

Debt Collection Lawsuit

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You received a summons and complaint for an outstanding debt. What should you do?

Do not ignore it.

If you received paperwork from the court regarding an unpaid debt, this means you have been “served”. This paperwork is called a summons and complaint. It is very important, so read it carefully and keep it in a safe place.

The summons and complaint will tell you if the claim against you for your debt was filed in small claims court (usually for amounts under \$10,000) or general civil court (claims over \$10,000).

Regardless of whether you think you owe the debt or not, you must respond or show up to court.

If your case was filed in small claims court, you need to read the summons and complaint to see if you have to show up in court or if you can fill out a form called an answer instead. If you are required to appear in court, you must go in person. If you do not go to the hearing, the court will assume that you agree that you owe the debt and you will automatically lose the lawsuit. If the summons and complaint says that you are allowed to submit an answer instead of going to court, you must submit the answer by the due date listed on the summons and complaint. If you don't file your answer in time, the court will assume that you agree that you owe the debt and you will automatically lose the lawsuit.

If your case was filed in general civil court, you need to send in your response, called an answer, within 20 days after you receive the summons and complaint. If you do not submit your answer within those 20 days, you will automatically lose the lawsuit and possibly your chance to challenge that automatic loss.

How to write and submit an answer

Small Claims Court: use the template below to complete your answer. [Small Claims Answer form](#)

Common Defenses to a Debt Collection Claim

If you tell the court that you do not agree that you owe the debt, you don't agree about the amount of the debt, and/or that you don't agree that the debt collector suing you is the company to whom you owe money, the court should then require the creditor or debt collector to provide proof that you owe the debt, in the amount claimed, to them. Creditors and debt collectors cannot always provide that proof to the court.

Debt Collector is missing paperwork from original creditor:

Often, the debt collector suing you bought your debt from someone else, like another debt collector or the original creditor. Sometimes, important records and paperwork about your debt get lost or do not get transferred to the new debt owner during these sales. So, it's important to make the debt collector suing you show you and the court all of the necessary paperwork to prove that you owe the debt in the amount they say you do.

- Credit and/or billing history
 - The debt collector needs to show documents that prove when you got into debt and that the original creditor correctly recorded your payments.
- Original Creditor Agreement
 - The debt collector also needs to show the contract you signed with the original creditor allowing them to sue you. This contract is usually found in the cardmember agreement. Remember, just having regular billing statements are not enough. The debt collector must provide the actual agreement with the creditor with your signature on it.

The Debt Collector doesn't own your debt.

To sue you over a debt, the debt collector has to prove they legally own the debt. If the debt collector suing you is not the original creditor, they must show that they legally bought the debt from the previous legal owner. This usually means having documents proving that the debt was legally transferred from the original creditor to the current debt collector.

The debt is too old for you to be sued for it.

Debt collectors have a limited amount of time to sue you to collect on a debt. This time period is called the “statute of limitations,” and it usually starts when you miss a payment on a debt. In Wisconsin, the statute of limitations for debts is 6 years. This means that once you have missed a payment on a debt to a creditor, the 6-year clock starts running for the creditor to sue you over that debt. If the creditor doesn’t sue you within those 6 years, they can’t sue you for that debt anymore.

However, any time you make a payment on the debt, it resets the clock, giving them 6 years from the date of your payment to sue you over the remaining debt. That’s why debt collectors will sometimes strongly press debtors to make even a small payment on a debt after the 6 years have passed - in order to give themselves the ability to sue, which they would not have had before the payment. If you put in writing that you owe the debt, that can also restart the clock.

If a creditor or debt collector sues you for a debt after the statute of limitations has run out (in other words, it has been over six years since your last missed payment), do NOT ignore the lawsuit. You still need to respond to the lawsuit and prove to the court that the debt is too old to be sued on. You may want to put the date of your last payment in your answer and bring something to court that shows the date of your last payment.

Other defenses

- **You aren’t the person who owes the debt.**
- **The debt amount is inaccurate.**
- **You owe the debt, but not to this creditor.**

To prove these defenses, you need to show documents that prove the debt collector's claim is wrong.

Example: To prove that the debt amount is wrong, you could provide proof of payments you made to the creditor or debt collector that were not properly added to your account.

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