
Definitions

- A **consumer** is a person who uses credit for personal, family or household purposes—not for business purposes.
- A **creditor** is a person or company to whom you owe money.
- A **debtor** is a person who owes money.
- **Collateral** is whatever the creditor has a lien or mortgage on, usually your car or your house. Furniture, appliances, one radio or one television set are not collateral, unless the debt is for buying any of these things.
- **Repossess** means to take back property that has a lien on it, with or without a court order.
- The **balance** is the amount left to pay off on your loan contract.
- **Refinance** means to renew the loan contract before you have paid it out.
- A **collection agency** is a company that collects debts for other people or companies.

If you need help . . .

If you wish to file a complaint with the South Carolina Department of Consumer Affairs, call 1-800-922-1594 (734-9462 in Columbia).

If you have a very low income, you may be able to get help from your local legal aid office. If you do not know where the legal aid office is located, call the Legal Services at (803) 799-9668 for a referral.

ADDITIONAL

LEGAL TIPS AVAILABLE

To access prerecorded information on other legal issues, call the South Carolina Bar's LawLine. If you are calling from the Columbia area, dial 771-0011. If you are calling from anywhere else in South Carolina, dial 1-800-521-9788. Follow the recorded instructions.

SOUTH CAROLINA BAR LAWYER REFERRAL SERVICE

If you need a lawyer, contact the South Carolina Bar Lawyer Referral Service from 9 a.m. to 5 p.m. Monday through Friday. Call 1-800-868-2284 or if you are in Richland or Lexington Counties, call 799-7100.



***Provided as a public service of the
South Carolina Bar***

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CONSUMER DEBTS



AND THE LAW

Do you owe someone money? Having trouble paying off your debt? This brochure can help you understand your rights as a consumer debtor.

What happens if you get behind on payments to a creditor?

Maybe nothing. If you are more than 10 days late in making a payment, the creditor may send you a letter—called the Notice of Right to Cure—giving you 20 days to catch up. If you don't, the creditor can repossess anything used as collateral or sue you for the balance due.

If you have missed payments because of illness or disability, ask the creditor if you purchased disability insurance (referred to as accident and health insurance). If so, you must file a claim form provided by the creditor, who then submits the form to the insurance company for payment.

The creditor must give you only one Notice of Right to Cure. If you received this Notice in the past but caught up your payments and later get behind again, your creditor can immediately sue for the balance owed or repossess the collateral, without giving you any further notice. If you refinance the debt with the same creditor, you should receive a new Notice if you miss payments.

Can a creditor repossess without sending a Notice of Right to Cure?

You are not entitled to a Notice of Right to Cure if you have broken your contract in another way besides missing payments. For example, if the creditor can prove that the collateral is in danger or that you are moving it out of state without the creditor's permission, the creditor may repossess without sending any notice. If you have a revolving credit or credit card debt, the creditor must send a notice once every 12 months.

What if the creditor tries to repossess?

The creditor **can**:

- ask you for the goods (but you do not have to turn them over);

- take your car from your driveway or from the street if you do not object or protest; or
- sue you to get the goods or the car.

The creditor **cannot**:

- enter your home without permission or a court order, even if the contract says he or she can; or
- take your car out of a closed garage.

Is furniture collateral for a debt?

Only if the debt is for buying the furniture. If you refinance or get a loan, the creditor cannot use your furniture or appliances as collateral.

Can you be put in jail for missing payments?

As a general rule, no. But you might go to jail for writing bad checks or disobeying court orders to pay money (including child support). You can also go to jail for selling or giving away the collateral on the debt.

How far can a creditor go to collect?

A creditor can do any of the following:

- send you letters (but not postcards);
- telephone you, but not at unusual times and not collect, unless you agree to accept the call;
- talk to your family, employer, friends or neighbors to locate you—but not to discuss your debt;
- talk about your debt with anyone who has a valid business need, such as a credit bureau;
- call your employer to confirm your employment—but a creditor **cannot** call you at work if your employer does not allow such calls; or
- sue you or threaten to sue, in most cases.

A creditor cannot:

- threaten to sue you if the creditor has no intention or right to sue; or
- garnish or threaten to garnish your wages. In some cases, however, your wages can be garnished to collect child support.

Also, it is illegal for creditors to:

- tell you anything that is not true;
- harass or threaten you, curse or use dirty language;

- use fake legal papers or pretend to be a lawyer or a government official;
- demand sexual favors;
- ignore your request to stop contacting you, if the person calling represents a collection agency;
- contact you directly if you have a lawyer to represent you about the debt; or
- deposit a post-dated check early if the creditor agreed to hold it (writing post-dated checks is not advisable; you must notify the bank if you do).

Should you refinance?

There is no easy answer. When you refinance, a new finance charge is added to what you already owe, sometimes increasing your monthly payment. If you're already having trouble making payments, this won't help. First, talk to your creditor. Many creditors will work with you if your problem is temporary. Before refinancing, ask the creditor to reduce your monthly payments.

If you return goods you bought on credit and the creditor has a lien on the goods, or if you let the creditor repossess, will that cancel your debt?

Maybe. If the original amount of the sale (or in some cases the loan) was less than an amount set by law, the debt will be cancelled. If the original amount was greater, the goods will be sold and, if the sale brings less than the balance of the debt, you will owe the difference. The amount set by law can change, so you should ask a lawyer or the South Carolina Department of Consumer Affairs to find out if your debt is cancelled. As of July 1, 1996, the amount was \$3,750.

If you cosign someone else's debt, what happens if they don't pay?

You probably will have to pay debts for which you cosign, unless the creditor did not give you a special cosigner's notice required by law. If you have cosigned a debt for your spouse, the law is more complicated. A lawyer can explain your liability for your spouse's debts.