

# DEALING WITH DEBT COLLECTION AGENCIES AND CREDIT REPORTERS SUCH AS BAYCORP?



When a debt collection agency such as Baycorp sends you a notice saying you have a debt **you owe someone else money**, there are things you can do.

If you believe that you do not owe the money, you can dispute the debt. If you don't dispute the debt **you still have options**.

## What should I do if I dispute the debt?

If you dispute part of all of the debt you should consider the following:-

### ➤ **Don't ignore the notice**

Ignoring the notice will not make it go away.

### ➤ **Advise the agency that the debt is in dispute**

Write a letter to the agency stating that the debt is in dispute and explaining why. Advising them that there is a real and unresolved dispute over the debt should mean that they will stop any action to collect the debt until the matter is resolved.

### ➤ **Ask the agency to refer the matter back to the creditor**

Ask them to refer the matter back to the person they allege you owe money to (the creditor). Also ask them for any detail they hold relating to the alleged debt. If possible, fax or email these requests directly to the agency keeping a record of the time and date you sent the fax. Always make sure you put the agency's reference number or your client number on any correspondence.

### ➤ **Ask for your credit record to be amended**

When you contact the agency, you should also state that you require them to remove the credit record relating to the alleged debt until the dispute is resolved (pursuant to Privacy Principle 7).

### ➤ **Make a claim in the Disputes Tribunal**

If a dispute cannot be resolved, you can take a claim to the Disputes Tribunal to seek an order that you are not liable to pay the alleged debt. The Disputes Tribunal will only consider claims of up to \$7500 (or \$12,000 if both parties agree). If the debt is more than that, it will have to be contested in the District Court. When you prepare for the Disputes Tribunal hearing, write down what happened. Gather documents, letters or anything else that helps prove what you say and ask witnesses if they will attend the hearing to give evidence for you. (See "An Easy Guide to the Disputes Tribunal" at [www.communitylaw.org.nz](http://www.communitylaw.org.nz) - /publications/self-help resources).

## What if I don't dispute the debt?

If you do not dispute the debt but do not have enough money to pay it in full you can:-

### ➤ **Negotiate with the creditor directly**

You can try negotiating directly with the creditor by explaining your situation to them and disclosing the reasons why you are unable to make the required payments. If you reach an agreement with the creditor directly you should advise the debt collection agency of this afterwards.

### ➤ **Negotiate with the agency**

In some cases, the creditor will not want to talk to you or the agency will have 'bought' the debt. In these cases you will need to negotiate directly with the agency. If you are having serious financial problems, it may be a good idea to contact your local Budget Service for advice and assistance. They may be able to negotiate with the agency on your behalf. (See [www.familybudgeting.org.nz](http://www.familybudgeting.org.nz) )

## ➔ **Bankruptcy**

If your debts are so large that you feel you will never be able to pay them back, bankruptcy may be an option to consider. This will solve issues relating to unsecured debts (e.g. bank cards, unpaid income tax) but not secured debts (e.g. hire purchase or mortgages) or child support and some debts owing to WINZ. There are serious consequences to filing for bankruptcy so before making any decisions, you should contact the Insolvency and Trustee Service on 0508 467 658.

## **Other things to know about dealing with debt collection agencies**

### ➔ **Collection costs**

On top of the original debt, an agency will often add collection fees and interest. **You can only be charged these additional fees if you were aware at the time you agreed to purchase the goods or services that late payment would result in extra charges.** A trader can notify you of these potential collection costs by clearly displaying a notice at reception or checkout, or including the statement on price lists, credit application forms or contracts.

### ➔ **Your credit record**

Debt collection agencies hold a lot of information about you and your credit record. Your records are accessible to others in order to assess your credit rating and decide whether to extend credit to you. The Privacy Act requires all the information an agency holds to be accurate, and any information that is not accurate must be corrected or removed.

If you are listed with a credit reporting agency you can request a copy of your credit record to see if it is accurate. Credit reporting agencies are all subject to the new Credit Reporting Privacy Code. This means that consumers have free access to their credit record on request. The agency can only charge you for this information if you have requested it urgently (within five working days).

When you request a copy of your credit record, you should do so in writing and say that you are relying on Rule 6 of the Credit Reporting Privacy Code. Generally information relating to your credit record can be held for five years.

If you have made all the required payments and the agency's records still show that you are a bad debtor, you should write to the agency requesting that their records be amended to record that the debt has been paid in full. The agency is still entitled to record the fact that there was 'default'. If the agency refuses to amend incorrect information you can complain to their complaints section.

Under the new Credit Reporting Code credit reporting agencies such as Baycorp are also required to have a formal complaint handling process. If you are unable to get satisfaction from this free service you can refer the matter to the Privacy Commissioner at [www.privacy.org.nz](http://www.privacy.org.nz) or on 0800 803909

### ➔ **Limitations Act 1950**

Generally the Limitations Act 1950 limits when claims can be enforced through court proceedings. These alleged debts are generally "statute barred" when they are older than six years. There two main exceptions: if a court has already ordered you to pay or you've already paid a portion of the debt within the last six years.

Where a debt is older than six years, an agency may be limited in its ability to start any court proceedings – in those circumstances, you should seek legal advice before responding to the agency.

Where an agency lists you as a debt defaulter for a debt that is statute barred you can refer this to their complaints section and if necessary to the Privacy Commissioner as a breach of privacy principle 8.



*For more information contact your local Community Law Centre*

[www.communitylaw.org.nz](http://www.communitylaw.org.nz)