

Pursued by Debt Collectors? A Practical Summary of Your Rights Under Federal Debt Collection Law

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PROTECTION AGAINST DEBT COLLECTORS: FEDERAL LAW

A. The Primary Federal Law which Protects Against Debt Collectors

- 1. The primary Federal Law which provides protection against certain actions by debt collectors and debt collection agencies is called the Fair Debt Collection Practices Act, or "FDCPA".**

B. To Whom and What does the Fair Debt Collection Practices Act (FDCPA) Apply?

- 1. What kind of debts does the FDCPA apply to?**
 - a) The FDCPA applies to personal debts, not business debts.**
- 2. What kind of persons or organizations are considered debt collectors under the FDCPA, and thus must follow it?**
 - a) The FDCPA defines "debt collector" as:**
 - (1) a person who regularly collects, or attempts to collect, personal debts on behalf of another person or institution; and**
 - (2) a person who regularly collects, or attempts to collect, personal debts on his/her/its own behalf, but uses a different name in doing so.**
- 3. What kind of persons or organizations are *not* considered debt collectors under the FDCPA, and thus may not need to follow it?**

(this list is not exhaustive, but contains the most common examples)

 - a) an entity collecting another entity's debt in a rare occurrence**
 - b) an entity which collects its own debts using its own name**
 - c) an entity which owned the debt and sold it, but continues to service it (examples include student loan companies and mortgage loan companies)**
 - d) an entity which is attempting to collect a debt in good standing (in other words, a debit not in default)**

C. Allowable Communications from FDCPA Debt Collectors

- 1. Who can be contacted about the debt?**

- a) **the debtor (borrower)**
- b) **the debtor's spouse**
- c) **the debtor's [attorney](#) on the debt matter (if any)**
- d) **the debtor's parent if the debtor is a minor**
- e) **the debtor's guardian (if any)**
- f) **the debtor's executor or administrator (such as when the debtor is deceased or otherwise legally incapable)**
- g) **a consumer/credit reporting agency**
- h) **the attorney for the debt collector/debt collection agency**
- i) **the attorney for the creditor (the entity actually owed the debt, for whom the debt collector is likely working)**
- j) **anyone else the court or the debtor allows the debt collector to contact**
- k) **in certain situations, a debt collector can contact almost anyone else in relation to the debt (see #2 below for more information)**

2. Who else can be contacted about the debt, and in what situations?

- a) **A debt collector who is unable to locate a debtor may contact a third party to ask for the debtor's location information: home address, telephone number, and place of employment.**
 - (1) the debt collector must identify himself/herself by name and state (s)he is confirming information concerning the debtor's location (using the debtor's name, and not describing the person as a "debtor")
 - (2) the debt collector cannot reveal the name of the debt collection agency or that the call pertains to debt collection, unless specifically asked
 - (3) written communication from a debt collector to a third party to obtain the debtor's location information must not indicate the fact that the debt collector is, in fact, a debt collector

(4) each third party can only be contacted once, unless the debt collector believes that the information obtained during the first contact was wrong, incomplete, or outdated and that the third party would now have better information

(5) also, a third party can be contacted more than once if the third party so requests

3. When can debt collectors call about the debt?

a) Generally, debt collectors are not allowed to call before 8 a.m. or after 9 p.m., using the debtor's time zone.

(1) *However*, debt collectors can legally call at other times if the debtor or a court of law has given such permission.

4. Can the debt collector contact the debtor at work?

a) Debt collectors can contact the debtor at work unless the debt collector has reason to know the employer does not allow this type of communication at work.

(a) Usually, the debt collectors will attempt to contact the debtor at work until/unless someone (such as the debtor) tells the debt collector such contacts are not allowed. It is best to follow up and confirm such verbal communications in writing.

5. Can the debt collector continue to contact the debtor if the debtor has an [attorney](#) on the matter?

a) NO, not if the debt collector knows the attorney's name and contact information, or can easily get it, unless that [attorney](#) is unresponsive or specifically agrees to allow the debt collector to contact the debtor directly.

D. Preventing Further Communications from Debt Collectors

1. Is a verbal request by the debtor for all the calls to stop enough?

a) No. A verbal request made by the debtor to the debt collector to "stop all calling" is not enough, although it might be enough to stop the calls to the place of employment.

2. Is a written request to a debt collector to stop all the calls enough?

- a) **It should be, yes. A debtor who serves a written request/demand on a debt collector to cease all telephone communications should result in a cessation of those phone calls.**
 - b) **Unfortunately, some unethical debt collectors will not provide their name, address, or telephone number, thus making it difficult to file such written requests with them.**
3. **Can a debtor stop the phone calls but allow written correspondence to be sent to his/her home?**
- a) **Legally, yes. A debtor can file the written demand to have all phone calls stop, but also state that written communications to the home address are permissible.**
4. **Can a debtor demand that *all* communications, written and verbal, from the debt collector stop?**
- a) **Yes, but even with such a demand, the debt collector can:**
 - (1) send written notice informing the debtor that the debt collection effort is stopping;
 - (2) send written notice informing the debtor that other legal remedies will be pursued (*such as a lawsuit being filed*);
 - (3) send written notice informing the debtor that documents mailed from the debtor to the debt collector are considered "official" communications when received by the debt collector

E. What Information is a Debt Collector Obligated to Provide to the Debtor?

1. **Unless it was included in the initial communication from the debt collector to the debtor, the following information must be provided in writing to the debtor, unless the debtor pays the debt within 5 days of that initial communication:**
 - a) **the name of the creditor to whom the debt is owed**
 - b) **the amount of the debt**
 - c) **that the debtor has *thirty (30) days to dispute the debt*, or else the debt is assumed to be valid**

d) if the debtor, in writing, disputes the validity of the debt, the debt collector will send the debtor a verification of the debt

(1) it should be noted that, if the debtor so disputes the debt in writing, debt collection efforts must stop until written verification of the debt has been provided to the debtor

e) notice to the debtor that, if the debtor makes a written request for the name and address of the original creditor within the first 30 days, that information will be provided by debt collector (this typically applies in situations in which the current creditor/loan holder identified pursuant to (a) above bought or otherwise acquired the loan from the original creditor/loan holder)

(1) it should be noted that, if the debtor so makes a demand in writing for the name and address of the original creditor, debt collection efforts must stop until that information has been provided

F. What are Common but Unethical Actions by Debt Collectors?

- 1. making telephone calls without properly identifying himself or herself**
 - a) except as allowed and necessary to obtain location information from third parties**
- 2. annoying, abusing, or harassing persons by calling their telephone number repeatedly or causing their telephone to ring continually**
- 3. using obscene, profane, or other language that abuses the hearer**
- 4. falsely representing or implying that he or she is affiliated with the United States or any State or Government**
- 5. falsely representing or implying that he or she is an attorney**
- 6. falsely representing or implying the type, amount, or legal status of the debt**
- 7. threatening to take any action that is not legal or not actually intended to be taken**
- 8. communicating or threatening to communicate false credit information (such as to a credit reporting agency, etc.)**

9. using any false or deceptive means to collect or attempt to collect a debt
10. using any false or presentation or deceptive means to collect information about a debtor
11. falsely representing or implying that the debt collector operates or is employed by a consumer credit reporting agency
12. falsely representing or implying that nonpayment of the debt will result in arrest, imprisonment, garnishment of wages, seizure of property, or sale of property, unless such action is lawful and actually intended by the debt collector or creditor
13. failing to communicate that information obtained by the debt collector will be used to help collect the debt
14. failing to disclose in the initial communication that the debt collector is attempting to collect a debt and any information obtained will be used for that purpose
15. failing to disclose in communications, generally, that the communications are from a debt collector.

G. Less Common Unethical Practices by Debt Collectors

1. collecting or attempting to collect some sort of fee or charge unless it was authorized by the original debt agreement or as otherwise permitted by law
2. falsely representing or implying that the debtor committed a crime or other conduct to disgrace the him or herself
3. using written communications which appear to be authorized by or belonging to the courts, a government agency, etc., but, in fact, are not
4. advertising a debt as being for sale to force payment by the debtor
5. using or threatening to use violence or other criminal means to harm debtor, the debtor's reputation, or the debtor's property
6. publishing a list of debtors who allegedly refused to pay debts

- a) **Please note that did debt collectors can, however, communicate with consumer reporting agencies in this regard, as well as a few other entities specified by law**

7. using a post card to contact a debtor about a debt

H. Debt Collectors are Hounding Me; What Should I Do?

1. **A review of the information on the earlier pages of this guide will give you valuable information on what kinds of actions to take to at least reduce the harassment you're enduring.**
2. **GATHER EVIDENCE! If you do nothing else, at least gather evidence of unethical/illegal actions by a debt collector. This may mean that you must ask questions of the caller. *Think about it this way: isn't it better to spend an extra few minutes now, in order to protect your rights - perhaps including recovering hundreds or thousands of dollars?***

Such evidence can include, but is not limited to:

- a) **voice mails**
- b) **caller ID records (if necessary, take a photo of the caller ID screen)**
- c) **handwritten records, including such information as:**
 - (1) the date and time of the call
 - (2) the number that the caller called (your number: home? cell? work?)
 - (3) the number the caller is calling you from, if you have access to that information
 - (4) the attitude of the caller, including any use of foul language
 - (5) the caller's name and the name of his/her company, as told to you by the caller
 - (6) on whose behalf the caller is calling, as told to you by the caller
 - (7) the caller's address and telephone number, as told to you by the caller
 - (8) the nature of the debt supposedly owed, including the amount, as told to you by the caller

- (9) what penalties you face if you don't pay, as told to you by the caller
 - (10) whether you will owe the debt collection company any fees, as told to you by the caller
 - (11) whether the caller is an attorney or calling on behalf of an attorney, as told to you by the caller
 - (12) what actions the caller or creditor are going to take if you don't agree to pay what they are demanding, as told to you by the caller
 - (13) whether the caller is calling on behalf of a consumer credit reporting agency, as told to you by the caller
 - (14) how many times the caller's company has called you in the past on the same matter, as told to you by the caller
- d) written correspondence (keep copies!)**
- e) evidence from other persons a debt collector may have called**
- (1) for example, friends, relatives, neighbors, etc. may have been contacted by debt collectors; make an effort to get evidence like that listed above from those folks
 - (2) at a minimum, take notes yourself when others tell you that they received calls from someone looking for you; these persons receiving such calls may be your important witnesses at a later date
- 3. You may want to consult and perhaps hire a qualified [attorney](#) - although it is not mandatory, and, for the most part, your rights are not changed by whether you have an [attorney](#) or not.**
- a) One major exception, however, is that a *debt collector is not allowed to contact you directly, in any way, if (s)he is aware that you have a [lawyer](#) representing you on the matter.***
- 4. If there is sufficient evidence of violations by the debt collector(s), one should consider the legal remedies available. This may include filing a lawsuit against the debt collection agency or just making the debt collection agency aware of your ability to do so, then entering into negotiations on the matter.**

I. Legal Remedies Against Debt Collectors who Violate the Law

- 1. Debt collectors who violate the Fair Debt Collection Practices Act (FDCPA) are subject to the following penalties:**
 - a) any actual damages (usually money damages to compensate the debtor) sustained by the debtor as result of the violation of law
 - b) punitive (punishment) damages as allowed by a court, typically \$1000 per claim
 - c) costs incurred by debtor in filing the lawsuit, and reasonable attorneys' fees
- 2. The claimant (debtor) usually has *one year from the time of the violation of the law by the debt collector to file suit.* In other words, time is of the essence.**

J. Can a Creditor (Lender) or Debt Collector File a Lawsuit Against a Debtor to Attempt to Collect a Debt?

- 1. As a general rule, yes, a creditor or debt collector working on behalf of a creditor can file a lawsuit against a debtor to attempt to collect a debt.**
 - a) *This is usually, but not always, true.* If you are being sued over a debt, or have been threatened with a lawsuit over a debt, you should seek advice from a qualified [attorney](#).
- 2. If the debt was secured with property belonging to the debtor or property belonging to someone on the debtor's behalf, a lawsuit to recover the debt owed might be able to be filed in the jurisdiction where the property is located.**
- 3. Unless number two above applies, the general rule is that a lawsuit filed by a creditor or debt collector must be filed in the jurisdiction in which the debtor lives or the jurisdiction in which the original contract creating the debt was executed.**

K. Legal Defenses Available to Debt Collectors

- 1. A debt collector may not be liable for a violation of the FDCPA, even if such a violation technically may have occurred, if:**

- a) a preponderance of the evidence shows that the violation wasn't intentional
- b) a preponderance of the evidence shows that the violation was a result of a bona fide error which occurred despite a debt collector having reasonable measures in place to avoid such errors
- c) the debt collector, in good faith, relied on an advisory opinion from the Federal Trade Commission (FTC) , even if that opinion was later changed or determined to be incorrect.

L. Summary

In a perfect world, all debtors could and would pay their debts and debt collectors would not be necessary. However, in the real world, debt collectors - both ethical and unethical - exist and influence our lives. By educating ourselves, we can help to enforce the laws which govern debt collectors. Those very laws, including the Fair Debt Collection Practices Act, are designed to penalize debt collectors who violate the law with monetary sanctions.

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