
NATIONAL CONSUMER LAW CENTER®

GUIDE TO

SURVIVING DEBT

**2016
EDITION**

THE NATIONAL CONSUMER LAW CENTER®

America's Consumer Law Experts

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EIGHT DIFFERENT WAYS TO STOP DEBT COLLECTION HARASSMENT

When bill collectors have no bite behind their bark, they will bark very loudly, hoping to intimidate you. Do not let them. This section lists *eight different approaches* to stop debt harassment.

Keep in mind that the effectiveness of any of these approaches may depend on whether the creditor is doing its own collection (for example, the doctor's office is calling you up) or whether the creditor has hired a debt collection agency or attorney. You have more rights if you are dealing with a debt collection agency, a debt buyer, or an attorney.

The key federal law regulating debt collection, the Fair Debt Collection Practices Act (FDCPA), applies only to debt collection agencies, debt buyers, and attorneys, and generally does *not* apply to creditors collecting their own debts. Nevertheless, most states have laws which regulate creditors collecting their own debts. In any case, the eight approaches listed here will often work with creditors collecting their own debt and not just with collection agencies.

1. Head off harassment before it happens. While you should pay your most important bills first, you should not totally ignore any of your bills, such as by tossing a series of warning letters in the trash. Instead, there are steps you can take short of payment which will make it clear to the creditor that you are not ignoring the bill.

It is to your advantage to try to deal with the problem before the creditor refers the debt to a collection agency. You should consider calling up the creditor to explain your situation. Promptly contacting the creditor is most important with hospitals, doctors, dentists, and similar creditors who would otherwise quickly turn a debt over to a collection agency. Although retailers, banks, and finance companies are more likely to have an in-house collection section, it still pays to try to avoid the transfer of the debt to that office.

If a certain bill is less important, explain to a creditor why you are not paying and when you propose to pay:

"I have to pay my rent and utility bills first. I just got laid off, but when I get a new job, I will do my best to meet my credit card debt. I understand that you will want to cancel my card and I will pay you what I owe you when I can."

You should try to make it clear that you cannot afford to pay the bill and will not pay a collection agency either. Do not over-promise, but be polite and honest. Make sure the creditor understands you will pay as soon as you can so that there is no need to go to the expense of hiring a collection agency.

The creditor then has a financial interest *not* to turn the matter over to a collector. Collection agencies usually charge the creditor a fee based on what they collect. The creditor can avoid paying these fees by sitting tight.

You may also have decided that you would like to try to work out a payment plan with the creditor. There are many ways to do this—you may want to negotiate with a creditor on your own, consider paying the creditor back through a debt management plan arranged by a credit counseling agency (see Chapter Four), or try to settle the debt by offering a lump sum. You can find some tips for negotiating on your own below in paragraph 4. These tips work well whether you are dealing with your own creditor or with a collection agency. But keep in mind that it is to your advantage to try to work out a plan with the creditor rather than with a collection agency. Creditors are generally more flexible than collection agencies. In addition, a collection agency may add the costs of collection to your debt. You may be tempted to use a debt settlement company to help with your negotiations. These are almost always a bad idea and should be avoided (see Chapter Four).

2. The cease letter. Assuming you called the creditor or collector and didn't get anywhere, the simplest strategy to stop collection harassment is to write the collector a cease letter. Your rights will vary depending on whether you are dealing with your creditor or with a collection agency.

Federal law requires collection agencies to stop their phone calls and letters after they receive a written request to stop. The federal law does not apply to creditors collecting their own debts, but even these creditors will often honor such requests.

You do not have to give any special explanation why the collector should cease contacts. Nevertheless, it is generally a good idea to explain why you cannot pay and your financial plans for the future. The letter might also describe prior abusive tactics of the collector's employees and any resulting distress this has caused you. It is very important to keep a copy of the written request and to send it by certified mail, return receipt requested. This will give you proof that the collector received your letter.

Here is an example of such a letter (delete references to billing errors, debt harassment, or any other statements that do not apply to you—a simple request to stop collection contacts is sufficient):

“CEASE” LETTER SAMPLE

Sam Consumer
10 Cherry Lane
Flint, MI 10886

January 3, 2016

NBC Collection Agency
1 Main Street
Flint, MI 10887

Dear Sir or Madam:

I am writing to request that you stop communications to me about my account number 000723 with Amy’s Department Store, as required by the Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(c). [*NOTE: Delete reference to the Fair Debt Collection Practices Act when the letter is sent to a creditor instead of to a collection agency.*]

I was laid off from work two months ago and cannot pay this bill at this time. I am enrolled in a training program which I will complete in March and hope to find work that will allow me to resume payments soon after that. Please also note that your letters mistakenly list the balance on the account as \$245. My records indicate that the balance is less than that.

You should be aware that your employees have engaged in illegal collection practices. For example, I received a phone call at 6:30 a.m. from one of them last week. Later that day I was called by the same person at my training program which does not permit personal phone calls except for emergencies. My family and I were very upset by these tactics.

This letter is not meant in any way to be an acknowledgment that I owe this money. I will take care of this matter when I can. Your cooperation will be appreciated.

Very truly yours,

Sam Consumer

Even though it is against federal law, not all debt collectors will stop contacting you after they receive your letter. You should try not to let them get away with this. If necessary, send another letter and once again keep a copy. Let them know that you are aware that they are violating the federal law by continuing to contact you. You should also keep a careful record of any letters and phone calls you receive after sending the letter. This record may help you if you later decide to sue the debt collector.

You should also consider other options if the debt collector ignores your letter. In particular, you might think about contacting a lawyer to send a letter on your behalf (paragraph 3 below), complaining to a government agency about the collector's conduct (paragraph 6 below), or suing the debt collector (paragraph 8 below).

3. The lawyer's letter. You do not need a lawyer to send a cease letter. When your main goal is to get the bill collectors off your back, you can send a simple cease letter without the cost of legal assistance. However, if a cease letter does not stop collection calls, a letter from a lawyer usually will. In addition, the lawyer may be able to raise legal claims on your behalf for violations of the FDCPA.

Collection agencies must stop contacting a consumer known to be represented by a lawyer, as long as the lawyer responds to the collection agency's inquiries. Even though the FDCPA requirement does not apply to creditors collecting their own debts, these creditors will also usually honor requests from a lawyer. A collector's lawyer is generally bound by legal ethics not to contact debtors represented by a lawyer.

Your lawyer may get her fee paid by the debt collector. Getting a lawyer is discussed later in this chapter.

4. Negotiating work-out agreements. Probably the most common consumer strategy to deal with debt harassment, though not the best, is to work out a deal with the collector. Usually a consumer will try to figure out a way to make monthly payments to a creditor. Tips for negotiating payment plans are discussed below. Keep in mind that you can negotiate with creditors about other terms as well, including agreements to cancel a delinquency. It does not usually affect the total amount you owe, but the creditor will treat your debt as if it is current. You may also be able to persuade the creditor to restructure your payments or reduce the interest rate on future payments.

BEWARE OF RE-AGING OLD DEBTS

Consumers should avoid re-aging old debts. Some debts are so old that you can dismiss them in court. This time limit is called the statute of limitations. However, this time period may restart if a consumer makes a payment—even a small amount or a promise to repay. New activity on an old debt could re-age it and make it more collectable. You may be better off ignoring a call about an old debt. This and other defenses to the debt collection are discussed in Chapter Nine.

Regardless of the type of deal you try to negotiate, be careful about offering too much. As described in Chapter One, it is extremely important to prioritize your debts. Even a small payment to an unsecured creditor is unwise if this prevents payment of your mortgage or rent. There are other, better ways to stop debt harassment.

Payment Plans. If you think you can make monthly payments, you should think about the best ways to negotiate with the creditor or collector. The tips below should be helpful whether you are dealing with a creditor or a collection agency, although a creditor is likely to be more flexible for the reasons discussed earlier in this chapter.

You should first think about whether you can offer a lump sum or whether you will have to make monthly payments. A lump sum will often be a better deal, but you may not be able to raise the money. Strategies for raising money to pay off debts are discussed in Chapter Seven.

Chapter Seven also reviews the choices that are most likely to get you into trouble. You should be very careful about making choices, such as payday loans, that may raise some money for you in the short-term, but will likely cause you more problems not too far down the road.

If you decide instead to negotiate a payment plan, it is critical to be sure that you pay enough each month to make a dent in your debt. An exception to this rule might arise if you are desperate to avoid collection efforts that might harm you or if you are delinquent on a debt where the creditor has special collection powers, such as government student loans. To get a better understanding of the possible consequences of a debt collection lawsuit, see Chapter Nine.

Paying down credit card debt through monthly payments is particularly difficult. This is because not all of your monthly payment will go toward

the amount of your debt. For example, let's say you owe \$1,000. If you pay \$50, your debt will not be reduced to \$950. Instead, most of the \$50 will go toward paying just the interest on the loan. This is why it is almost impossible to get out of debt when you pay just the minimum payment on your credit card. For more information about credit card costs, see Chapter Five.

Medical debts may be more negotiable. Several approaches are discussed in Chapter Seven.

Negotiating Tips. In general, you may be surprised that you have some power in negotiating with a collector. Just knowing your rights in this situation can go a long way. Most importantly, you have the right not to be harassed or abused by debt collectors, as discussed in detail later in this chapter. Knowing that it is against the law for the collector to make false threats or to speak to someone else about your debt should help you avoid panicking and setting up an unreasonable or unaffordable plan.

Your ability to get an agreement depends on whether the creditor believes you will honor the agreement. Your chances are likely to decrease considerably if you have set up a payment plan with this creditor in the past and failed to keep making those payments. When negotiating with a creditor, you should also avoid over-promising. Be realistic about what you can pay and offer that amount. Remember that it will not help you much in the long-run if you can only pay a very small amount. If you're uncomfortable negotiating on your own, you might try to find a social worker, trusted friend, or relative to help you.

You might also think about going to a credit counselor for help in setting up a repayment plan. Chapter Four will help you decide whether you should seek help from a credit counselor and, if so, how to find a reputable agency. We recommend that you avoid all companies that offer to settle your debts for less than the amount owed.

One rule to keep in mind for any type of negotiation is to be sure and get any deal in writing. You should also try to negotiate to get the creditor to help you with your credit report.

5. Raise complaints about billing errors and other defenses. Collection letters often contain errors, sometimes misstating the account number or the amount due, or billing the consumer instead of his or her insurance company. Occasionally, you may even receive collection letters aimed at someone

with the same or a similar name. When a collection letter contains a mistake, write to request a correction. Collection agencies, by law, must inform you of your right to dispute the debt. They must do this the first time they communicate with you or within five days after first communicating with you about the debt. If you then dispute the debt in writing within the next thirty days, the collection agency must stop collection efforts while it investigates.

If the dispute involves a line of credit, a credit card, or an electronic transfer of money, you have additional legal rights under the federal Fair Credit Billing Act to *require* the creditor to *investigate* the bill. You must write a letter pointing out the mistake within sixty days of receipt of the disputed bill. Your rights to correct billing errors are periodically included with credit card statements. A sample letter for this purpose is contained in Chapter Five.

There are many other defenses to repayment you should also consider. These are discussed in Chapter Nine. It is usually best to raise all available complaints as early as possible in the debt collection process. Waiting too long may make you less believable later. You should mention your claims every time a creditor or collector contacts you about payment. If the creditor still pursues a lawsuit, raise the claims at that point as well.

If you believe you have claims against a creditor, it's a good idea to put those claims in writing and mail them to the creditor, collector, and any attorneys representing them. This is especially important if you believe that you have warranty or similar claims. Don't forget to keep a copy of anything you mail and send by certified mail, return receipt requested.

Collectors will often tell you to go talk to the original seller or to a prior creditor about any problems. Although the collector might not want to hear your complaints, you should tell the collector anyway. The key thing to remember is that it is always better to defend against the creditor or collector's attempt to collect a debt than to give the collector the money and then try to get it back from the original seller.

6. Complaining to a government agency. Another strategy is to write to government agencies responsible for enforcing laws that prohibit debt collection abuse, like the Federal Trade Commission or your state's attorney general's office. The Consumer Financial Protection Bureau is now taking consumers' complaints about credit card companies, banks and debt collection companies. A government agency is not likely to investigate immediately unless it has other complaints against the same collector, a fact that probably

SAMPLE COMPLAINT LETTER

Sam Consumer
10 Cherry Lane
Flint, MI 10886

January 25, 2016

Federal Trade Commission
Bureau of Consumer Protection
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Dear Sir or Madam:

I am writing to complain of abusive debt collection tactics used by ABC Collection Agency, 1 Main Street, Flint, MI 10887. I request that you investigate this company.

I was laid off two months ago and have not been able to maintain all payments on all my bills. ABC began contacting me in December about my account with Amy's Department Store in Flint. ABC's abusive collection tactics have included:

1. Telephoning my sister asking her to lend me the balance when she does not have anything to do with this account.
2. Calling me repeatedly at 6:30 a.m. at home.
3. Using offensive language, such as calling me a "lousy deadbeat."
4. Writing that they would sue me if they did not receive payment in ten days. This was a month and a half ago, but all they have done since then is to call and to write. (A copy of that letter is enclosed.)
5. Continuing to contact me after I sent them a letter asking them to stop. (Enclosed is my letter to them and a later letter from them.)
6. Billing me for \$245 when no more than \$185 is owed on the account.

My family and I are doing our best to get back on our feet, and this abuse is very stressful. Your assistance will be appreciated.

Very truly yours,

Sam Consumer
cc: Attorney General's Office
Bureau of Consumer Protection
Lansing, MI
Flint Office of Consumer Affairs
Flint, MI
ABC Collection Agency
1 Main Street
Flint, MI 10887

WHERE TO COMPLAIN

Federal Trade Commission, Consumer Response Center
600 Pennsylvania Ave., NW
Washington, D.C. 20580
877-FTC-HELP (382-4357)
www.ftc.gov

Consumer Financial Protection Bureau Consumer Response Center
P.O. Box 4503
Iowa City, Iowa 52244
855-411-CFPB (2372)
www.consumerfinance.gov/complaint

cannot be known ahead of time. Even so, sending the collector a copy of your letter often produces good results.

Copies of the letter should also be sent to the consumer protection division within the state attorney general’s office (usually in the state capitol), and also to any local office of consumer protection listed in the local telephone book or on the Internet. Addresses can be obtained from a local better business bureau or office of consumer affairs. An example of such a letter follows on the next page.

7. Bankruptcy. Filing your initial papers for personal bankruptcy instantly triggers the “automatic stay.” This is a very powerful tool because it stops all collection activity against you, from collectors, creditors, or even government officials. No further collection activity can proceed unless a particular collector obtains permission from the bankruptcy court. The bankruptcy court will not grant this permission to collectors seeking to contact you about unsecured debts. For this reason, filing for bankruptcy can be a very effective means of stopping debt harassment. If you have filed other bankruptcy cases that were dismissed within the previous twelve months, however, you may not get an automatic stay or it may only last for the first thirty days of your bankruptcy case. See Chapter Twenty-One for more information about bankruptcy.

Nevertheless, as a general rule, a bankruptcy filing is not your best strategy where your only concern is debt harassment. Bankruptcy should be saved for when you have serious financial problems. Debt collection harassment can usually be stopped without having to resort to bankruptcy. In fact, be wary

of any attorney offering to file bankruptcy for you where the only problem is debt harassment. More detailed information on bankruptcy can be found in Chapter Twenty-One.

8. Sue the debt collector for illegal conduct. Federal and state fair debt laws provide consumers with strong protections from debt collection harassment. Debt collectors often break these rules because they know that in most cases they can get away with it. Most consumers either don't know about their rights or don't have the resources to fight back.

The rest of this chapter provides an introduction to fair debt and other laws that protect consumers from debt collection harassment. The remaining sections will also give you ideas on finding a lawyer to help you bring a lawsuit. Fighting back by suing debt collectors cannot only stop harassment against you and possibly get you a money recovery, but may also convince the debt collectors to stop harassing other consumers. You can also use the fair debt laws to make counterclaims against a creditor or collection agency that is suing you to collect money. More information on defending lawsuits and on counterclaims can be found in Chapter Nine.