

# **Time-Barred Debts: When Collectors Cannot Sue You for Unpaid Debts**

**After a period of time, creditors lose the right to sue you for unpaid debts.**

If you have old, unpaid debts, you may be safe from a lawsuit to collect the debt. This is because a creditor or debt collector has a limited number of years to sue you for an unpaid debt. This time period is set by state law and is called the statute of limitations.

The time allowed varies greatly from state to state and for different kinds of debts. Under certain circumstances, this time period can be restarted. So be very careful when talking to debt collectors about old debts. If you say the wrong thing, you could extend the time the creditor has to sue you for the debt.

## **When Are Debts Time-Barred?**

To determine if your debt is time-barred – that is, too old for a creditor or collector to sue you for it – you must do some legwork.

**Determine what kind of debt it is.** Is the debt based on a written contract, oral contract, or a promissory note (a written promise to pay money to somebody)? Is it a credit account? If so, is it open-end or closed-end credit?

### **Is the Account Open- or Closed-End Credit?**

Determining whether an account is open-end or closed-end is not always easy. Generally, if you can use the account repeatedly, it's open-end credit (also called "revolving credit"). Your payments vary depending on how much credit you have used in a certain period of time. The most common example of open-end credit is a credit card.

Closed-end credit usually involves a single transaction, such as the purchase of a house or car, and the payments are fixed in amount and number.

Many transactions fall somewhere in between open- and closed-end credit. Also, many creditors try to characterize a closed-end account as open-end, either to take advantage of a longer statute of limitations or to avoid providing the more extensive disclosures required for closed-end credit.

The statute of limitations for open- and closed-end accounts is often different. To complicate matters even more, the statute of limitations for an open-ended account is not always clear. Some states have a special

statute of limitations for credit card accounts. Others apply the statute of limitations for written or oral contracts to open-end credit.

**Determine when the debt was due.** This is when the statute of limitations starts ticking. For open-end accounts, the statute of limitations starts to run when the first payment was due.

**Find the applicable statute of limitations.** Statutes of limitations are set by state law. They usually range from about three to ten years and depend on the type of debt. To find out the statute of limitations for debts in your state, you can:

- Consult a lawyer.
- Check out your state laws, either by going to a local law library, contacting your state consumer protection agency (visit Consumer Action ( [www.consumeraction.gov](http://www.consumeraction.gov)) for a list of consumer protection agencies), or doing some research on the Internet. You can find most state laws online through Nolo ([www.nolo.com/statute](http://www.nolo.com/statute)) or Findlaw ([www.findlaw.com](http://www.findlaw.com)). (For more on doing your own legal research, see Nolo's [Help With Legal Research Resource Center](#).)
- Consult self-help legal manuals. For example, [Solve Your Money Troubles: Get Debt Collectors Off Your Back & Regain Financial Freedom](#), by Robin Leonard and John Lamb (Nolo) lists the statute of limitations for various debts for each state.

## Using the Statute of Limitations

If the creditor has waited too long to sue you, you must raise this as a defense in the papers you file in response to the lawsuit. If you can prove that the debt is older than the statute of limitations, then you will not have to pay it. If the creditor or debt collector knows that the statute of limitations has expired on the debt and still sues you, it may have violated the federal Fair Debt Collection Practices Act (FDCPA). (For more on the FDCPA, see [Dealing With Creditors FAQ](#).)

However, a statute of limitations does not eliminate the debt – it merely limits the judicial remedies available to the creditor or collection agency after a certain period of time. A debt collector may still seek *voluntary* payment of an old debt even though the law cannot force you to pay it.

## Some Debt Collectors Try to Enforce Time-Barred Debts

In recent years, aggressive debt collectors have begun trying to enforce debts that are barred by the statute of limitations. They buy these debts from original creditors for pennies on the dollar, so they make a tidy profit when they collect anything.

Some of these debt buyers use aggressive tactics when they try to collect on time-barred debts. According to media reports, they abuse and harass debtors and try to trick debtors into reaffirming debts so that the statute of limitations begins anew.

### **What Should You Do if a Collector Tries to Collect a Time-Barred Debt?**

The most important thing is not to say or do anything (whether on the phone or in a letter) that in any way acknowledges that you owe the debt. Acknowledging the debt or making even a token payment can extend or revive the statute of limitations in some states. (For more on dealing with debt collectors, see Nolo's [Dealing With Creditors Resource Center](#).)

### **Be Careful Not to Waive, Extend, or Revive the Statute of Limitations**

If you claim that the statute of limitations prevents a collector from suing you for a debt, the collector might argue that you have waived, extended, or revived the statute of limitations in your earlier dealings.

### **Waiving the Statute of Limitations**

If you waive the statute of limitations on a debt, it means you give up your right to assert it as a defense later on. The law makes it very difficult for a consumer to waive the statute of limitations by accident. A court will uphold a waiver only if you understood what you were doing when you agreed to waive the statute of limitations for your debt. In certain circumstances, even then a waiver may be unenforceable. If you think you may have waived the statute of limitations, you should still raise it as a defense (and force the creditor to demonstrate that you waived it).

### **Extending the Statute of Limitations**

Extending the statute is often called "tolling." Tolling or extending the statute temporarily stops the clock for a particular reason, such as the collector agreeing to extend your time to pay. For example, Emily owes the Farmer's Market \$345. The statute of limitations for this type of debt in her state is six years. Normally the statute would begin to run when Emily stopped paying the debt, but Farmer's gave her an additional six

months to pay (and therefore tolled or extended the statute of limitations for six months). After six months, Emily still cannot pay the debt. The six-year statute of limitations begins to run at this point.

## **Reviving the Statute of Limitations**

Reviving a statute of limitations means that the entire time period begins again. Depending on your state, this can happen if you make a partial payment on a debt or otherwise acknowledge that you owe a debt that you haven't been paying. In some states, partial payment will only "toll" the statute rather than revive it.

For example, Ethan owes Memorial Hospital \$1,000. The statute of limitations for medical debts in his state is four years. He stopped making payments on the debt in 2002. The four-year statute began to run at this point. In 2005, Ethan made a \$300 payment and then stopped making payments again. In Ethan's state, his partial payment of \$300 revived the statute of limitations. The hospital now has four years from the date of his \$300 payment to sue Ethan for the remainder of the debt.

A new promise to pay a debt may also revive the statute of limitations in some circumstances. In most states, an oral promise can revive a statute of limitations, although in a few states the promise must be in writing.

For a state-by-state chart on statutes of limitations for various debts, get [\*Solve Your Money Troubles: Get Debt Collectors Off Your Back & Regain Financial Freedom\*](#), by Robin Leonard and John Lamb (Nolo). This book contains everything you need to get out of debt and repair your credit.