



What Creditors Can Do if You Don't Pay

This publication is intended to provide general information only and is not a substitute for legal advice.

October 2009

HIGHLIGHTS

- 1 SECURED CREDIT CONTRACTS
- 2 UNSECURED CREDIT CONTRACTS
- 3 IF A CREDITOR SUES YOU
- 4 ENFORCEMENT OF JUDGEMENTS
- 5 GARNISHMENT
- 6 DO YOU OWE MONEY TO A BANK?
- 7 DEBT COUNSELLING
- 7 LEGAL HELP
- 8 FOR MORE INFORMATION

**Government
of Alberta** ■

When you use credit to make purchases or pay for services and fail to make payments your creditors may take legal actions to recover the money owed. Common types of credit are bank loans, bank account overdrafts, lines of credit, credit cards, finance agreements, student loans, payday loans, etc.

This tipsheet describes the legal action a creditor may take if you do not pay your debts.

Note: A creditor can hire a collection agency to collect unpaid debts. Refer to the Service Alberta tipsheet Bill Collection and Debt Repayment for information on what collection agencies can or cannot do. [www.servicealberta.ca/Consumer Information/Tipsheets-Consumer Information](http://www.servicealberta.ca/Consumer%20Information/Tipsheets-Consumer%20Information).

Phone Edmonton: (780) 427-4088
Toll-free in Alberta: 1-877-427-4088

SECURED CREDIT CONTRACTS

Some creditors ask you to provide some type of security when you sign a credit contract. Security, also called collateral, is money or goods that you promise to give a creditor if you do not pay back your debt. Common types of security include savings bonds, term deposits, and property such as vehicles, furniture, or even a house. If someone has cosigned a loan for you, their money or belongings may be the security for your debt. Your credit agreement will identify what you provided as security for your debt.

If you sign a secured credit agreement and don't make your payments the creditor has a legal right to seize (take) the security and, if the value of the security doesn't cover your debt, the creditor may also sue you for any money left owing, including interest and costs.

In some cases, the court may also allow the creditor to garnishee your wages and your bank account.

Note: Legal costs can be very expensive. Talk to your creditors or their representative to see if you can negotiate new payment arrangements and stop legal action. Ensure any agreement you negotiate is in writing and signed by both parties.

Seizure under a secured contract

A creditor must use a civil enforcement agency to seize the security. A civil enforcement bailiff, working with the agency will carry out the seizure.

You will have a chance to get your security back. The creditor must give you 20 days notice before selling your security. To get it back, you will have to pay the money you owe from the missed payments, as well as the administrative costs of the seizure. You may also have to pay the full amount of the debt. If you cannot pay, the creditor has the right to sell the security.

Note: Seizure under a secured credit contract is not the same as seizure under an unsecured credit contract. For more information refer to "Seizure under a writ of enforcement".

Conditional sales contracts

A conditional sales contract is a special type of secured contract. When you buy goods under a conditional sales contract the creditor owns the goods until you pay the debt in full. The goods are the security for the contract. For example if you buy a car from a car dealership and sign a conditional sales contract you can drive the car off the lot immediately, but the car is the security and you are not really the owner until you make your last payment. If you don't make your payments, the dealer may seize the car.

With a conditional sales contract, if you don't make your payments as agreed, the creditor may either seize the goods that you bought on the conditional sales contract, or sue you to get a judgement for the amount that you owe.

Quit claims

If you don't make your payments the creditor may ask you to sign a quit claim in which you agree to voluntarily give the security back to the creditor. If you do this there is no need for the creditor to use a civil enforcement agency (bailiff) to seize the security.

Note: If the creditor sells the security but does not receive enough money to pay your debt in full, you could still be responsible for the balance. You have no guarantee that the creditor will sell the security for more than what you owe. If the creditor sells the security and receives more than the balance of your debt the difference must be paid to you.

UNSECURED CREDIT CONTRACTS

With an unsecured credit agreement, you get credit without promising security to the creditor. For example, you sign an unsecured credit contract when you get a credit card or a payday loan. You have an unsecured credit agreement with the utility company when they connect your gas, power, water or phone. You also have an unsecured agreement with your dentist for dental care.

Unsecured creditors can sue you if you don't pay your bills.

Note: If you don't pay your utility bill, the utility company will probably cut off your services and start legal action to get the money you owe. To have the service reconnected, you will have to pay your outstanding debt, a late penalty, a hook-up fee and a deposit.

IF A CREDITOR SUES YOU

A creditor has the option of suing you in the Civil Division of Provincial Court (formerly known as small claims court) or the Court of Queen's Bench.

Civil Division of Provincial Court

If your debt is \$25,000 or less, your case will probably be heard in this court. You may hire a lawyer to represent you or you may represent yourself.

If you are sued you will be served with a civil claim. The creditor (or a representative of the creditor) will serve the claim on you where you usually live. It can also be served on any adult resident in your household that is at least 16 years of age. The claim can also be sent by registered mail. The claim will tell you who is suing you, why they are suing, and how much money they are suing you for.

Don't ignore the claim. If you do not take any action your creditor can get a default judgement from the court that would allow them to garnishee your wages, bank account or have your property seized.

What you can do:

1. Talk to your creditor.

You might be able to negotiate a payment plan you can handle and to which your creditor will agree. Make sure any agreement you negotiate is in writing and signed by both parties. The creditor should immediately inform the Civil Division of Provincial Court in writing that the matter has been settled.

2. Pay the claim.

You can pay the claim and related costs to the court, or directly to the creditor or his representative. Make sure you get a receipt. The court will only accept payment by cash, certified cheque, money order or debit card where available. You will not have to appear before a judge if you choose this action.

3. File a dispute note.

You will receive a form called a dispute note when you receive your civil claim. If you believe there are facts in your favour and you want to object to the creditor's claim, you can complete the dispute note and deliver it personally, by fax, or by mail to the Court office where the civil claim was filed. Lack of money is not a valid reason to dispute the claim.

If you receive a civil claim in Alberta, you have 20 calendar days from the time you are served to file the dispute note. If the claim is served on you outside Alberta you will have 30 days to respond. The Court office must receive the dispute note within the correct time limit. Once the note is filed, the clerk of the court will let you and the creditor know when the hearing will be. At the hearing a judge will decide if the creditor has a valid claim.

If you don't file a valid dispute note within the required time or appear in court on the day of the hearing, the court will award the creditor with a judgement against you.

Court of Queen's Bench

If your debt is \$25,000 or more the case will be heard in the Court of Queen's Bench. The creditor or a representative of the creditor will deliver a statement of claim to you in person, or by registered mail. You have 15 calendar days to respond. Because of the large amount of money involved you should consult a lawyer.

If you are sued you will be served with a civil claim. Don't ignore the claim.

ENFORCEMENT OF JUDGEMENTS

The court will award a judgement to a creditor if the judge decides that the creditor's claim is valid. This judgement is enforceable for 10 years and it can be renewed. Interest is charged on an unpaid judgement. It is calculated from the date of the judgement. While a judgement issued in an Alberta court can only be enforced in Alberta, a creditor may transfer the judgement to other provinces. So even if you move to another province, a creditor can pursue you to collect a judgement debt.

Once a judgement is granted the creditor can take several steps to get the money that you owe:

1. Register a writ of enforcement with the Personal Property Registry.
2. Garnishee your wages, bank accounts or accounts receivable.
3. Seize your property.

Writ of enforcement

To start enforcement procedures the creditor must file a writ of enforcement with the Court of Queen's Bench and then register it in the Personal Property Registry. If several creditors have judgements against you, each one may file a writ. If one creditor seizes your property, or garnishees your wages or bank account, all creditors with writs against you will receive a share of the money from the seizure or the garnishment.

If you own a house or land, a creditor with a judgement against you can file a writ of enforcement against the title to your property at the Land Titles Office. You will have difficulty selling or mortgaging your property until the judgement is settled.

Seizure under a writ of enforcement

After registering a writ of enforcement, a creditor must use a civil enforcement agency to seize your personal property to pay the judgement debt plus interest and costs. The civil enforcement bailiff can seize personal property such as vehicles and furniture. However, there are certain belongings that the bailiff cannot seize under a writ of enforcement. (See "What cannot be seized".)

When the bailiff seizes your property you will be given a copy of the Notice of Seizure, a Notice of Objection and a form called Information for Debtor. The bailiff may remove the seized property or leave it with you under an arrangement called a baillee's undertaking. If the property is left with you it is under the condition that you agree not to sell, remove or damage it.

After the bailiff gives you the seizure documents, you have 15 calendar days to give a notice of objection to the civil enforcement agency that conducted the seizure. The notice must give the reasons for your objection. Your property then cannot be sold without a court order. You will be notified of the court date for hearing your objection. If you don't file an objection, or make arrangements to pay your debt, the creditor may instruct the civil enforcement agency to sell the seized property by any commercially reasonable method.

Can you stop a seizure?

Talk to your creditor immediately. If you can start paying some of the money that you owe, the creditor may leave the seized property with you. You and the creditor may agree to a new payment plan. If you can't agree, the creditor will probably continue with the seizure. Most creditors want to collect the money that you owe them as quickly as possible, so would rather not take legal action.

What cannot be seized

Under Alberta's *Civil Enforcement Act*, you have the right to keep certain property. In most cases, you may keep

- household furnishings and appliances worth up to \$4,000
- a motor vehicle up to a value of \$5,000
- personal property that you need to earn your livelihood, up to a value of \$10,000
- up to \$40,000 of the equity on the title of the house that you own and live in (equity is the difference between the market value of your home and any outstanding mortgages). If the equity is more than \$40,000, the creditor can move to sell the house. You would then be allowed to keep up to \$40,000 of any money left after the mortgage is paid in full. This \$40,000 is reduced proportionately where the title to the property is held jointly (e.g. in the case of two joint tenants, the exemption for each is \$20,000).

Note: If you promised any specific items as security on a loan or have a conditional sales contract, those items can be seized if you do not make your loan payments. The amounts listed above do not apply.

GARNISHMENT

Garnishment is a legal procedure that a creditor can take after the court awards a judgement against you. The creditor asks the court to take the money (garnishee) you owe from a number of sources like

- your pay cheque
- your account at a financial institution such as a bank, treasury branch, trust company or credit union
- accounts receivable (money owing to you by others).

The creditor delivers the garnishee summons to your employer or financial institution. The creditor can garnishee your wages or money in your bank account, up to the amount of your total judgement debt plus costs. Your employer or financial institution pays the money to the court and the court pays the money to the creditors.

If there is not enough money available to cover your debt on the day the garnishee summons is served the creditor will continue to garnishee your wages or accounts until your debt is paid in full.

A garnishee summons is effective for 60 days against a bank account, and is effective for one year in most other cases. The garnishee must be renewed at that time.

Your employer, financial institution or creditor will give you a copy of the garnishee summons within 15 days of the date it is served.

Wage garnishment

If your wages are garnisheed, you will be allowed to keep a certain amount of money each month to pay for your basic expenses:

- For a debtor with no dependents, the minimum exemption is \$800 net per month and the maximum is \$2,400 net. Creditors can take one-half the amount between the \$800 minimum exemption and the \$2,400 maximum exemption and 100 percent of employment earnings greater than \$2,400.
- For a debtor with one or more dependents, the minimum and maximum exemptions both increase by \$200 for each dependent.

These amounts are calculated from total earnings less income tax, Canada Pension Plan contributions and Employment Insurance contributions.

Note: The *Fair Trading Act* prohibits the assignment of wages to a creditor from an employer. Your employer must pay you the full amount of your owed wages, then you have control over the use of those wages. A creditor that attempts to induce a person or employer to enter into a wage assignment may be in breach of the legislation.

If your debt is for unpaid child support or alimony under a court order, you will not be allowed to keep these amounts. Clients can call the Alberta Justice Maintenance Enforcement Program (MEP) Info Line by calling (780) 422-5555 in Edmonton or dial 310-0000 for toll-free access anywhere in Alberta. Clients should have their seven digit MEP account number and Personal Identification Number (PIN) available when using the Internet service or calling.

Bank account garnishment

A creditor who garnishees your bank account is allowed to take the entire amount of money that you owe. This means that all money you have on deposit at your financial institution can be taken. The creditor does not have to leave you anything.

Joint accounts can be garnisheed. The money taken from this type of account will be pro-rated by the court based on the number of account holders. Garnishment of a joint account is only valid for one garnishee. The creditor will have to re-issue the garnishee if they want to continue to garnishee the joint account.

If your employer deposits your wages directly into your bank account, that money is considered to be a bank deposit. It can all be garnisheed. If you are in this situation you can apply to the Court for an order that will grant you the same exemptions you would have been entitled to if the garnishee had been served on your employer.

Special rules apply if the only money kept in a bank account is from income support payments under the *Income and Employment Supports Act*, a handicap benefit paid under the *Assured Income for the Severely Handicapped Act*, or a widow's pension under the *Widows' Pension Act*. Your bank account cannot be garnisheed if the only money in the account is from one of these types of payments. If you deposit other money in this account it could be garnisheed.

Objection to a garnishment

To stop the garnishment process or to make changes to the garnishment by the creditor, you must obtain a court order. You will probably need a lawyer to do so.

DO YOU OWE MONEY TO A BANK?

If you have an overdue debt owing to a bank, the bank can use its right of set-off to recover the money. The right of set-off allows a bank to withdraw money from your accounts to pay your overdue debt. The bank does not have to give you notice or ask your permission before taking this action. The bank does not have to ask the permission of the court.

Banks may use their right of set-off to collect overdue payments on credit cards, loans, overdrafts or lines of credit. A bank may withdraw money that you have on deposit in any of its branches and apply it to your debt. The bank does not have to leave any money in your account.

AFTER YOUR JUDGEMENT IS PAID

Once you have paid a judgement in full, the judgement should be discharged at the Court of Queen's Bench and at the Personal Property Registry. Check to make sure this is done. It's also a good idea to let the credit bureau know that you have paid the debt. They will enter this information on your credit record.

For more information refer to the Service Alberta tipsheet Your Credit Report.
www.servicealberta.ca>Consumer Information> Tipsheets-Consumer Information>Your Credit Report.
Phone: Edmonton (780) 427-4088
Toll-free in Alberta: 1-877-427-4088

Judgements are recorded on your credit file. The information will remain on your file for six years after the judgement has been paid in full. Businesses may not be willing to give you credit if you have a judgement on your record.

DEBT COUNSELLING

Money Mentors, formerly Credit Counselling Services of Alberta, is a not-for-profit consumer debt counselling service that offers a number of debt repayment options.

Money Mentors is the only organization in Alberta legislated to provide the Orderly Payment of Debts (OPD) program.

Under the OPD program, Money Mentors makes an application on your behalf, to the court, for a consolidation order. This order will allow you to make payments, which Money Mentors will distribute pro rata to your unsecured creditors. A consolidation order protects you from some legal actions. The interest rate is reduced to 5%. Payment schedules are based on your ability to pay. Most secured credit (such as property mortgages or car loans) cannot go on OPD. If you choose to go on the program, you can maintain secured credit payments outside of the OPD program, but you cannot get any new credit while on OPD.

If you default while on OPD, the court will make an order permitting all registered creditors to proceed independently to enforce their claims. They do not have to sue the debtor to proceed with legal action to collect the debt.

LEGAL HELP

If a creditor is taking legal action against you, you may want legal advice. The following agencies can help.

Calgary Legal Guidance gives legal advice and assistance to people with low incomes who do not qualify for Legal Aid. Phone (403) 234-9266 in Calgary.

Dial-a-Law offers brief taped explanations of various aspects of the law. In Calgary, call (403) 234-9022. Elsewhere in Alberta, call toll-free 1-800-332-1091.

Lawyer Referral Service is a province-wide service for people who can afford to pay a lawyer but need help finding one who can meet their particular needs. The service, operated by the Law Society of Alberta, provides you with the names of three lawyers in your area. You can make an appointment with one of them and receive an initial half-hour consultation at no cost. In Calgary, call (403) 228-1722. Elsewhere in Alberta, call toll-free 1-800-661-1095.

Legal Aid Society of Alberta provides legal help to people who cannot afford a lawyer. The Society has offices in Calgary, Edmonton, Fort McMurray, Grande Prairie, Whitecourt, Lethbridge, Medicine Hat, Peace River, Red Deer, St. Paul and Wetaskiwin.

Student Legal Assistance at the University of Calgary offers legal help to people with low incomes. Phone (403) 220-6637 in Calgary.

Student Legal Services at the University of Alberta offers legal help to people with low incomes. In Edmonton phone (780) 492-2226.

FOR MORE INFORMATION

Money Mentors - OPD Program

Offices are located in Edmonton, Calgary, Lethbridge and Red Deer

Toll-free in Alberta: 1-888-294-0076

www.moneymentors.ca

Consumer Contact Centre

Edmonton (780) 427-4088

Toll-free in Alberta 1-877-427-4088

www.servicealberta.ca

The tipsheet *Bill Collection and Debt Repayment* has information about debt programs and options.

The tipsheet *Payday Lending* has information about payday loans.

www.servicealberta.ca>Consumer Information>Tipsheets-Consumer Information

A current version of this and other consumer tipsheets are available at the Service Alberta website www.servicealberta.ca. Most public libraries have Internet access if you don't have access at home.

If you need more copies of this tipsheet, you have permission to photocopy.