



DEBT COLLECTION AND THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) FACT SHEET



Several times a week in our office the attorneys meet with clients who find themselves in the following situation: Seemingly, out of the blue, a Soldier or his or her spouse will receive a phone from an individual saying they are calling to demand payment of a debt. The individual is mentioning a loan or company you did not repay, and the loan information and company sound vaguely familiar. The individual has the account number, the year it was taken out, and, oftentimes, your full social security number. The individual tells you that you owe \$800, but if you pay by the end of the day, they will cut you a break and reduce the price to \$500. This is the common interaction with an employee of a debt collector.

When a consumer falls behind on a payment, he or she is referred to as a debtor. The person or business the consumer owes the debt is called the creditor. If the debtor does not make payments to satisfy the debt, initially, the creditor will take their own steps to attempt to collect the debt from you. However, if they are unsuccessful, they will likely sell or turn over the debt to someone else to collect it: a debt collector. Debt collectors usually include collection agencies, lawyers and law firms, and companies that buy delinquent debts and attempt to collect on them. The Fair Debt Collection Practices Act (FDCPA) is a law designed to protect debtors from abusive, unfair or deceptive practices to collect a debt from you.

Below are some frequently asked questions our office receives and some tips for the next time you receive a call or letter from a debt collector.

Can a debt collector contact me any time or any place?

No. A debt collector may not contact you at inconvenient times or places, such as before 8:00 a.m. or after 9:00 p.m., unless you agree to it. Debt collectors may not contact you at work if they are told (orally or in writing) that you are not allowed to get calls there.

How can I stop a debt collector from contacting me?

If a collector contacts you about a debt, you may want to talk to them at least once to see if you can resolve the matter even if you do not think you owe the debt, cannot repay it immediately, or think that the collector is contacting you by mistake. If you decide after contacting the debt collector that you do not want the collector to contact you again, tell the collector – in writing – to stop contacting you. Here's how to do that:

Once you draft the letter, sign and send the original by certified mail, and pay for a “return receipt” so you will be able to document that the collector received it. Once the collector receives your letter, they may not contact you again, with two exceptions: (1) a collector can contact you to tell you there will be no further contact, or (2) to let you know they or the creditor intend to take a specific action, such as filing a lawsuit. Sending such a letter to a debt collector you owe money to does not get rid of the debt, but it should stop the contact. The creditor or the debt collector still can sue you to collect the debt.

Can a debt collector contact anyone else about my debt?

If an attorney is representing you about the debt, the debt collector must contact the attorney, rather than you. If you do not have an attorney, a collector may contact other people only to find out your address, your home phone number, and/or where you work. Collectors usually are prohibited from contacting third parties more than once, and they are also prohibited from telling the third party the call is in regard to a debt. Other than to obtain this location information about you, a debt collector generally is not permitted to discuss your debt with anyone other than you, your spouse, or your attorney.

What does the debt collector have to tell me about the debt?

Every collector must send you a written “validation notice” within five days after the initial contact. Their notice must contain how much money you allegedly owe, and it must also include the name of the creditor to whom you owe the money and how to proceed if you do not think you owe the money.

What if I am not sure I owe the money or if I believe it is no longer a valid debt?

If you are unsure of the debt and whether you actually need to pay it, you should write a letter requesting verification of the debt to the debt collector within 30 days of receipt of their letter. During this time, the debt collector is prohibited from contacting you again until the debt can be verified. If they do not respond within 30 days of receiving your letter, they must cease collection efforts and remove your name and file from their records. If, however, they do verify the debt, then they may continue to contact you and take further action to collect the debt.

What practices are off limits for debt collectors?

Harassment

Debt collectors may not harass, oppress, or abuse you or any third parties they contact. For example, they may not:

- * use threats of violence or harm;

- * publish a list of names of people who refuse to pay their debts (but they can give this information to the credit reporting companies);
- * use obscene or profane language; or
- * repeatedly use the phone to annoy someone.

False statements

Debt collectors may not lie when they are trying to collect a debt. For example, they may not:

- * falsely claim that they are attorneys or government representatives;
- * falsely claim that you have committed a crime;
- * falsely represent that they operate or work for a credit reporting company;
- * misrepresent the amount you owe;
- * indicate that papers they send you are legal forms if they are not; or
- * indicate that papers they send to you are not legal forms if they are.

Unfair practices

Debt collectors may not engage in unfair practices when they try to collect a debt. For example, they may not:

- * try to collect any interest, fee, or other charge on top of the amount you owe unless the contract that created your debt – or your state law – allows the charge;
- * deposit a post-dated check early;
- * take or threaten to take your property unless it can be done legally; or
- * contact you by postcard.

Debt collectors also are prohibited from saying that:

- * you will be arrested if you don't pay your debt;
- * they'll seize, garnish, attach, or sell your property or wages unless they are permitted by law to take the action and intend to do so; or
- * legal action will be taken against you, if doing so would be illegal or if they don't intend to take the action.

Debt collectors may not:

- * give false credit information about you to anyone, including a credit reporting company;

- * send you anything that looks like an official document from a court or government agency if it isn't; or
- * use a false company name.

Can a debt collector garnish my bank account or my wages?

If you do not pay a debt, a creditor or its debt collector generally can sue you to collect. If they win, the court will enter a judgment against you. The judgment states the amount of money you owe, and it allows the creditor or collector to get a garnishment order against you, directing a third party, like your bank or employer, to turn over funds from your account to pay the debt. Your wages usually can be garnished only as the result of a court order, so it is important you do not ignore a lawsuit summons. If you do, you lose the opportunity to fight a wage garnishment.

Do I have any recourse if I think a debt collector has 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, the judge can require the collector to pay you for any damages you can prove you suffered because of the illegal collection practices, like lost wages and medical bills. The judge can require the debt collector to pay you up to \$1,000 per violation regardless whether you prove that you suffered actual damages. You also can be reimbursed for your attorney's fees and court costs. Even if a debt collector violates the FDCPA in trying to collect a debt, the debt does not go away if you owe it.

What should I do if a debt collector sues me?

If a debt collector files a lawsuit against you to collect a debt, respond to the lawsuit, either personally or through your lawyer, by the date specified in the court papers to preserve your rights.

Where do I report a debt collector for an alleged violation?

Report any problems you have with a debt collector to the state Attorney General's office (Georgia <http://consumer.ga.gov/form/consumer-complaint/step1>; Alabama <https://www.alabamaag.gov/consumercomplaint>) and the Federal Trade Commission at (https://www.ftccomplaintassistant.gov/?utm_source=takeaction#crnt&panel1-1).

Servicemembers should also consider filing a complaint with the Consumer Protection Financial Bureau (CPFB) online at (<https://www.consumerfinance.gov/complaint/>).

If you need assistance filing a complaint, drafting a request for verification of the debt, or understanding enforcement and protection under the FDCPA, please contact our office at 706-545-8273/3281/3282 in order to schedule an appointment with one of our attorneys.



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