



## **WHY YOU MUST ANSWER A DEBT COLLECTION LAWSUIT**

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## **IMPORTANT INFORMATION—PLEASE READ THIS FIRST**

Just because you use these materials does not mean that I'm your lawyer. I'm only your lawyer if we both sign something that says I'm your lawyer.

These free materials are information, not legal advice. If you want legal advice, talk to a lawyer privately about your specific situation. If you live in Minnesota, feel free to contact me about your case.

These materials should only be used in Minnesota. If you live in another state, you can find a lawyer in your area by using the Find-an-Attorney feature on the National Association of Consumer Advocate's website: <http://www.naca.net/>.

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In Minnesota, a lawsuit begins when the defendant is served. “Served” is just a fancy legal word that means “delivered”. There are two main ways you can be served: (1) by having the lawsuit handed to you personally; or (2) by having it left at your home with someone of appropriate age. I've attached a sample district court lawsuit so that you know what it looks like if you are served with one.

Because a Minnesota lawsuit starts by serving the defendant, rather than filing the lawsuit with the court, the lawsuit probably will not have a court file number on it. And if you were to call the court, they would have no record of it because it hasn't been filed yet. **There is a lot of information on the internet that suggests that a lawsuit is not valid if it doesn't have a court file number on it. That might be true in other states, but not in Minnesota.**

Once you've been served, you have 20 days to answer the lawsuit. If you don't answer the lawsuit within 20 days, the debt collector can apply for a default judgment. The court considers all of the allegations in the complaint to be true and gives the debt collector whatever they are asking for. In other words, the debt collector wins because you didn't participate, not because they have a better case. In debt collection cases, a default judgment is entered administratively by a court clerk without a judge ever seeing the case.

A judgment, whether entered by default or otherwise, is a court ruling that you owe the money. And once a debt collector has a judgment, they have the power to garnish your bank account and your paycheck. Although judgments can sometimes be overturned, for the most part they are final. That's why its so important to answer the lawsuit within the 20 days. If you don't, you no longer can raise any defenses and will probably have to either negotiate a settlement or payment plan with the debt collector, or possibly even consider bankruptcy.

Even if you believe that you owe the debt, you should still answer the lawsuit and force the creditor to prove its case. Remember, the creditor has the burden of proof and must prove that you owe them the money. **There is a free form, along with instructions, available on my website that you can use to answer a debt collection lawsuit.**

## **A Word About Debt Buyer Lawsuits**

A debt buyer is a business that purchases past-due accounts from the original creditor and then sues people to collect the debts. Because the debt buyer didn't originate the debt, it must rely on the original creditor to provide it with evidence to prove its case. In some cases, the original creditor doesn't provide the debt buyer with any evidence of the debt. And when the original creditor does provide evidence, it's often just a single billing statement that was generated long after the account became delinquent. So if you answer the lawsuit, there is good chance that you can win the case, or at least negotiate a favorable settlement.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Creditor,  Plaintiff,  v.  You,  Defendant.	Court File No.: _____ Case Type: Consumer Credit Contract  <b>SAMPLE SUMMONS</b>
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THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorney and Answer to the Complaint that is herewith served upon you within Twenty (20) days after the service of this Summons upon you, exclusive of the day of such service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Rule 114 of the Minnesota General Rules of Practice provides for use of alternative dispute resolution (ADR) in most cases. Notice of ADR processes will be provided by the Court Administrator after this action is filed.

**DEBT COLLECTION LAW FIRM**

Dated:

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Debt Collection Lawyer (#0123456)  
Attorney for Plaintiff  
Street Address  
City, State, Zip  
(612) 123-4567 (phone)  
(612) 987-6543 (fax)

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

<p>Creditor,  Plaintiff,  v.  You,  Defendant.</p>	<p>Court File No.: _____ Case Type: Consumer Credit Contract  <b>SAMPLE COMPLAINT</b></p>
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Plaintiff, for its cause of action against the Defendant, alleges:

1. Defendant owes Plaintiff \$10,000.00 for goods and services sold and delivered to Defendant through the date of the service of the Complaint. Said purchases were made on Defendant's Credit Card bearing account number 1234567891011121 which was issued to Defendant by Plaintiff.
2. Defendant is in default for failing to make the required payments on the charge account.
3. Pursuant to the terms and conditions of Plaintiff's cardholder agreement, Defendant agreed to pay all collection costs, including reasonable attorneys' fees.

**WHEREFORE**, Plaintiff demands judgment against the Defendant(s):

1. For the principal sum of \$10,000.00 Dollars, plus accrued interest in the amount of \$500.00, representing interest on the outstanding principal balance at the rate of 19.990% per annum from August 1, 2009, through September 20, 2009, plus continued interest on the outstanding principal balance at the account rate until the date of entry of judgment, plus reasonable attorneys' fees in the amount of \$3,000.00 Dollars, and Plaintiff's costs and disbursements herein.

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**ACKNOWLEDGMENT**

Plaintiff acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

Dated:

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Debt Collection Lawyer (#0123456)