

HANDLING LEGAL ADVERSITIES

DEALING WITH ATTORNEYS

Understanding the attorney's role is important. Attorneys, like each of us, have a job to do. Many consumers are intimidated or fearful of attorneys. Actually, most attorneys are fairly easy to work with if you understand what their jobs are. In your situation, it may be to collect money due from you to a creditor that the attorney represents.

Please remember that actual laws may vary from state to state and you should not rely on these as specific to your particular situation or state. Many of the specifics for each law can be found at a local law library or from the Attorney General's Office in your state. When calling the Attorney General's Office, ask for the Consumer Protection Division.

Steps To Filing A Lawsuit And Getting A Judgment

Once an original creditor decides that legal measures are necessary to get a consumer to pay a debt, an attorney is hired. These are the steps normally taken by an attorney:

- A phone call is placed to the debtor requesting payment.
- A certified letter demanding payment is sent out.

Note: Many attorneys will send the same demand letter by regular mail. Therefore, if you refuse the certified mail and the regular mail piece is not returned showing an "incorrect address", the judge will assume you received the notice.

- If there is no response to the demand letter, the attorney will file suit.
- You will be served by a process server with notice of the suit.
- If you do not answer the suit, the attorney will get the judge to sign a judgment against you.
- The attorney then has the right to request written answers to questions about all of your assets and potential sources of income, and can take your deposition. A deposition is a recorded (by tape or a stenographer/court reporter) question and answer session under oath.
- Once these answers are received the attorney will determine which assets are most easily attachable and seize them, or place liens against them.

PERSONAL PROPERTY REPOSSESSION

When Are You In Default Of A Security Agreement?

- missing one payment normally puts you in default,
- not following the rules as outlined in the agreement:
- not notifying of address change
- reduction in income
- missed maintenance schedules
- selling the property before the agreement is complete or even if you continue to make payments on time.



SURVIVAL TIP

Per the FTC's Credit Practices Rule, household goods and/or personal items pledged as security interest for a loan, other than the items pledged, cannot be repossessed

If a loan company has asked you to pledge your living room sofa, dining table and chairs, or other household goods or personal items as security against a personal loan, they cannot repossess those items. Even if you are in default they could not repossess the items above.

5 Reasons A Creditor Repossesses Goods:

1. history of missed payments,
2. will not return phone calls,
3. concerned that your unemployment, divorce, arrest, etc. will affect your ability to repay,
4. do not make required insurance payments to protect the creditor's assets,
5. fears that you may damage goods.

Breaching The Peace

For something to be repossessed the debtor must cooperate or give his or her permission to the creditor, anything less may be considered breaching the peace. Breaching the peace is any use of force whatsoever in retrieving or attempting to retrieve property from a debtor, if the debtor resists any such action. It is highly unlikely that a sheriff shows up with a court order, but if he does let him have the property.