



Fair Debt Collection Practices Act

It probably comes as no surprise that if you use credit cards, owe money on a personal loan, or are paying on a home mortgage, you are a “debtor”. If you fall behind in repaying your creditors, or an error is made on your accounts, you may be contacted by a “debt collector”. Dealing with a debt collector can be one of life’s most stressful experiences. Harassing calls, threats, and use of obscene language can drive you to the edge. What’s worse, a collector may embarrass you by contacting your employer, family, or neighbors. You may even be hounded to pay a debt that is not rightfully yours. While collection agencies have a job to do, there are limits on how far a debt collector can go.

Tips for Dealing with a Debt Collector

1. Know how the collection process works. Why are you being contacted by a collection agency? It usually means that a creditor has not received payment from you for several months. They have negotiated with another company or are using an in-house affiliate called a debt collector to attempt to get you to pay. Third-party collectors often purchase your debt for less than you owe, and your

debt is now owned by the collector. A collector may also work for the creditor in return for a fee or a percentage of any money collected. In-house collectors that are affiliated with the original creditor work on behalf of the company directly. Because the creditor has taken a loss on your account or because you are late with making payments, this negative information may show up on your credit report.

Another reason a debt collector may be contacting you is that an imposter has used your identity to obtain credit, a crime known as identity theft. You are not responsible for the debt, but you may experience difficulties convincing the debt collector of this. Under federal law, the debt collector has certain responsibilities in investigating your situation and may be liable for failure to cooperate.

2. Know your rights. Learn to recognize abusive collection practices. Even if you owe a debt, a collector owes you fair treatment and respect for your privacy. Also, be aware that even if the collector’s conduct does not exactly match the language of the federal Fair Debt Collection Practices Act, that collector may still be liable for its conduct.

3. Ask questions and learn specifics. Often the first contact with the debt collector is a telephone call from a representative, a pre-recorded message asking you to call a toll-free number, or a letter. When a collector calls or you call back, get as much information as possible. Ask for the name of the caller, the collection agency, the creditor, and the address and fax number for sending correspondence. Also ask about the amount the collector claims you owe. In this first call, you should also tell the caller you expect written follow-up if you have not yet received a notice in the mail.

4. Assert your right to privacy. If your first contact with a collector is by telephone, tell the caller that you want all future contact in writing rather than by phone. You can also instruct the collector not to call you at work or at all if that is your choice. Make notes of your first conversation and start to keep a file. It’s very important to follow up on such requests in writing right away. Your letter should include requests about contact or other matters discussed in your first telephone contact. Note: If you notify the collector not to contact you at all, the collector is entitled to contact you one more time to explain how it intends to proceed.

Also you should tell and write the collector that you are the only person to be contacted. Since the agency is well aware of your location, there is no need to contact your employer, neighbors, relatives, or friends to find out where you are. If you are an employer, friend, neighbor, or family

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member who is being contacted by a collector, you can write the collector and tell him to stop contacting you.

5. Start and keep a file. At the first contact from a collection agency, start a file. Your file should include:

- Dates and times of phone conversations, pre-recorded messages the collector leaves on your voice mail, and when you send or receive correspondence.
- Notes of conversations along with the name of the collection agency employee.
- Copies of correspondence you send, as well as those you receive including envelopes.
- Copies of correspondence you send, as well as those you receive including envelopes.
- Copies of messages that are abusive or overly intrusive.

There is no set time after which you will never be contacted again about a debt. Some debts are sold to other collectors even after being properly disputed. Keep all records regarding disputed debts indefinitely in case the debt comes back to haunt you, and you need to dispute it again.

6. Put it in writing. Send any correspondence, including disputes, to both the collection agency and the creditor by Certified Mail, Return Receipt Requested. When in doubt, send a written confirmation of anything that you may need to prove later (for example, a promise or threat made, a rude or harassing comment received, or an explanation given you that may show improprieties in the handling of your dispute or your payments).

7. Clarify payments. If you negotiate a repayment plan over the phone, ask the representative to send you the terms of the plan in writing. You

may also write a letter that explains your understanding of the negotiated repayment plan. Payments made to a debt collector when multiple debts are involved should clearly specify to which debt the payment is to be applied. It is possible to dispute one debt, but agree to pay another. Also, any promise to remove or adjust reports in your credit history should be documented for later enforcement.

8. Pay the proper party. Payments should be made to the debt collector and not the original creditor unless you are expressly instructed to pay the creditor directly. In this case, you should confirm such instruction in writing to both the creditor and the debt collector.

9. Don't be coerced. Never pay a bill you don't owe just to get the collector to "go away." Any payment of the debt is considered an acknowledgment that you are responsible. Even if you pay, that will not erase a negative entry on your credit report.

10. Examine balances, interest charges, and other fees and charges. Carefully review the amount you are being asked to pay. You should ask the collector to tell you the amount of the original debt as well as give you a breakdown of any interest, fees, or charges that have been added. Federal law prevents a debt collector from charging you any more than the amount you actually owe, if not permitted by the laws of your state or the terms of the original agreement with the creditor.

11. Complain about abusive collection practices. Under the federal FDCPA, a collector is not allowed to make idle threats, expressed or implied (for example, "We must get your payment no later than the day after tomorrow"), or use abusive or profane language. A collector should

not discuss your account with third parties or use the phone to harass you.

12. Military members should make an appointment with the local Judge Advocate General's office if contacted by a collector. The Soldiers and Sailors Civil Relief Act (SSCRA) provides protections for military members whose financial life is affected by military service. Visit the Department of Army's web site for information on how the SSCRA applies to military members, <http://usmilitary.about.com/od/sscra/l/blsscra.htm>.

13. Don't ignore a collector even if the debt is not yours. It is in your best interest to respond to a collector immediately. Delay can mean the collector will continue to contact you. The collector may even file a lawsuit and get a judgment against you. The result can cost you more time and trouble in the long run.

Frequently Asked Questions about Debt Collection Practices

The Fair Debt Collection Practices Act requires that debt collectors treat you fairly and prohibits certain methods of debt collection. Of course, the law does not erase any legitimate debt you owe. The Federal Trade Commission (FTC) provides answers to the most commonly asked questions about your rights under the Fair Debt Collection Practices Act:

What debts are covered? Personal, family, and household debts are covered under the Act. This includes money owed for the purchase of an automobile, for medical care, or for charge accounts.

Who is a debt collector? A debt collector is any person who regularly collects debts owed to others. This includes attorneys who collect debts on a regular basis.

How may a debt collector contact me? A collector may contact you in person, by mail, telephone,

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telegram, or fax. However, a debt collector may not contact you at inconvenient times or places, such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector also may not contact you at work if the collector knows that your employer disapproves of such contacts.

Can I stop a debt collector from contacting me? You can stop a debt collector from contacting you by writing a letter to the collector telling him to stop. Once the collector receives your letter, he may not contact you again except to say there will be no further contact or to notify you that the debt collector or the creditor intends to take some specific action. Please note, however, that sending such a letter to a collector does not make the debt go away if you actually owe it. You could still be sued by the debt collector or your original creditor.

May a debt collector contact anyone else about my debt? If you have an attorney, the debt collector must contact the attorney rather than you. If you do not have an attorney, a collector may contact other people, but only to find out where you live, what your phone number is, and where you work. Collectors usually are prohibited from contacting such third parties more than once. In most cases, the collector may not tell anyone other than you and your attorney that you owe money.

What must the debt collector tell me about the debt? Within five days after you are first contacted, the collector must send you a written notice telling you the amount of money you owe; the name of the creditor to whom you owe the money; and what action to take if you believe you do not owe the money.

May a debt collector continue to contact me if I believe I don't owe money? A collector may not contact you if, within 30 days after you receive the written notice, you send the collection agency a letter stating

you do not owe money. However, a collector can renew collection activities if you are sent proof of the debt, such as a copy of a bill for the amount owed.

What types of debt collection practices are prohibited? Harassment. Debt collectors may not harass, or press, or abuse you or any third parties they contact.

Unfair practices. Debt collectors may not engage in unfair practices when they try to collect a debt.

What control do I have over payment of debts? If you owe more than one debt, any payment you make must be applied to the debt you indicate. A debt collector may not apply a payment to any debt you believe you do not owe.

What can I do if I believe a debt collector violated the law? You have the right to sue a collector in a state or federal court within one year from the date the law was violated. If you win, you may recover money for the damages you suffered plus an additional amount up to \$1,000. Court costs and attorney's fees also can be recovered. A group of people also may sue a debt collector and recover money for damages up to \$500,000, or one percent of the collector's net worth, whichever is less.

Where can I report a debt collector for an alleged violation? Report any problems you have with a debt collector to your state Attorney General's office and the Federal Trade Commission. Many states have their own debt collection laws, and your Attorney General's office can help you determine your rights.

May a collector send me mail in care of another person? Only if you live at the same address or receive your mail at that address. Even when communicating with you directly by mail, a collector is not permitted to use a postcard. The outside of an envelope sent to you by a debt collector should not include language to indicate that the mail is from a debt

collector or that the letter relates to the collection of a debt. In short, the collector should take reasonable measures to assure your privacy. For example, if the collector knows that you share your address with others, it may be required to mark the letter "personal" or "private" and not give any outward appearance of the nature of the letter.

May a debt collector contact my neighbors or family members about my debt? Not if the collector knows your name and telephone number and could have contacted you directly. Contacts with a spouse, the parent of a minor, a guardian, cosigner, executor, or administrator are considered the same as contacts with the debtor under the FDCPA.

If I cosign a loan, can a debt collector contact me? Yes, if the person who asked you to cosign does not pay. When you cosign a loan, you are guaranteeing that the lender will be repaid—either by the person who asked you to cosign or by you.

As the cosigner, you have the same legal protections as the primary signer. You may also have additional claims against the creditor and possibly the collector if you were not given the special disclosures required under state and federal law advising co-signers of the risks involved. For more on the implications of cosigning for another person's debt, see the FTC publication "Cosigning a Loan," www.ftc.gov/bcp/conline/pubs/credit/cosign.htm.

Does a debt collector have access to my credit report? Yes. The FCRA lists a number of "permissible purposes" for accessing your credit report. One purpose is for "...review or collection of an account..." (FCRA Sec 604(3)(A)) If you are dealing with a debt collector, you should check your credit report. You can now order free reports from each of the three national credit bureaus once every 12 months.

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ARTICLES

TIPS & TRICKS

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What happens after I dispute a collection? After you file a dispute, the collection agency then must stop collection efforts until it has conducted an investigation. This means the debt collector cannot put the debt on your credit report. It must validate the debt by obtaining a verification of the debt or a copy of a judgment from the creditor. A copy of documents that verify the bill should then be mailed to you. When you send the collector proof that the debt is not yours or has been satisfied, ask for written confirmation that the collector is not holding you accountable for the debt. Some accounts, even though properly disputed with one collector, may be sold to another. This can happen years after you have successfully disputed an account.

This makes it all the more important to create a record of your experience with the prior collector. Keep your file indefinitely, especially if it contains correspondence that states you are not responsible. State law may keep a collector from suing you after a given period of time. However, there is no statute of limitations on collection efforts. What you thought was a closed file may come back to haunt you later.

How long does the collection agency have to conduct its investigation? There is no set time, but, again, the collection agency cannot resume collection action unless it confirms the debt.

May a debt collector report negative information on my credit report? Yes. However, collection agencies are not consistent when it comes to

reporting. Some collectors report only larger collection amounts while others report all collections. For a discussion about inconsistent reporting and other issues that arise when collectors report to credit bureaus, see the Federal Reserve Board Study, Credit Report Accuracy and Access to Credit, www.federalreserve.gov/pubs/bulletin/2004/summer04_credit.pdf.

Am I liable for the debt if I don't dispute it in 30 days? If the matter ends up in court, failure to file a dispute cannot be held against you. The FD-CPA (§1692g(c)) says failure to file a dispute does not allow a court to assume you admit liability for the debt. However, being able to establish that you did comply with all statutory requirements may greatly enhance your chances of success. Your goal is to establish the facts and convince the judge or others who decide the matter that you are credible and deserve to have the law applied with its full effect on your behalf.

May I sue a collection agency? Yes. The FDCPA allows individuals and class action plaintiffs to sue in federal or state court within a year of the violation. Under the FDCPA, if you win, you may recover actual damages plus up to \$1,000. Attorney fees and court costs may also be recovered. Members of a class action may recover actual damages plus a total of \$500,000 or one percent of the net worth of the debt collector.

There are many private practice attorneys who specialize in assisting consumers who have experienced

violations of state and federal debt collection laws. The web site of the National Association of Consumer Advocates, www.naca.net, provides a directory of member attorneys. The search process enables you to find attorneys near you and to specify those with debt collection experience, www.naca.net/db.php3.

May I tape record calls from the collector? If the collector is verbally abusive when phoning you or engages in other practices in apparent violation of the law, you might want to gather evidence by taping the calls. Such evidence can be invaluable if you file a complaint with the authorities and if you sue the collector. Be aware that in a dozen states including California, you need to obtain consent before taping the call, with some exceptions. Check the web site of the Reporters Committee for Freedom of the Press (www.rcfp.org/taping) for a 50-state compilation of laws regarding tape recording. ■



Business Hours!

Monday-Friday: 7:00 a.m.-7:00 p.m.

Saturday: 8:00 a.m.-12:00 noon

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