JUST SAY NO TO CREDITORS
OR . . . THE BILL COLLECTOR ALWAYS RINGS TWICE
ANSWERS TO HARD QUESTIONS IN HARD TIMES
FOR PEOPLE WITH HIV INFECTION

Learning you've been exposed to AIDS is a shattering experience for anyone. It changes your life -- makes you ask questions you've never asked. And it forces you to pay attention to matters you may never have anticipated: matters like impaired health, changed living situations or a sudden loss of income.

An AIDS diagnosis is also expensive. Because you are facing a life-threatening illness, you may have to reduce your work hours -- or stop work entirely. With no private pension or long term disability insurance, you find Social Security disability and other public benefits do not allow you to make ends meet.

Your medical costs are soaring. It's harder and harder to pay for necessities like rent or mortgage, electricity, phone and water. You're falling behind on credit card bills that you easily paid off when you had a good salary. Your stress level is mounting because creditors are promising horrible consequences if you don't pay immediately.

But if you know your rights, you can keep a level head while dealing with your bill collectors. You can decide which
debts to pay and which bills to ignore. And you can learn how to say NO to your creditors.

**What happens if I can't make a payment?**

Some bills, like car or house loans, may have a disability insurance policy that could relieve you of your obligation to pay. Where there is no disability coverage, you can still relax. With few exceptions, you can't go to prison or lose any property immediately. You need to know the consequences of paying late or not paying at all. Then you can decide which bills to pay now, which to postpone and which to ignore altogether.

**What are the consequences of paying late?**

If you think you'll come into some money, call your creditors and tell them you can't pay for several more months. Most creditors want your money -- not to begin "collection efforts." If you work something out, send a confirming letter. If possible, show you're trying by sending a token amount.

**What are the consequences of not paying anything?**

Before you decide which bills to pay and which bills to ignore, you need to know the consequences of not paying:

• A Lawsuit -- Eventually, a creditor is apt to sue you if you don't pay a bill, unless it's very small or you're "judgment proof." Even if a creditor does sue you, a lawsuit takes time to run through the court system.
• Wage Attachment -- Missing payments on a court order may lead to an attachment of not more that 25% of your wages, that is, removal of money from your paycheck. If you are not working, there's nothing to attach.

• Bank Account Attachment -- Missing payments on a court order may lead to an attachment of your bank account, including jointly held accounts regardless of whose money it is.

• Immediate Loss of Service or Coverage -- Missing payments for insurance, utilities, or telephone leads to the loss of the service or coverage. A creditor can also sue you for any unpaid bills for past service or coverage.

• Repossession -- If you miss a car or truck payment, the creditor can repossess the vehicle. No court order is necessary. It's unlikely, however, that a creditor will take your car unless you miss a few payments and are uncooperative. If you need extra time, call the creditor in advance. If you decide to give up your car, call the creditor and let it take the car away. But be aware: if the sale of the repossessed car does not cover what you owe, the creditor may sue you for the balance.

If you have other property such as a sofa or stereo that you pledged as security against your paying, the creditor can repossess it after obtaining a court order. To avoid a lawsuit, offer to give the sofa or stereo back to the creditor.
- Jail -- If you miss court-ordered child support or alimony that a judge feels you can pay, you could end up in jail. If you can't pay, don't just stop. Ask the judge to modify the amount. You'll need to file a motion requesting a modification of how much you pay, or obtain a written agreement with your ex-spouse and then file that with the court.

If you are able but refuse to pay your income taxes, you could go to jail.

- Eviction or Foreclosure -- Your landlord can evict you for not paying rent and can sue you for back rent. If you miss a mortgage or home loan payment, the lender may sell your house to cover what you owe. Evictions happen fairly quickly; foreclosures take a few months. Filing bankruptcy will not stop eviction proceedings.

- Liens on Your House -- If you don't pay your local property taxes, the local government will probably place a lien on your house, meaning it will get paid when you sell your house or die. Unpaid child or spousal support can result in a lien, too. If other creditors sue you and obtain a judgment, they can file judgment liens against your real property.

- Interception of Your Tax Refund -- Missing child support, income tax or student loan payments could lead to the loss of your federal or state income tax refund.

Is it illegal for bill collectors to harass me?
Yes, though it doesn't stop many of them. Nonetheless, under the law, bill collectors cannot:

- use obscene or profane language;
- threaten to harm you, your relatives or friends;
- threaten to publish or actually publish your name outside credit reports as a person who doesn't pay bills;
- claim to be a law enforcement or other government official;
- send you papers that look like court or government documents;
- repeatedly use the telephone to annoy you;
- contact your employer for any reason other than to verify employment or to arrange a wage attachment;
- threaten to get your public benefits cut off;
- call you at work if your employer says NO;
- falsely state that you've committed a crime;
- threaten to take your property unless they've got a court judgment;
- falsely say they're attorneys or use lawyers' stationery; or
- claim they will increase the debt when they have no intention of adding on attorneys' fees, service fees, or finance charges.
What should I do if bill collectors harass me?

You may be able to stop strong-armed collection efforts simply by informing your creditors that you know your rights. Write your creditors a short letter like this:

(Names & Address of Collection Agency or Creditor)

Re: Your Name & Account #

Dear (the name of the Collection Agency or Creditor):

I have received numerous phone calls and several letters from you concerning bills I haven't paid. As I have informed you, I cannot pay. Accordingly, under 15 U.S.C. 1692c, this is my formal notice to you to cease all further communication with me except for the reasons specifically set forth in the law.

Very truly yours,

(Your Name & Address)

Do I have to pay an old debt?

That depends on how old the debt is and the type of communication you've had with the creditor. A law called the "statute of limitations" limits the length of time that a creditor can sue you to collect a debt. In California, the limit is four years from the time you made your last payment on a written debt. If you didn't write anything, the limit is two years. Finally, on installment debts like student loans, the statute of limitations applies to each installment as it is due.

Even if the statute of limitations has passed, a creditor may still be able to collect if you "reinstated" the debt. You can reinstate a debt to the federal government by
making a payment or a promise to pay. You can reinstate other debts by promising in writing to pay. A creditor then has another four (or two) years to sue on a reinstated debt.

**What does it mean to be "judgment proof?"**

One of your most powerful weapons is explaining to your creditors that you're "judgment proof." This means that your property is "exempt" -- that is, it can't be taken by your creditors to pay what you owe them. This is true even if you file for bankruptcy or your creditors ask the sheriff to take your property in order to satisfy a court judgment against you.

If you filed for bankruptcy and could claim all your property as exempt, then you are judgment proof if you receive government benefits like Social Security or Medi-Cal, own no, or have little equity in, real estate, and have limited personal property.

**What property is exempt in California?**

You can claim a lot of property as exempt:

**Insurance**

- Disability and health benefits
- Unmatured life insurance policy to $4,000 in loan value

**Public Benefits**

- AFDC
- Aid to the blind, aged, disabled
• Social Security; State Disability benefits
• Unemployment benefits

**Miscellaneous**
• Motor vehicle with an equity to $1,200

**Property**
• Health aids

In addition, you can claim other property as exempt by choosing one of the following options:

**OPTION 1**

If you own a home, here's what you can claim:

**Your Home**
• If you are physically or mentally disabled, or over 65, to $75,000 equity; otherwise, to $30,000 equity.

**Pensions**
• Any public or private pension, including an IRA or Keogh

**Miscellaneous**
• Appliances you need

**Property**
• Burial plot
• Cash or bank deposits from the sale of, or damage to, an exempt item
  • Clothing you need
  • Food you need
- Furnishings you need
- Jewelry, heirlooms and art to $2,500

**Wages**
- 75% of wages paid within the preceding 30 days.

**Work Tools**
- To $2,500 value, if used to actually generate income

**OPTION 2**

If you don't own a home, or have very little equity in one, you may want to exempt the following, which include a generous cash allowance of $7,500:

**Your Home**
- Equity to $7,500

**Pensions**
- Pensions that qualify for ERISA (Employees Retirement Income Security Act), to the extent tax exempt

**Miscellaneous**
- Animals, to $200 per animal

**Property**
- Appliances, to $250 per appliance
- Books, to $200 per book
- Burial plot, to $7,500 (in lieu of home)
- Clothing, to $200 per item
- Crops, to $200 per crop
- Furnishings, to $200 per furnishing
- Household goods, to $200 per good
- Jewelry, to $500
- Musical instruments, to $200 per instrument
- Other property to $400
($7,900 if no home or burial claimed)

Work Tools
- To $750 value, if used to actually generate income

What should I do if I'm "judgment proof?"

Although your creditors may never be able to collect on
the money you owe them, they nevertheless can make you
uncomfortable. To stem off a possible lawsuit, you may want to
write your creditors the following letter:

(Name & Address of Creditor or Collection Agency)

Re: Your Name & Account #

Dear (Name of Creditor or Collection Agency):

This letter is to advise you that due to serious
medical problems and my inability to continue regular
employment, I am unable to continue to make payments on
my account. I have been diagnosed with a life-
threatening illness (mention AIDS or ARC if you are
comfortable) and cannot work sufficient hours to meet
my current expenses. (State your reduced hours and
sources of income (SSI, disability, general assistance,
etc.).)

I am familiar with California law and know that I am
"judgment proof." If I file for bankruptcy, I will
claim all my property as exempt, and if you sue me and
obtain a judgment, you could not collect any of my
property to satisfy the judgment.

Please cease all collection activities you have taken
or are considering taking. While I will provide you
with reasonable financial or medical information, I must avoid stress. This includes high-pressure collection activity and lawsuits. If my current situation improves and I am able to resume payments, I will tell you. In the meantime, I am returning my credit card (or please cancel my credit card privileges).

Thank you for your assistance and understanding.

Very truly yours,

(Your Name & Address)

**How do I file for bankruptcy?**

You may simply have too many debts and want to file for bankruptcy. Bankruptcy is a simple procedure that involves filing some papers, paying a $90 court fee and paying attorneys' fees. In return, you keep your exempt property and your debts are wiped out (discharged).

There are a few debts that can't be wiped out in bankruptcy. The major ones are:

- back alimony and child support;
- back taxes;
- court judgments arising from intoxicated driving;
- credit purchases over $500 for luxuries bought within 40 days of filing;
- debts from embezzlement, larceny or breach of fiduciary duty;
- debts from willful and malicious acts;
- debts from writing a bad check or lying on a credit
card application;

- fines and penalties;
- loans or advances of $1,000 or more within 20 days of filing for bankruptcy; and
- student loans due fewer than five years ago unless you can show it's a severe hardship for you to pay (but check with your lender to see if you can defer payments based on disability).

This means you can wipe out your credit card debts, your utility bills, your back rent or your hospital bill. If you have a "secured" debt where you pledged the item as security for paying, you'll have to return the item, or to keep it, you'll have to pay the balance (or the property's value, whichever is less). If you pledged a sofa or stereo as collateral for a debt, you can ask your attorney to have this lien put aside.

If you file for bankruptcy, a court trustee takes your non-exempt property and sells it to pay your creditors. The trustee can also take back from your creditors any payments you made within 90 days before you filed. The trustee can also take back payments or gifts you made to your relatives and friends within a year of filing.

In short, make only essential payments before filing for bankruptcy. Don't pay off favorite creditors, friends or relatives, and don't give away any of your personal property or
sell it for less than it's worth.

**Will my heirs have to pay my bills from my estate after I die?**

Possibly. If you have little property and a lot of bills, your heirs may never see your property. During probate — when the property you left by will is distributed to your heirs — your creditors can make claims against your property. Paying your creditors takes priority over distributing your property to your heirs. For "small" estates under $60,000, summary probate laws permit your heirs to claim all your property immediately through a simplified procedure; but your heirs might possibly remain liable on your debts to the extent of the value of the property they receive.

Practically speaking, most creditors on consumer debts do not pursue their claims after the debtor customer's death. Creditors might pursue a debt, however, if they retain a lien in a particularly valuable item or if the debt involves a large sum of money.

If your property is worth more than what you owe, you can assure that your heirs get some property by specifying in your will which property is to be used to pay the bills.

One way to avoid the problem is to sell your non-exempt property, buy exempt property and file for bankruptcy. After the court wipes out your debts, your creditors cannot go after you or
your heirs.

Another solution, especially if you have a significant amount of property, is to leave your property to your heirs by what are called "probate-avoidance techniques." This means you leave your property in some way other than a will, such as a joint tenancy or living trust. You could also designate a beneficiary under your life insurance policy or pension plan. Because your creditors can go after only property that goes through probate, if there's no probate, or if very little property goes through probate, then there's no opportunity for your creditors to request payment. See a lawyer if you want to set up any probate-avoidance techniques.
CALIFORNIA AIDS LEGAL SERVICES ASSOCIATION (SALSA!)

Where can I go for more help?

If you need more help in dealing with your legal problems, contact the AIDS legal service closest to you.

FRESNO & CENTRAL VALLEY

Central Valley AIDS Team
606 East Belmont
Fresno, CA 93701
(209) 264-2437

LOS ANGELES

Hospice/AIDS Project
Los Angeles County Bar
P.O. Box 55020
Los Angeles, CA 90055

LA Gay & Lesbian Community Services Center
1213 North Highland Ave.
Los Angeles, CA 90038
(213) 464-7400

ORANGE COUNTY

AIDS Legal Panel
c/o Duran & Loquvam
709 South Anaheim Blvd.
Anaheim, CA 92805
(714) 533-9399

RIVERSIDE COUNTY

Desert AIDS Project Legal Services
750 South Vella Road
Palm Springs, CA 92264
(619) 323-2118

SACRAMENTO & NORTHERN CALIFORNIA

Sacramento AIDS Legal Panel
Legal Services of Northern California
515 12th Street
Sacramento, CA 95814
800-468-8890

SAN DIEGO

Legal Aid Society of San Diego
110 south Euclid
San Diego, CA 92114
(619) 252-5557

San Diego AIDS Project Legal Clinic
3777 4th Avenue
San Diego, CA 92103
(619) 543-0300

SAN FRANCISCO BAY AREA & NORTH COAST

AIDS Legal Referral Panel
25 Hickory Street
San Francisco, CA 94102
(415) 864-8186

SAN JOAQUIN

San Joaquin AIDS Foundation
4410 N. Pershing Ave., C5
Stockton, CA 95207
(209) 476-8533
SANTA CLARA

AIDS Legal Services
480 North 1st Street,
Suite 214
San Jose, CA 95112
(408) 293-3135

SANTA CRUZ

AIDS Legal Panel Santa Cruz AIDS Project
1606 Soquel Avenue
Santa Cruz, CA 95062
(408) 427-3900

SOLANO

Solano County AIDS Legal Services Project
c/o Solano County Legal Assistance
930 Marin Street
Vallejo, CA 94590
(707) 643-0054