

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

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INTRODUCTION

If you use credit cards, have a loan, or are paying off a mortgage, you are a “debtor.” Most people are. You may never have occasion to come into contact with a debt collector, but if you do, the law is there to ensure you are treated fairly. In 1977, Congress passed the Fair Debt Collection Practices Act to prohibit “debt collectors” from attempting to collect debts in certain ways. *See* 15 U.S.C. § 1692 et seq. It does not, however, eliminate legitimate debts.

WHAT DEBTS ARE COVERED?

The Act covers personal, family and household debts. This can include money borrowed for any reason, like a car, home, education, medical care, or charge accounts. It generally only covers third party debt collectors, not internal collectors. Debts owed by businesses are not regulated.

WHO IS A DEBT COLLECTOR?

A debt collector is any person other than a creditor (the original person you owe money to) who regularly collects debts owed to others. For example, if you default on your loan from a bank, the Act does not apply to the efforts of the bank to collect the debt. However, if the bank hires a debt collection agency to pursue the debt for it, the Act applies to the efforts of the debt collection agency.

HOW MAY A DEBT COLLECTOR CONTACT YOU?

A debt collector can contact you by telephone, mail, or telegram, but not at an inconvenient time (before 8 a.m. or after 9 p.m.) unless you agree. A debt collector may not contact you at work if s/he knows that your employer does not approve. You must tell the collector if that is the case. If you want the collector to stop contacting you entirely, you must send a letter to the agent or agency and tell them to stop. There should be no further contact from the collector, except to inform you either that they are no longer

attempting to collect or that the collector is filing a lawsuit.

CONTACTING OTHERS

A debt collector may contact your family or friends only to ascertain your whereabouts and for no other reason. Further, such contact by the debt collector can be made only once and the collector may not contact others if you are represented by an attorney.

REQUIRED DISCLOSURES

The collector must send you, within 5 days of contact, a written notice telling you: 1) the amount of money you owe, 2) to what creditor you owe the money, and 3) what to do if you believe you do not owe the debt. The collector must provide a statement that he will assume the debt’s validity unless the consumer disputes it within 30 days. If you send a reply that you do not owe the debt, the collector may not contact you again unless they first send you proof of the debt (such as a copy of your bill) and, if requested in writing, identify the original creditor. The collector must cease collection efforts during the 30-day period that the consumer has to dispute the debt.

JURISDICTION

A collector may sue a consumer only in the judicial district where the consumer resides or signed the contract, except that an action to enforce a security interest in real property must be brought where the property is located.

Where services were provided pursuant to an oral agreement, the debt collector may sue only where the consumer resides.

PROHIBITED COLLECTION PRACTICES

The FDCPA prohibits any party from designing or furnishing forms knowing that they are or will be

used to deceive a consumer to believe that someone other than his creditor is collecting the debt. Letters cannot falsely imply that a debt collector is participating in collection of the debt, when in fact only the creditor is collecting.

Harassment, oppression, and abuse are prohibited. Prohibited practices include:

- (1) Threats of harm to the person, property, or reputation of a person;
- (2) Publication of a list of persons who refuse to pay (except to a credit bureau);
- (3) Use of obscene or profane language;
- (4) Repeated telephone calls to harass;
- (5) Telephoning people without giving proper identification as a debt collector;
- (6) Advertising the debt.

In addition, collectors cannot use false statements to collect a debt. For example, debt collectors cannot:

- (1) Imply that they are an attorney (unless they are), or government representative;
- (2) Imply you have committed a crime or fraud;
- (3) Imply that they work for a credit bureau;
- (4) Misrepresent the amount of the debt;
- (5) Misrepresent the legal nature of forms presented or that legal action has begun if it has not.

Finally, debt collectors may not:

- (1) Say you will be arrested for failure to pay;
- (2) Say they will seize, garnish, attach, or sell your property or wages unless they legally intend to do so;

(3) Say actions will be taken against you which legally may not be taken;

(4) Give false credit information about you to anyone;

(5) Use a false name;

(6) Use symbols or words indicating "debt collection" on postal correspondence.

(7) Collect any amount greater than your debt, unless your state law permits such a charge;

(8) Deposit a post-dated check prematurely;

(9) Use deception to make you accept collect calls or pay for telegrams;

(10) Take or threaten to take your property unless this can be done legally; or

(11) Contact you by postcard.

WHAT CAN I DO WHEN A DEBT COLLECTOR HAS BROKEN THE LAW?

If a retail store, department store, small loan and finance company, oil company, public utility company, state credit union, government lending program or travel and expense credit card company is involved, contact the Federal Trade Commission by visiting www.ftc.gov.

You also have the right to sue a debt collector in state or federal court within one year from the date of the violation. 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.

Note: The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.