

ARE YOU FACING A LAWSUIT TO COLLECT DEBT?

The NM Supreme Court started issuing new orders in debt collection cases in September 2022.

Older debt collection cases are now moving forward and all debt collection cases, wage garnishment, and bank account deductions will resume by February 1, 2022. *The court had temporarily stopped issuing orders due to the COVID-19 pandemic.

"I was sued by a creditor. What should I do now?"

Never ignore or throw away paperwork from a New Mexico court.

If you are sued, you should be served with a complaint and a summons.



- If you do not respond or do not attend your hearing, the court may enter a default judgment against you in favor of the creditor.
- You have a much better chance of avoiding a judgment if you attend your hearing and explain your case to the judge.
- **Are you being sued for a medical debt?** A new law is in place that prohibits many hospitals and medical providers from suing low-income patients over medical bills. Please contact NM Center on Law and Poverty if you have questions regarding medical debt.

Respond to the lawsuit and check to see if you really owe the debt.

If you do not respond, the court may enter a default judgment, which can lead to wage garnishment.

- Check and see if any of the issues described below are happening with your lawsuit. **Tell the court in your answer. There are sample forms available to download at <https://www.nmcourts.gov/forms.aspx>.** Civil Form 4-301 explains how to answer a complaint.
- 1) The amount is wrong or there is no explanation why you owe the amount listed**
 - Look to see if there is anything included in the complaint that tells you why you are being sued for this amount. If there is not, or you don't believe the information provided is correct, tell the court.
 - 2) You don't think you owe the debt or there is no information showing a record of the debt**
 - Do you think they have the wrong information or are suing the wrong person? If you have no record of the debt, and you think this company has the wrong information or the wrong person, tell the court.
 - 3) You don't recognize the name of the company suing you**
 - Look to see if there is anything attached to the complaint the court sent that says your debt was "sold" or "assigned" to another company. If you still don't understand who is suing you, tell the court.
 - 4) You think the debt is too old**
 - The statute of limitations is New Mexico law that governs how long a creditor can try to collect on a debt after the date payment was due.
 - The statute of limitations for any written contract is usually 6 years.
 - The statute of limitations for any oral/unwritten contract is 4 years.
 - If you think your debt is beyond the statute of limitations, tell the court.
 - 5) The person representing the creditor (i.e. signing the complaint or coming to court) is neither an attorney nor the owner of the company suing you**
 - Under New Mexico law, if the creditor suing you is a business, they are not allowed to have a non-lawyer represent them in court. (NMRA 2-107, NMRA 3-107)
 - If the person who comes to court or signs your complaint is not an attorney OR the business owner, tell the court.
 - 6) The person/entity suing you has not provided the information in the checklist on the following page.**

KNOW YOUR RIGHTS

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Checklist for your Complaint

When someone files a Consumer Debt Claim against you, New Mexico courts require that complaints include certain information. **If any of the information is not provided, tell the court** because they may not have met their obligations in filing a lawsuit.

The complaint must include the following information:

- ☐ Your full name and address.
- ☐ The last two digits of your Social Security number. If this information is not provided, the debtor must explain why.
- ☐ Whether or not the party suing you is the original creditor (the person or company that originally made your loan or sold you product).
- ☐ The last four digits of your account number.
- ☐ The amount you owed at the time you defaulted on the debt – including principal, interest, and any other charges.
- ☐ An explanation for any additional charges beyond interest.
- ☐ The date of your last payment.
- ☐ A statement by the party suing you that the statute of limitations has not run.
- ☐ The name and address of the current party that owns your debt.
- ☐ Whether the party suing you is a collection agency. If they are a collection agency, a statement that they are “the real party in interest.”
- ☐ A copy of the original contract or an explanation of why they don’t have the original contract.
- ☐ If the creditor suing is not the creditor you borrowed money from, they must show they own the debt. The creditor can prove that they own the debt through an affidavit or document showing a chain of title.

Need legal assistance?

State Bar of New Mexico Consumer Debt & Bankruptcy Workshop: (505) 797-6000

- Depending on the amount and nature of your debt, you may wish to consult with a bankruptcy lawyer. The NM State Bar can refer you to a bankruptcy lawyer and hosts a workshop on Consumer Debt and Bankruptcy on the fourth Wednesday of every month.

New Mexico Legal Aid: 833-545-4357

Senior Citizens Law Office (available for low income seniors 60 years or older): **(505) 265-2300**

University of New Mexico School of Law Economic Justice Clinic: (505) 277-5265

