



CENTRAL VIRGINIA LEGAL AID SOCIETY

www.cvlas.org

101 W. Broad St., Suite #101
Richmond, Virginia 23220
804-648-1012 or 800-868-1012
Fax: 804-649-8794

229 North Sycamore Street
Petersburg, Virginia 23803
804-862-1100 or 800-868-1012
Fax: 804-861-4311

The C.B. Holt Rock House
1010 Preston Avenue
Charlottesville, Virginia 22903
434-296-8851 or 800-390-9983
Fax: 434-296-5731

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.

Which bills and debts should I pay first?

Your most important creditor generally is not the one who shouts the loudest, the longest or the most often. Creditors who harass you do so because they have no better way to get you to pay. Creditors who can take quick action against your home, utility service, car, or other valuable property are of more concern. These are your secured creditors.

What is a secured 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 usually include these things.

- 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 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.

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.

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, department 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.

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. (If you support a dependent minor child living with you, and your total household monthly income is no more than \$1,750.00, you can claim an additional exemption of \$34 per week for one child, \$52 per week for two children, and \$66 per week for three or more children.) Amounts that must be withheld by law include federal and state taxes. They don't include optional deductions from wages.)

Government benefits can't be garnished. This includes Social Security, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), Black Lung benefits, unemployment compensation, workers' compensation, and Veterans' benefits. 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).

However, a garnishment summons could temporarily freeze your bank account. If you don't object in time by filing a garnishment exemption claim, you could lose exempt benefits in a bank account. If a garnishment summons freezes your bank account, get legal help right away.

Pensions 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).

Again, a garnishment summons could temporarily freeze your bank account. If you don't object in time by filing a garnishment exemption claim, you could lose exempt benefits in a bank account. If a garnishment summons freezes your bank account, get legal help right away.

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 \$3,000 worth of a firearm.
- Medically prescribed health aids.
- Up to \$10,000 worth of tools and equipment you need for work or school.
- Up to \$6,000 "equity" value in a motor vehicle. "Equity" means the fair market value minus the amount you still owe on the vehicle.
- The portion of an income tax refund due to the Earned Income Tax Credit (EITC).
- Child support and spousal support, whether paid or unpaid.
- Up to \$5,000 worth of additional property (up to \$10,000 for a married couple, and up to \$10,000 for an individual 65 years of age or older) plus \$500 for each dependent, if you list it in a Homestead Deed filed with your local Circuit Court.

- An additional \$25,000 in real or personal property that serves as your principal residence, which can be claimed every eight 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.

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

No. 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, all of 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 never should move up the priority of your debt.

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. 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.