

## **When Debt Collectors Call**

By Sonya A. Smith-Valentine

Maybe they received an injury due to an automobile accident. Maybe they purchased a car that turned out to be a lemon. Perhaps they were discriminated against in their workplace and lost their job. Or maybe they are getting a divorce. Whatever the reason, your client is now strapped for cash and the debt collectors are calling.

Many people fall behind in their bills. On top of trying to keep food on the table and the lights on, your client is experiencing severe anxiety every time the phone rings. Is it the debt collector calling again? Debt collectors add to your client's initial problem with harassing and abusive phone calls at home and at work, and our clients don't want to talk about it due to embarrassment and shame.

Also, with the increase in identity theft, more and more consumers are finding themselves on the other end of the phone with a debt collector. Often, the consumer is not believed when they state that the debt is not theirs or that they are a victim of identity theft. The phone calls and letters just keep coming.

The Fair Debt Collection Practices Act (FDCPA) is a federal law that regulates what actions a debt collector can and cannot take in trying to collect a debt. It covers personal, family and household debts. Business and commercial debts are not covered. This underutilized law can help your clients sleep better at night without breaking into a cold sweat every time the phone rings.

The deck is stacked against your clients, as most do not know their rights in dealing with debt collectors. Many believe that they have to suffer the abuse since they owe the debt. On the contrary, consumers have more rights than most would think, and consumers should not hesitate to shield themselves from these sharp practices and exercise their rights under the FDCPA.

Debt collectors may communicate by mail, in person, by telephone or telegram. A debt collector cannot contact a person at times or in places that they know are inconvenient, such as at work if the employer does not permit it. A debt collector cannot contact a person before 8:00 a.m. or after 9:00 p.m.

If a written request is sent to the debt collector demanding that they stop all communication, the debt collector must stop contact immediately. If the debt collector is advised that the consumer is represented by an attorney concerning the debt, the debt collector cannot communicate directly with the consumer except through the lawyer.

A debt collector cannot contact any third parties about the debt specifically. A debt collector can contact other people once (and once only) in an effort to locate the consumer. They cannot call family members or neighbors about the debt. Debt collectors are not permitted to ask family and neighbors to pass on phone messages or tell other people that they are attempting to collect a debt.

Within five days after the first contact with a consumer, a debt collector must send written notice that includes all of the following: (1) the amount of the debt, (2) the name of the creditor to whom the debt is owed, (3) a statement that unless within 30 days after receipt of the notice the validity of the debt is disputed, or any portion of it, the debt will be assumed to be valid by the debt

collector, (4) a statement that if the debt collector is notified in writing within the 30-day period that the debt or any portion thereof is disputed, the debt collector will obtain verification of the debt or a copy of a judgment and mail such verification to the consumer, (5) a statement that upon written request within the 30-day period the debt collector will provide the name and address of the original creditor if different from the current creditor, and (6) a statement that the communication is from a debt collector attempting to collect a debt and that any information obtained will be used for that purpose.

Every debt collector who tries to collect the debt must provide their own 30-day validation notice, even if a previous debt collector has already given such notice. If a debt is disputed in writing within the 30-day validation period, a debt collector cannot continue to collect on the debt until they have sent proof of the debt or a copy of the judgment.

Debt collectors may not use any language, communication or conduct to harass, oppress or abuse any person. This includes the use of threats of violence or harm to the person, property or reputation; advertising the debt or publishing a list of consumers who refuse to pay their debts, except to a credit bureau; using obscene or profane language; or calling people without identifying themselves.

False statements are prohibited. For example, a debt collector cannot falsely imply that he is an attorney or government representative. They cannot falsely imply that a person committed a crime by not paying a debt. Debt collectors cannot misrepresent the character, amount or legal status of the debt. They cannot indicate that papers being sent are legal papers when they are not.

A debt collector may not use threats when trying to collect a debt. This includes threats like the following: (1) the consumer will be arrested if they do not pay the debt, (2) the consumer's property or wages will be seized, garnished, attached or sold, unless the collection agency or the creditor intends to do so and they have the right to do so.

Debt collectors routinely report credit information to the major credit bureaus but often fail to report that a debt is disputed, as required by law. Further, after a debt is discharged in bankruptcy some debt collectors nevertheless continue collection efforts or try to get the consumer to reaffirm the debt.

Consumers are entitled to file a lawsuit against any debt collector who violates the FDCPA. In short, the FDCPA allows a consumer to recover actual damages, statutory damages of up to \$1,000 and attorney's fees and costs. While this may seem like a modest amount, to debt collectors who violate the law there is much more at stake: increased insurance rates, decreased collection rates, potential governmental regulatory action and the spiraling costs of defending a lawsuit for their illegal conduct.

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