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HEG83-183 Negotiating With Creditors

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Negotiating With Creditors

At some time, almost everyone gets behind in paying a bill. This publication offers suggestions about how to deal with creditors during those times.

Kathy Prochaska-Cue, Extension Family Economics and Management Specialist

The Problem

- Due to some unexpected event, you are behind on your bills and don't expect to be able to catch up in the next month or two. You may have lost your job, or have had large medical bills.
- You make promises to pay you can't keep; checks bounce, or you receive threats from creditors (people to whom you owe money) that they will sue or turn the account over to a collection agency.
- Your income isn't enough to pay *all* the bills.

Who to Pay First

See that your basic needs -- food, rent, and utilities -- are met first. Courts also consider child support payments as top priority. If your income has dropped a lot, think about asking the court to change the support amount. However, don't ignore the support order. Once a month's payment becomes due, no judge can reduce it.

Think about the following when paying the rest of the bills. Which are the longest overdue? Whose services will you need soonest? Who is likely to be patient?

Keep in Contact

Your ability to negotiate a repayment plan with creditors will depend on whether they believe you will honor the agreement. Convincing them of your good faith will go a long way in helping you get along. All creditors fear they won't be repaid. When a payment is long overdue without a word from you, creditors naturally become worried, they think they will never be paid. Being honest and open with your creditors is important. Explaining the situation and telling them again that you want to repay the debt makes them feel better. Contact them before they call you, answer their questions quickly, and keep communications open.

Early communication with creditors often avoids the need to deal with a collection agency. Usually,

negotiating with the original creditor is easier than working with a collection agency to which the debt has been assigned. Once the account is turned over for collection, the original creditor loses almost all control over what would be an acceptable payment plan. Any good relationship from personal contact with the original creditor is lost. Collection agencies are usually more aggressive and less willing to compromise. In addition, since they frequently bring lawsuits against debtors to collect debts and are more familiar with the legal system, they are probably more willing to go to court than the original creditor, for whom the legal procedures may be confusing. In short, you have a better negotiating position with the original creditor; don't wait until the debt is turned over for collection.

Letter Is Better

Should you negotiate with your creditors in person, by phone, or by letter? Going to see the creditor in person is probably the least favorable to the debtor, with phone contact second. While something can be said for the value of the good faith shown by a personal contact, there are some real drawbacks. You have little control over the order of presentation. You might forget an important point, or your choice of words may not be the best. You must answer questions or other proposals for repayment right then and there, without time to think about the advantages, disadvantages, and alternatives.

When dealing with a collection agency, personal negotiations should especially be avoided. Personnel of these agencies are frequently very aggressive and demanding. Their manner, either in person or on the phone, may make you afraid or nervous. By contrast, the force of their personality is greatly reduced in a letter. Although the letter may threaten a lawsuit or repossession of your property, those threats could be made as easily in person or over the phone. However, you don't have to give your answer to a letter on the spot. You can take time to think about whether the creditor is able or likely to carry out the threat, and then reply accordingly. You can also take the letter and seek advice before answering. And, written negotiations allow you to keep a copy of the promises and concessions, in case of any argument later. Always make a copy of your letters to them, as well as keeping their replies.

As a consumer you have certain rights under the 1978 Fair Debt Collection Practices Act when it comes to dealings with debt collectors. They are prohibited from harassing, oppressing, or abusing you; from using any false statements, such as implying that they are attorneys or work for a credit bureau or Social Security; and from engaging in such unfair practices as making you accept collect calls or threatening to take your property without the right to do so.

This law applies to any personal, family or household debt, and covers debt collectors who regularly collect debts for others, but not the creditors themselves or their lawyers.

The law further prohibits debt collectors from contacting you at inconvenient times or places. The collector may not contact you at work if your employer disapproves, must not tell anyone else that you are behind on your debts, and cannot use obscene or abusive language.

You have the right to sue a debt collector who breaks the law, and may recover up to \$1,000 for any violation as well as actual damages, court costs, and attorney fees.

To learn more about this law or to complain about collectors other than banks and other financial institutions, write to the Federal Trade Commission, Debt Collection Practices, Washington, D.C. 20580.

Be Polite

Although a creditor may be rude, offensive, or threatening, it never helps to respond in the same manner. The creditor may be using this rude behavior intentionally to provoke you into saying something you would regret later. A letter gives you the opportunity to phrase your response with care. Either way, however, always try to keep cool.

Be Specific

Never tell a creditor, "I'll pay you what I can." Although you may have the best of intentions, those words promise the creditor nothing. They're too vague; the creditor can't count on any specific amount. It leaves the decision solely up to you. If you pay nothing, creditors can argue that you violated your promise. Creditors would rather get something than nothing and, generally, they would rather be *guaranteed* a smaller sum than have the mere *possibility* of a larger amount. From a purely accounting standpoint, the guarantee of a small sum permits creditors to better calculate their own budgets, since they can more accurately figure their monthly income.

Be Practical

Don't promise a payment you can't afford. Although the creditor will typically be trying to get you to pay as much as you can, your failure to make the agreed payment will greatly harm your chances to renegotiate. All good faith between you and the creditor will have been lost. Figure out what you can really afford to pay *every* month -- don't be optimistic about what you might be able to spare in a good month.

Make a Budget

A list of your income and expenses helps you make ends meet. A budget is also a very good way to convince a creditor of your "good faith" effort to pay your debt. Don't just write down a lump sum total - break down the expenses by creditor, and list how much you pay each of them. In negotiating a repayment agreement, creditors are likely to feel they are getting a square deal if you can show that you are doing all you can to pay the debt, and that you are treating each creditor equally. Avoid showing favoritism for one creditor over another. However, this does not mean that every creditor must receive the same monthly amount; it is reasonable to make larger payments for your larger debts. Have your itemized budget with you when you speak with a creditor so that you can tell when their proposed payments are too much for your budget.

Monthly vs. Weekly Payments

Creditors would rather get something than nothing. However, there comes a point when the cost of processing the payment (including secretarial time, copying, postage, stationery, etc.) outweighs the benefit received. Thus, a creditor would probably rather have one monthly payment, rather than several weekly ones.

Formality Not Needed

A written repayment agreement need not be prepared by a lawyer. There are no "magic words" that make an agreement an enforceable contract. All that needs to be written down is what each party agrees to do and how. Include whatever information a stranger looking at the agreement would need to know: names and addresses of the creditor and the debtor; how much is currently owed; how much you will pay, how often, and for how long. Both parties should sign the agreement. You may also want to make clear what the creditor will (or won't) do in return for the payments, or what will happen if the payments

aren't made.

Offer Services

If your budget won't permit a decent-sized payment (or even if it does), you may want to consider offering services instead of payment. A debt can be paid off by whatever means the creditor agrees to. Cleaning the house or office, washing the car(s), making minor repairs, painting, music lessons, meals, babysitting, mowing the lawn -- these are only a few services that are needed by many people. Don't forget jobs that your work-age children can do. Figure out what services your creditors need for their businesses or homes. If you can perform some of them, thus saving your creditors out-of-pocket expenses, they may accept the arrangement to pay the debt. An individual creditor is more likely to enter into this type of arrangement than a collection agency or a representative of a group. Money satisfies everyone; a particular service, though satisfactory to one person, may not be acceptable to everyone in the organization. Even if the offer of services is not accepted, it is a valuable way to show good faith and intent to pay the debt. Be sure that it is clear what the money value of your services is and how that will decrease your debt. Put the service agreement in writing and keep detailed accounts of services provided. Such written proof shows the debt is being reduced in the event the debt is turned over to a collection agency.

Voluntary Wage Assignment

A voluntary wage assignment is a written contract in which you agree that a certain amount will be deducted from your paycheck to pay the creditor. Because it is voluntary, it is different from a garnishment. Since your employer's accounting department must make the deduction and send it to the creditor, talk to your employer first to see if this arrangement is acceptable. Some employers refuse to handle voluntary wage assignments because it complicates their payroll procedure. If acceptable to your employer, the voluntary wage assignment is better than a garnishment. In the eyes of the employer, you are taking the responsibility of arranging to meet your obligations, rather than being forced to pay your debts. Some employers find reasons to suspend or fire employees if their wages are garnished. Don't wait until then; make other arrangements with the creditor.

Penalty Clause

Sometimes a creditor will refuse to believe your promises of payment. This often happens if you have been unable to keep up with a previous payment agreement. In that case, creditors might be persuaded to accept a new repayment plan if you offer to include a penalty clause in the agreement. Such a provision states that if you default in making any of the agreed-upon payments, you owe the creditor an amount of money *in addition* to the original debt. The amount of such a penalty should be sizable (probably no less than \$100.00), to serve as a real incentive for you to keep current on your payments. Offering to include such a penalty clause demonstrates your honest intent to pay.

Although a penalty clause might lead the creditor to agree on a repayment schedule, it can be dangerous. Unlike a normal installment arrangement, the due date for payment is inflexible. If the payment is one day late, the creditor can insist on collecting the penalty. This inflexibility can be softened by including language in the repayment agreement defining "default." For example, although the payments may be due on the first of each month, you might agree that default occurs if payment is not received within 10 days of the due date. You might also be able to exclude "acts of God" (tornado leveling your house, etc.) or other unforeseeable circumstances beyond your control. Whatever the terms, a penalty clause is a risky, although sometimes effective, negotiating tool.

Will They Sue?

If the income you have left after meeting your basic needs can't pay your other bills in full, you may need to arrange with your creditors to make a smaller payment. Although they don't have to take the lesser amount, most will because of the costs required to take you to court. Those costs usually include court filing fees, a lawyer's fee, the sheriff's fee, possibly a collection agency fee, plus hours of the creditor's time. Even if the creditor handles the lawsuit without a lawyer, a simple debt collection can cost at least \$25.00, not counting time. If a lawyer is involved, which is usually the case, that amount rises to about \$150.00. If you don't think you owe all of the debt, this means more time and more expense for the creditor.

Even though creditors may get judgments (court orders saying you owe the money), they may not be able to collect. If you don't own a home, are unemployed, don't have money in the bank, and your other possessions aren't worth much, you may be "judgment-proof" (the creditor can't force you to pay). You can't be put in jail for not being able to pay your debts. Even after getting a court judgment, the creditor can only collect by going after your wages and bank accounts (garnishment) or by taking your property (execution). In either case, they can't take everything. There are laws setting limits on the amount of the property and wages that creditors can take. Generally, a creditor who has gotten a court judgment against you can take some of your property if you own a home with more than \$6,500.00 equity (current market value minus amount owed) or have belongings worth more than \$1,500.00. If you rent, up to \$2,500.00 worth of certain belongings (such as a car) may also be exempt. A judgment creditor can't garnish your wages if you make less than 30 times the minimum hourly wage per week.

This does *not* fully establish when a creditor can collect on a judgment. It merely suggests an important factor in figuring whether a creditor is likely to sue on the debt. **SEE A LAWYER TO DETERMINE HOW YOUR SPECIFIC SITUATION WOULD BE TREATED UNDER THE LAW.** You can then figure out how much a creditor could collect if a suit were brought forth and use this amount as the highest offer to creditors in negotiating a repayment agreement.

Debt Consolidation Loans

Many small loan companies try to get people to borrow money to "consolidate their bills." This means that the loan company pays off all the individual bills you owe. It may be tempting to get rid of a lot of creditors who are bothering you and just pay one big bill per month. However, the bill consolidation will probably cost you *a lot more* money at the current interest rate, which is probably much higher than it was when you made the original debts. Some of the smaller bills you have probably carry no interest, and many may be unsecured, meaning the creditors don't hold any collateral. The bill consolidation loan very likely will mean that you are putting up all of your household goods, your car, and sometimes even your house as security. Given these extra interest and security costs, think long and hard before entering in a debt consolidation loan.

Consumer Credit Counseling Services

Consumer Credit Counseling Services (CCCS) is a nonprofit agency that can help consumers work out repayment plans with creditors when original terms can no longer be met. Supported for the most part by retail merchants, banks, credit card companies, savings and loan associations, and other financial institutions and creditors, CCCS usually wants to meet with a client in person initially, but may handle further counseling efforts by telephone to save the consumer travel.

CCCS is located in the following cities in and near Nebraska:

NEBRASKA

CCCS
P.O. Box 31002
Omaha, NE 68131
(402) 345-3110

CCCS
1001 S 70, Suite 200
Lincoln, NE 68510
(402) 484-7200

COLORADO

CCCS
1020 Ninth Street, #4B
Greeley, Colorado 80631
(303) 356-1966

KANSAS

CCCS
125 South Seventh Street
Salina, Kansas 67401
(913) 827-6731

IOWA

CCCS
722 Nebraska Street
Sioux City, Iowa 51101
(712) 252-1861

SOUTH DAKOTA

CCCS
7th and Kansas City Streets
P.O. Box 14
Rapid City, South Dakota
57701
(605) 348-4550

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