

Credit Card Companies really can take away your car

Recently, in a Massachusetts District Court, a credit card company was facing a judge, and asking to take possession of a consumer car because they had defaulted on paying a minor credit card bill, to the tune of \$400. A lot of you may not realize it, but the simple fact of ignoring a credit card bill can have serious consequences, much more so than simply bad credit. Credit card companies and other unsecured creditors have been fighting back, although in many cases unlawfully, by taking possession of their customers cars and trucks, selling them and applying the funds to the past debt on the credit card bills. The problem with the conduct of the creditors is that in many cases, these companies are sidestepping the court procedure and rules in order to satisfy a debt.

How did this happen to me? That's the questions people have asked after the fact. Well, consumers do bear some of the responsibility. If and when you find yourself unable to pay your credit cards, you must be vigilant in checking your mail. A creditor may file a law suit and if you don't answer it in a certain period of time (21 days in Massachusetts), the Creditor will get a default judgment against you. Once that happens you are already way behind.

If a creditor does get a judgment, they can not just come and take your car though. They must obtain a court order. The problem for consumers though is that if you are ignoring the complaint filed, you have not defended yourself against the debt. A debt that quite frankly you may or may not even own to the creditor who filed the law suit. What some sneaky creditors will even do is at the time they ask for the default, will ask for permission to take your car. Since you are not there to say anything in your defense, the judge may just grant the creditor's request. However, even if this does happen to you, you may still have many consumer rights, and the creditor may have not followed all of the rules in your state.

The biggest defense that consumers have is a shift of burden from them to the creditor. The credit card company has an absolute obligation to prove that the defendant actually owes them and not some previous creditor the debt. The Creditor must be able to demonstrate they have the original paperwork signed by the card holder. This is called demonstrating they are a holder in due course. Many of these unscrupulous creditors will buy millions of dollars in debt in a bulk transaction. What this means is that they may not have actually reviewed their file to make sure your specific paperwork was in the batch. If they do not have it, you may be able to go into court and force them to give you your car back and may even be able to set aside the judgment. This is very similar to the foreclosure defense of "show me the note", that has become so popular in land courts across the nation. The Creditor, even if they own the debt, may have waited too long to get a judgment. In each state, there is a statute of limitations on how long a creditor has to obtain a debt, for example in Rhode Island, the statute of limitations on debt collection is 10 years. Finally, in each state as well as under various Federal laws such as the Federal Debt Collections Practices Act, there is a requirement to provide proper notice to you by mail, in some cases proof of delivery is required.

The most important thing to do if you find yourself owing a credit card or any other debt is to deal with it before the situation gets out of hand and a suite is filed. However, if a suit is filed, you should seek out the advice of a lawyer in your state who handles [consumer debt matters](#).

The foregoing article was drafted by the Phillips Law Offices LLC, with offices in Massachusetts, Rhode Island and Maryland