

When You Cannot Pay Off Your Payday Loan

I cannot pay off my payday loan. What will happen?

The payday lender has your check. It can cash it on the date payment is due. If you do not have enough in your account, your check will bounce. Your bank and the payday lender will both charge you a fee.

Some payday lenders might try to cash the check several times. Each time the check bounces, the bank will charge you an overdraft fee.

Some types of government benefits (example: SSI) are normally not garnishable by a debt collector. **Payday loans are different.** By writing a check on your account or authorizing the payday lender to remove money directly from the account, you give the payday lender permission to take money out of your account – no matter what types of funds are in the account.

At some point, the payday lender might send your debt to collections. In the end, you may owe the amount you borrowed, plus the fee, overdraft charges, bounced check fee, possible collections fees, and possible court costs if the payday lender or collection agency sues you.

Can my bank help me?

Try to talk to someone at your bank, in person at a branch or on a customer service line. Explain the situation. Ask if the bank could reverse any fees or charges on your account resulting from the bounced check. If you are having the payday loan money automatically

deducted from your bank account, ask the bank to stop the automatic deduction.

You might be able to stop payment on the check, close your bank account, and reopen a new bank account. Contact a lawyer to discuss this option before trying this.

Can I ask the payday lender for a payment plan?

Yes. On or before your loan comes due (even if it is your first loan), if you notify your payday lender you cannot pay the loan when it is due, the lender must tell you that you can have an installment plan.

Any such plan must be in writing. You and the lender must both sign it.

If your loan is for \$400 or less, the installment plan must be at least 90 days. If your loan is for more than \$400, your installment plan must be at least 180 days.

Are there any fees involved in the installment plan?

If you miss a payment on your payment plan, the lender can charge you a one-time default fee of \$25 and start collection on your defaulted loan.

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- ❖ Your lender cannot charge you a fee just for entering into an installment plan.
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Can I cancel my loan?

Yes, but you must cancel (or “rescind”) it on or before the close of business on the next day of business after you took out your loan. You cancel the loan by repaying the lender the amount they advanced you. In return, the lender must return or destroy your postdated check or cancel any electronic withdrawal from your bank account.

You must cancel your loan at the same place where you got your loan.

❖ **Example:** You took out a payday loan on Tuesday. You later decide that you do not want the loan. You must return to that same payday lender before it closes on Wednesday. If the lender is open 24 hours, you must return to the lender before midnight the next day.

Your loan documents should have included information about your right to cancel your loan. If not, contact DFI.

Will it cost me to cancel a payday loan?

The lender should not charge you for canceling your loan. If you try to cancel your loan by the deadline but the lender charges you a fee or refuses to cancel your loan, contact DFI immediately to report this.

I have an overdue payday loan. Should I deal with it by paying a fee and taking out another payday loan?

No. Any payday lender that has you pay an additional fee to “roll over” your payday loan and make the entire loan due later is violating state law. Contact DFI.

Under Washington law, you must pay off an existing loan first before taking out another loan with that lender. To avoid a debt trap, avoid taking out another payday loan to pay back the first one. These loans are so easy to get that you might think paying them back will also be easy. You can get into the cycle of paying off one loan and immediately taking out a new one to cover other bills. This cycle is hard to break. You could end up taking out several loans in a year because you end up taking out one at every payday to pay the last one back or to pay other bills. ***You will end up paying far more in fees and costs than you ever meant to borrow.*** Try the alternatives in “I am out of money. I still have bills to pay...” paragraph above.

Can I close my checking account to try to stop a payday lender from taking money from it?

Yes, but the payday lender will probably take collection action quickly. When you take out a payday loan, you either write the lender a personal check or give the lender permission to take money directly from your checking account. If you close the checking account to keep the lender from taking what you owe, the lender might keep trying to cash the check or withdraw money from the account anyway. That could result in overdraft fees owed to your bank.

The payday lender might send your loan to collections. Then there will be additional fees and costs. If you do not pay the debt while it is in collections, the collection agency might try to sue you to get what you owe.

To avoid collection actions, first try talking to the manager of the store where you got the payday loan. See if they will let you pay what you owe in an installment plan. Explain to the manager:

- Your situation.
- Why you cannot pay all you owe at once.
- You need to pay it back over several months.

If they agree to let you repay what you owe in an installment plan, ***make your payments on time*** to avoid collection actions.

You could have a hard time closing your account at one bank and then trying to open an account at a new one. Some banks will not open a new account if you owe another bank. If this happens, contact DFI, or whatever regulatory agency has jurisdiction over the bank that refused you service.

A payday lender sued me. It got a judgment against me. My only income is from social security or a pension. Can the lender collect?

It depends. If the only money in your bank account is from direct-deposited social security or the Veteran's Administration (VA), generally a judgment creditor cannot garnish the account.

Even if a creditor has not sued you, if your income is exempt, you must be on your guard to keep a payday lender from seizing it. **If the payday lender has your checks, or authorization to access your account, it does not have to sue you to get payment.**

You can try to terminate the payday lender's access to the funds in your account. You may have to close the account and move your money to an account at another bank. Some banks will not open a new account for you if you owe a different bank.

If you have your social security benefits or VA payments direct deposited into a bank account that a payday lender has your permission to access (via your check or authorization), you can redirect where your automatic deposits are made. Read more about changing automatic deposits of social security benefits at www.socialsecurity.gov. **Avoid any lender who wants you to have your social security checks deposited directly into a bank account the lender controls.**

Do not commingle nonexempt funds with your social security and VA money. **Example:** You deposit a birthday check from a family member into the same account as your exempt social security funds. You cannot argue that all funds in the account are exempt from garnishment.

If the creditor sues you, you must answer the lawsuit and any garnishment notice by notifying all parties in writing that they cannot garnish your bank account because it holds only exempt funds.

There is more information about protecting exempt assets in these publications available at www.washingtonlawhelp.org:

Can the lender threaten me with criminal charges?

No. It is illegal for a payday lender to threaten to throw you in jail or to threaten to prosecute you criminally for an unpaid debt. If this happens, you should immediately file a complaint with DFI. You can also complain to DFI if payday lenders are harassing you by calling your home or work more than a few times a day, showing up at your workplace, talking to your children about the debt, and so on.

Generally, when collecting or trying to collect a payday loan, the lender may not harass or intimidate you. The lender cannot:

- Contact you or your spouse more than three times in one week.
- Contact you at home between 9 p.m. and 7:30 a.m.

❖ If you feel a payday lender has harassed you in its effort to collect on your loan, contact DFI to file a complaint. See info below.

I am a military borrower. What are my rights?

Federal law limits to 36% the APR payday lenders can charge military families on payday, tax refund anticipation, and auto title loans. Lenders cannot accept checks or authorization to withdraw money from a military family's checking account as collateral for a loan.

I took out a payday loan online. The lender is charging a higher rate than state law allows. What can I do?

Under Washington law, every lender offering a payday loan to Washington residents must have a license to do so from DFI. All payday lenders offering loans to Washington citizens must comply with Washington law. If the payday lender is not licensed, the payday loan is unenforceable and uncollectible. If the payday lender is charging a higher rate than Washington law allows, the payday loan is unenforceable. Contact DFI immediately to report such violations.

Can I file a complaint about a payday lender?

Yes. DFI investigates complaints from consumers about their experience with payday lenders.

Example: The payday lender keeps bouncing your check with your bank or harasses you to pay back the loan. You should report this problem to DFI.

You can fill out a complaint form online at <http://dfi.wa.gov/cs/complaint.htm>, or call 1-800-RING-DFI (746-4334) (TDD: 360-664-8126) or (360) 902-8700. You may also contact DFI by fax to the Department of Financial Institutions, (360) 596-3868, or by mail or hand-delivery to 150 Israel Road SW, Tumwater WA 98501.

I am in a payday loan debt trap or I think the payday lender has violated the law. Where can I get help?

Solid Ground: Solid Grounds' Predatory Lending program can provide advice and help for consumers statewide, regardless of income. Call (206) 694-6776 or 1-866-297-4300.

Northwest Justice Project (NJP): NJP provides legal advice and help to low-income people statewide. If you are low-income and live outside of King County, call Northwest Justice Project's CLEAR line for advice and referrals at 1-888-201-1014, Mondays-Fridays, 9:15 a.m. - 12:15 p.m. If you are low-income and live in King County, call (206) 464-1519 for an intake appointment. If you are age 60 or over, whether you live inside or outside King County, call CLEAR*Sr at 1-888-387-7111. You can also

call 211 to reach an operator who can refer you to legal services.

If you are not low-income, call a lawyer referral service listed on the [Washington State Bar Association website](http://www.wsba.org/Resources%20and%20Services/Find%20Legal%20Help): <http://www.wsba.org/Resources%20and%20Services/Find%20Legal%20Help> .

[Washington State Department of Financial Institutions \(DFI\)](#): See contact info in the section above.

[Federal Trade Commission \(FTC\)](#): The FTC takes consumer complaints online at www.ftc.gov. You can also file a complaint by phone. Call toll-free 877-FTC-HELP (382-4357), 9:00 a.m. – 5:00 p.m., Eastern Standard Time, Monday - Friday.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

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