on a credit card that you did not apply for, receive or use, or if your credit card was used after you notified the creditor that it was stolen and/or used by an unauthorized person. **Mistaken Identity** is when you believe the plaintiff is suing the wrong person, for example, someone else with the same name or a similar name as you.
- **I have paid all or part of the debt.** This defense is available if you think that you owed the plaintiff some money at some time, but that you have made payments towards that amount (even if those payments were made to another collector) that the plaintiff has not counted.
- **I disagree with the amount of the debt/the amount is incorrect.** This defense is available if you believe the Plaintiff is suing for the wrong amount of money. The Plaintiff has the burden of proving that you owe the amount of money alleged in the complaint. If you think the amount asked for is too high (maybe because interest rates and fees were too much) then you can assert this defense.
- **I do not have a business relationship with plaintiff (plaintiff lacks standing).** This defense is available if the Plaintiff is not the business with whom you had a contract. Many businesses buy debts owed to other companies, and are often the plaintiffs in debt collection cases. If you don't recognize the name of the company listed as the plaintiff, then that company must prove that it has the right to sue you.
- **The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect debt.** This defense is available where the plaintiff is not the original creditor and is instead a debt buyer. You can call the Department of Consumer Affairs (DCA) at 311 or check online at <https://a858-elpaca.nyc.gov/CitizenAccess/> to find out if a debt collector is licensed.
- **Plaintiff does not allege a debt collector's license in the complaint.** Again, this only applies where the plaintiff is not the original creditor. If the complaint does not list a DCA license number, you can assert this defense.
- **Statute of Limitations (the time has passed to sue on this debt).** Most debt collection, including credit card debt, cell phone debt and hospital debt is based on a claim of a breach of contract. The statute of limitations for breach of contract varies depending on where the plaintiff's business is based, but is never longer than six years if you are sued in New York. The time is generally computed from the date of the first missed payment. If it has been more than two or three years since your last payment, you should probably allege this defense.
- **The debt was discharged in bankruptcy.** If you received a discharge of debts in bankruptcy after you incurred the debt, you do not owe the money and can allege this defense.
- **The collateral (property) was not sold at a commercially reasonable price.** This defense is primarily available in secured loans, such as auto loans, where the secured item, such as the car, was repossessed and sold at auction at less than a fair market value (which is quite often the case). The lender may be suing you for the amount owed minus the amount owed at auction.

Equitable Defenses

- **Unjust enrichment (the amount demanded is excessive compared with the original debt).** This defense is available when interest and penalty fees may have increased the amount of the debt beyond what is reasonable. This is also available if the plaintiff has waited for years after the default, allowing interest to increase the amount of the debt significantly during that time.
- **Violation of the duty of good faith and fair dealing.** This defense is available if the plaintiff has acted in bad faith in its interactions with you.
- **Unconscionability (the contract is unfair).** This defense alleges that even if you did enter a contract with the plaintiff, that contract was unfair and should not be enforced by the court.

- **Laches (plaintiff has excessively delayed in bringing the lawsuit to my disadvantage).** This defense is available if a significant amount of time has passed from the time of alleged default to the time the case was filed. It could mean that the delay makes it harder to prove that you paid, or that the passage of time has allowed interest to increase unfairly. This defense is often alleged alongside a statute of limitations defense.
- **Defendant is in the military.** This defense is available if the defendant is an active member of the armed forces.

Exempt Income

There are some forms of income that are exempt from collection. They include social security, social security disability, supplemental security income, public assistance, and other forms of public benefits. If your only source of income is exempt, you should notify the plaintiff of that in your answer, even though this isn't an actual defense to the case.

Counterclaims

If you believe that the plaintiff actually owes you money, you can assert a counterclaim on your answer. If you assert a counterclaim, you will have the burden of proving that the plaintiff owes you the amount of money you allege.

WHAT HAPPENS AFTER I FILE MY ANSWER?

When you file your answer the clerk will usually give you a date to return to court for trial. Sometimes the clerk will not give you a date, but will tell you to expect a postcard with the court date, and will usually also give you a website or a phone number to find out when your court date will be. It is important to follow up to learn when your court date will be if you do not receive a postcard within a week or two. **You must appear on time on your court date or the plaintiff will win by default.**

CAN I GET ANY ADDITIONAL ASSISTANCE?

Because there are so many consumer debt lawsuits in New York City, legal services organizations cannot provide representation to every defendant. One place where you can get free legal advice is the Civil Legal Advice and Resource Office (CLARO). The CLARO program is staffed by volunteer attorneys and law students who give brief advice to self-represented defendants in these cases. Their times and locations vary by borough, and you can visit www.claronyc.org or lawhelpny.org/consumer to learn more, or you can ask the court clerk when the CLARO program in your borough meets.