

Arizona Consumers Use FDCPA to Challenge Debt Collectors

By Lawrence 'D' Pew, [Arizona Bankruptcy Lawyer](#)

In this article from Arizona's Pew Law Center, we answer the question so many people ask of us – that is, “*Are there any restraints on debt collectors?*” The answer to that question is a resounding YES!

History of the Fair Debt Collection Practices Act

There was a time when debt collectors got away with using just about any tactic they wanted to recover money – abusiveness, deceptiveness, unfairness. These abusive tactics included the use of offensive language and harassment in just about every form including threats of violence, threats of deportation, threats of eviction, threats of repossession, threats of, well, anything a collector could think of to put the fear of God in a debtor. It was a “pay or else” approach to collecting money on past-due obligations and, sometimes, on debts the consumer didn't even owe.

These debt collectors had to show results. How the collector conducted himself or herself was unimportant, so long as it squeezed another payment out of the intimidated consumer. The victims of ruthless and relentless collectors often suffered greatly. Their marriages were undermined. Their privacy was invaded. Their family members were threatened. Their jobs were often at risk because debt collectors interfered at the workplace, too. *(Can you imagine how humiliating it would be for a debt collector to show up unannounced at your place of employment, call you a deadbeat in front of your boss and co-workers, and demand immediate payment?)*

These collection abuses became so widespread that federal legislation was needed to protect all consumer debtors. That protection came in the form of the [Fair Debt Collection Practices Act of 1978 \(FDCPA\)](#). In enacting the FDCPA, the U.S. Congress encouraged honest collection practices by penalizing ruthless debt collectors. Those who violated the law to gain first access to the debtor's money, pushing aside law-abiding debt collectors.

FDCPA ENFORCEMENT

The Federal Trade Commission (FTC) is responsible for administrative enforcement of the FDCPA for any unfair or deceptive act or practice. This involves the FTC's attorneys suing debt collectors in federal district court to enjoin violators through the use of preliminary injunctions and temporary restraining orders. The Department of Justice may also bring lawsuits on behalf of the FTC to seek permanent injunctive relief and civil penalties sufficient to punish the defendants and encourage future compliance. These are strong deterrents against future violations of the FDCPA by debt collectors.

To understand the scope of the FTC's enforcement actions against violators of the FDCPA, here are two case excerpts from the FTC's most recent 2011 report:

[U.S. v. West Asset Mgmt., Inc. \(N.D. Ga. 2011\)](#)

In March 2011 the FTC announced an historically large settlement with debt collector West Asset Management, Inc., for its pattern of FDCPA violations. The agreement included a \$2.8 million civil penalty for West Asset's “calling consumers and third parties repeatedly with intent to harass or annoy, and by revealing debts to third parties and calling them for reasons other than to obtain location information

about the consumer... [And for] materially misrepresenting to consumers that [it] was a law firm, [and] it would bring civil action or criminal prosecution against consumers who failed to pay, and nonpayment would result in the seizure, garnishment, attachment, or sale of consumers' properties, or wages, or their arrest or imprisonment." West Assets debited consumers' financial accounts (that's right, took the money out of consumers' bank accounts without garnishment orders) and charged their credit cards without consent. In essence, West Asset Management, Inc., did just about everything in its power to flagrantly violate the FDCPA and [FTC Act](#) in its debt collection practices, and the FTC held it to task to the tune of \$2.8 million.

U.S. v. Allied Interstate, Inc., (D. Minn. 2010)

In October 2010, the FTC announced that it had reached a settlement agreement with Allied Interstate, Inc. – the largest debt collector in the U.S. – for violating the FDCPA and FTC Act. Once again, we have a case where the debt collector engaged in "collection efforts even after consumers told [Allied]... that they did not owe the debt, without verifying the accuracy of the disputed information or otherwise having a reasonable basis for representing that the consumers owed the debt... [B]y making improper harassing phone calls to consumers (using abusive language or calling many times a day for weeks or months); making repeated calls to third parties seeking to locate a consumer; revealing alleged debts to third parties without the consumer's consent or court permission; and threatening legal action against consumers that it did not intend to take." The settlement called for a civil penalty against Allied for \$1.75 million.

Civil Lawsuits Against Debt Collectors under the FDCPA

A civil lawsuit (and class action when many consumers are similarly affected) may also be brought by the aggrieved consumer who was victimized by unlawful debt collection tactics. If the debt collector violates the FDCPA, the consumer can file a civil complaint in court. When a debt collector violates the FDCPA, the court may assess statutory damages up to \$1,000, actual damages sustained by the plaintiff, costs of the action and reasonable attorneys fees. The consumer does not need to prove any negative consequences, such as a job loss resulting from repeated continuous calls at work. Under this strict liability law, there is no need to prove actual harm for the court to assess statutory damages – proving the FDCPA violation occurred is sufficient.

FTC REPORTS

The Federal Trade Commission takes complaints from consumers over allegedly unlawful debt collection practices engaged in by third-party debt collectors. The FTC reports annually to the Congress on the level of debt collection industry compliance with the FDCPA.

FTC Annual Reports on Consumer Filed FDCPA Complaints

We know from the FTC's annual reports that there is a trend toward increased consumer complaints filed with the agency alleging FDCPA violations by both third-party and in-house debt collectors. Not only did consumers file more FDCPA-related complaints with the FTC than for any other specific industry, consumers did so in greater numbers than in previous years. The reasons why FTC consumer complaints have increased may be three-fold:

- *More people are aware of the FDCPA prohibitions on debt collection practices and are more willing to come forward with a complaint.*
- *More people are struggling to pay their creditors in this economy, so more people find themselves targeted by debt collectors.*

- *Debt collectors are competing intensely to collect precious payments, and crossing the line of legality is perceived to bring better results (until they're reported or sued, of course).*

Consumer Complaints Filed with the FTC in 2010: The total number of consumer complaints filed in 2010 against both third-party debt collectors and in-house debt collectors was 140,036 (27% of all consumer complaints filed with the FTC). Of those, 108,997 were against third-party debt collectors (21% of all consumer complaints filed with the FTC).

Consumer Complaints Filed with the FTC in 2009: The total number of consumer complaints filed in 2009 against third-party debt collectors and in-house debt collectors was 119,609 (22.8% of all consumer complaints filed with the FTC). Of those, 88,326 were against third-party debt collectors (16.8% of all consumer complaints filed with the FTC).

Consumer Complaints Filed with the FTC in 2008: The total number of consumer complaints filed in 2008 against third-party debt collectors and in-house debt collectors 104,766 (25.2% of all consumer complaints filed with the FTC). Of those, 78,925 were against third-party debt collectors (19% of all consumer complaints filed with the FTC).

PROHIBITED PRACTICES

In its annual reporting on FDCPA compliance by third-party debt collectors, the FTC separates consumer complaints into nine specific categories of FDCPA violations.

1. Harassing the Debtor or Others Associated with the Debtor

A debt collector is prohibited from harassing consumers to collect on a debt.

Harassment includes repeated or continuous telephone calling; use of obscene, profane, or abusive language; use of violence or threatening to use violence; and calling before 8 a.m. and after 9 p.m., or at times when the debt collectors knew or should have known were inconvenient for the consumer because of his or her schedule.

2. Demanding a Larger Payment Than Is Permitted By Law

A debt collector is prohibited from misrepresenting the character, amount, or legal status of any debt.

This unlawful activity includes any attempt to collect on a debt that the consumer does not owe, or attempt to collect more than what the consumer owes. A debt collector will also violate the FDCPA by attempting to collect interest, fees, and expenses in excess of what is owed according to the parties' agreement, and as permitted by law.

3. Failing to Send the Required Notice to the Consumer-Debtor

Under the FDCPA, the debt collector must send written notice to the consumer stating the amount owed, the creditor's name, and the right to dispute the debt in writing within 30-days of notice and, if disputed, debt verification must be sent to the consumer by mail.

This is a serious violation. When consumers do not receive notice, they have no way of knowing that they must dispute a debt in writing to receive verification of what the creditor claims is owed. The verification, which the debtor should receive in about 30 days, should reasonably include the original creditor's name, the amount of the debt, and the original account information associated with the debt.

4. Threatening Dire Consequences if the Consumer Fails to Pay on the Debt

A debt collector cannot threaten the consumer with false adverse consequences if the debt isn't paid. A threat is false and prohibited when the debt collector has no intention or legal authority to carry out the threatened action against the debtor.

This unlawful activity includes false threats to initiate a civil lawsuit; threats of criminal arrest, prosecution, or jail; threats of wage garnishment and property seizure; threats of termination from employment; and threats to ruin the consumer's credit rating.

5. Failing to Identify One's Self as a Debt Collector

All debt collectors must identify themselves as such in all communications with the consumer. The first such communication must include a mini-Miranda warning that states clearly that the debt collector is "attempting to collect a debt and that any information obtained will be used for that purpose."

Failing to identify one's self as a debt collector can mislead the consumer into revealing information under false pretenses, information that could be used against that individual to collect the alleged debt.

6. Revealing the Existence of an Alleged Debt to Third Parties

Debt collectors are prohibited from contacting third parties with one exception – they can seek limited location information about the consumer. Even then, the debt collector is prohibited from revealing the existence of the consumer's alleged debt.

Contacting third parties is a prohibited interference that can embarrass and intimidate the consumer into making payment. Such prohibited activities can interfere with gainful employment and ruin opportunities for advancement. This activity directly interferes with the consumer's relationships with family, children, friends, employers, co-workers and neighbors. Repeatedly contacting a third party for location information would also violate the FDCPA.

7. Impermissible Calls to the Consumer's Place of Employment

Debt collectors are prohibited from contacting the consumer at his or her place of employment if the collector knows or has reason to know that this is prohibited by the consumer's employer.

Contacting an employee at work about an alleged debt can jeopardize the consumer's employment and interfere with advancement in the workplace.

8. Failing to Verify the Disputed Debts

The debt collector must verify the debt when the consumer disputes it in writing. In the absence of verification, all collection efforts must cease.

The debt collector violates the FDCPA by contacting the consumer after a written dispute was submitted, and before verification was received. It is also a violation to continue collection efforts when the debt verifications have not been provided as required when a debt is disputed.

9. Continuing to Contact the Consumer after the Debt Collector Has Received a "Cease Communication" Notice

If the consumer notifies the debt collector in writing that he or she refuses to pay the alleged debt and that all related communications must stop, any further attempts to communicate about the debt are prohibited.

The consumer has the right to take a stand at any time and end all communications from a debt collector (including dunning letters and telephone calls). This forces the debt collector to either take proper legal action by filing a lawsuit or drop the matter entirely. Once the cease communication letter is received, the debt collector will either notify the consumer of termination of all communications or to inform the consumer of legal action to come. But that's it, any further contact has to be in the context of appropriate legal action, such as the service of a summons and complaint.

If you have read through this article and believe that a debt collector has violated any provision of the FDCPA in its dealings with you, then consider reaching out to your Arizona lawyer for legal advice on how to proceed. You may be surprised to learn that some debts become uncollectible under the statute of limitations when too much time has passed without the creditor taking any legal action (sorry, student loans are not one of them). You may be surprised to learn that, once the creditor has decided to file a lawsuit to collect on the debt, they often lack sufficient evidence to prevail in the case. And when the evidence does substantiate the debt, a lawyer will attempt to negotiate a settlement with the creditor that protects the consumer going forward.

If you choose to file an FTC consumer complaint directly, then go to the online [FTC Complaint Assistant](#). You may also file a complaint for such unlawful and deceptive practices with the [Office of the Arizona Attorney General Tom Horne](#).

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Lawrence 'D' Pew is an experienced tax, bankruptcy, and transactional attorney, and founder of the Pew Law Center, PLLC, a leading Arizona tax and bankruptcy law firm focused exclusively on debt relief. With offices in Mesa, the law firm serves Arizona residents in the greater Phoenix area, including Scottsdale, Mesa, Tempe, Gilbert, and Chandler. As a client-oriented law firm with a mission to always exceed client expectations, the Pew Law Center has helped over 2,000 people file for bankruptcy and eliminate over \$100 Million in debt.

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