Surviving Debt

You may have bills, debts and judgments that you can't pay. This leaves you with no choice but to delay or not pay some of them. Knowing which bills, debts and judgments to pay first, which ones to pay last, and which ones to not pay at all, is important. It may mean the difference between keeping and losing your home, utilities, car, or other valuable property.

What is the difference between a secured debt and an unsecured debt?

Debts either are secured or unsecured. A secured debt means the creditor has a claim on a particular piece of your property. That property is called "collateral." A creditor with collateral is a secured creditor. The creditor knows that if you don't pay, they can repossess or take the collateral from you and sell it. Secured debts require written agreement with specific language. They include:

- Home mortgages.
- Mobile home loans.
- Motor vehicle loans.
- Loans secured by specific items of household goods.

An unsecured debt means the creditor doesn't have a claim on a particular piece of your property. A creditor without collateral is an unsecured creditor. These creditors have a harder time collecting debts, unless you pay voluntarily. Unsecured creditors cannot take property from you to satisfy your debt, unless they first get a judgment and try to enforce the judgment. Unsecured debts usually include these things.

- Credit cards and charge cards.
- Hospital, medical, legal and other professional bills.

- Department store and gasoline charge cards.
- Loans from friends and relatives.
- Other loans not secured by any collateral.

What are my top-priority bills and debts?

You always should pay current and needed living expenses first. Usually, this means food, housing, utilities, and current medical care if your medical provider requires pre-payment. (Don't pay old medical bills first, unless you must pay them to get current medical care.)

Keep your rent or mortgage current. If you own or are buying your home, keep current on your real estate taxes and your house insurance. Failing to keep current on these expenses can lead to eviction or foreclosure, and the loss of your home.

Keep your utilities current. If you can't keep current, pay at least the minimum payment to avoid a disconnection. Getting disconnected can lead to eviction, and usually means you must pay a reconnection fee.

Keep your car payments current. If you own or are buying a car, keep current on your vehicle registration and your auto insurance. Driving an unregistered vehicle is illegal, as is driving an uninsured vehicle (unless you pay the uninsured motorist fee). These can lead to big debts and judgments if you get into an accident. Losing your car will make it difficult to keep a job, which will put you in deeper financial trouble.

You must pay child support debts and spousal support (or alimony) debts. These debts won't go away and you can't bankrupt them. Government agencies that collect child support have more legal rights than other creditors to take your income and property. These include seizure of your tax refunds, special wage garnishment rules, and seizure of federal benefits such as Social Security. Unlike most other debts, you can be jailed if you intentionally fail to pay child support or spousal support.

You must pay income taxes not automatically taken from your wages. You must file an income tax return even if you can't pay the taxes you owe. When the government collects taxes, they have more legal rights than other creditors to take your income and property. Failure to file returns or pay taxes can lead to penalties, fines, and jail time.

What are my medium-priority bills and debts?

Student loans usually should be paid ahead of low-priority debts, but after top-priority debts. Government agencies that collect student loans have more legal rights than other creditors to take your income and property. These include seizure of your tax refunds, special wage garnishment rules, and seizure of federal benefits such as Social Security. You also can be denied new student loans and grants if you don't repay the old ones.

What are my low-priority bills and debts?

Your credit cards, retail store charge cards, gasoline charge cards, open accounts with merchants, and hospital, medical, legal and other professional debts are low priority. You have not put up any collateral on these debts. These creditors can't take your property or income without a court judgment. Even with a court judgment, most or all of your property and income may be protected from enforcement of the judgment.

Sometimes a creditor requires you to put up specific items of household goods as collateral on a loan. Generally you can treat it as a low-priority debt. Creditors rarely take household goods because they have little resale value. If you object, these goods can't be taken without a court order.

Should I pay a debt because a creditor has a court judgment on it?

A court judgment should move a debt up in priority only if you have income or property which the creditor can take from you. Your wages can't be garnished unless gross wages minus amounts that must be withheld by law are at least $380.00 per week. (Amounts that must be withheld by law include federal and state taxes. They don't include optional deductions from wages.) If you have dependent minor children and your gross household income does not exceed $1,750, then you may claim an additional weekly exemption of $34 for one child, $52 for two children, and $66 for three or more children. You will need to file an affidavit and two forms of proof that you are entitled to these additional exemptions.

Government benefits can't be garnished. These benefits also can't be garnished if you keep them separate from any other money you have (for example, in a separate bank account).
In Virginia, a creditor with a judgment can't take any of the following property from you.

- Up to $5,000 worth of household goods.
- Up to $1,000 worth of clothing.
- Up to $6,000 total "equity" value in motor vehicles. "Equity" means the fair market value minus the amount you still owe on the vehicle.
- Medically prescribed health aids.
- Up to $10,000 worth of tools and equipment needed for work or school.
- Up to $3,000 total value of firearms.
- Up to $5,000 in additional property ($10,000 if the debtor is age 65 or older) and $25,000 worth of additional property, if listed in a Homestead Deed filed with the Circuit Court. Disabled veterans are entitled to an additional $10,000 in exemptions. You can only use all of your homestead exemption once every 8 years.

If all your income and property is protected, you are "judgment-proof." In this case, you don't really have to worry about the judgment. You can treat it as a low-priority debt. A judgment continues to accrue interest until it is paid in full. Generally, that rate is the standard judgment rate, currently 6% per year. If you signed a contract agreeing to pay a higher rate of interest, that rate of interest would apply.

Should I pay a debt because a creditor threatens to get a court judgment on it?

The threat to sue you should not necessarily move that debt up in priority. Many threats to sue never are carried out. Even if the threat is carried out, a creditor needs several months to get a judgment. Even if the creditor gets a judgment, your income or property may be protected.

Should I pay a debt because a creditor threatens to ruin my credit record or harasses me?

No. Many debt collectors who threaten to report your debt to a credit bureau already have done so. If your debt hasn't already been reported to a credit bureau, the debt is unlikely to be reported at all. Debt collectors usually harass to get you to pay debts that you should pay last, if at all. Debt collection efforts, or threats, never should move up the priority of your debt. Stick with your priority plan.

Should I pay a debt because I have co-signed on it?

Co-signed debts should be treated like your other debts. If you put up your property as collateral, treat it as a high-priority debt. If you didn't put up your property as collateral, treat it as a low-priority debt.

Should I take on more debt to repay my old debt?

Instead of delaying or not paying some of your bills, debts and judgments, you may be tempted to take on new debt to repay old debt. Usually this is a bad idea. Don't take on new debt to pay off old debt. What seems like a short-term fix can lead to long-term problems and usually only results in debt piled on top of debt. It will often just put you further behind. The best way to deal with too much debt is to decide which debts to pay first, which debts to pay last, and which debts to not pay at all.

***THIS INFORMATION IS NOT LEGAL ADVICE**. Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.*

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