



# CONSUMER CONCERNS

Information for Advocates  
Representing Older Adults

National Consumer Law Center®

## Dealing with Debt Collection Harassment

Debt collectors have been the most complained-about industry on the Federal Trade Commission's consumer website for many years running. And abuses by out-of-control collectors appear to be getting worse.

Debt collection harassment and abuse can take a particular toll on vulnerable older consumers. The good news is that there are federal and state laws that are intended to protect consumers from debt collection and harassment and many private lawyers in most states that specialize in suing debt collectors on a contingent fee. Consumers are protected whether the money being collected is owed or not. The bad news is that many collectors still do not comply with the law.

The information below will help advocates counsel clients about what a debt collector can and cannot do and how consumers can protect themselves. It is also important to work with older consumers to help them evaluate which debts are highest priorities and what the possible consequences might be if they are unable to repay all of their debts.

### • What Can a Debt Collector Really Do?

A debt collector working on behalf of a creditor can do little more than demand payment if the consumer is low-income and has little property. If the creditor has not taken the client's house, car, or other property as collateral on a loan, then legally the creditor can only do three things:

1. Stop doing business with the consumer.
2. Report a default to a credit bureau.
3. Sue the consumer in court. Many collectors do not follow through on their threats to sue. Even if they do, consumers can raise defenses to paying the debt, if they are counseled on how to answer a suit. And even if the creditor obtains a judgment, this judgment still may not force a low income consumer to pay the debt. It only gives the creditor the right to try to seize part of the consumer's wages, home, bank account or property that is not exempt from creditors under state law. An elder with a home or significant savings may be more likely to be sued and forced to pay.

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## How To Avoid Harassment

Federal law and many states prohibit harassment by collection agencies, debt buyers, and collection attorneys. In many cases, the state laws provide additional protections. For example, the federal law applies only to third party collectors. Some state laws also cover creditors collecting their own debts.

Consumers should consider the following eight steps. In most cases, they will want to consider more than one.

- **Try to Head off Harassment Before it Starts**

It is to the consumer's advantage to try to deal with the problem before the creditor refers the debt to a collection agency. Consumers should consider calling up the creditor to explain their situation. It is important to advise consumers that they should not over-promise in these negotiations. They should also take into account whether they actually have the money or whether they have defenses to raise that would eliminate all or part of the obligation.

- **Negotiate with the Creditor or Collector**

It is often easier to negotiate with a creditor before a debt is sent to a collection agency, but consumers can negotiate with collection agencies as well. Regardless of the type of deal, consumers should avoid offering too much. Even a small payment to an unsecured creditor is unwise if this prevents payment of a mortgage, rent, or utility bills.

- **The Cease Letter**

The simplest strategy to stop collection harassment is to write the collector a cease letter. Consumer rights vary depending on whether the collector is a creditor or a collection agency.

Federal law requires collection agencies to stop their collection efforts (sometimes referred to as dunning) 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.

It is very important for consumers to keep a copy of the written request and to send it by fax with a date stamp and verification of receipt or certified mail (return receipt requested). This gives proof that the collector received the letter.

Even though it is against the federal law, not all debt collectors will stop contacting consumers after they receive a letter. Consumers may have to send another letter and once again keep a copy. Advocates should advise clients to keep a careful record of any letters and phone calls received after sending the letter, noting the date, time, caller, summary of the conversation. This record may help if the consumer later decides to sue the debt collector.

Here is an example of such a letter.

## Sample "Cease" Letter

Sam Consumer  
10 Cherry Lane  
Flint, MI 10886

January 2, 2010

NBC Collection Agency  
1 Main Street  
Flint, MI 10887

Dear Sir or Madam:

I am writing to request that you stop contacting me about an account number \_\_\_\_\_ with [name of creditor] as required by the Fair Debt Collection Practices Act 15 U.S.C. section 1692c(c). (Note: Delete reference to the Act where the letter is to a creditor instead of to a collection agency. Some, but not all, state laws prohibit further contact by creditors).

[Describe any harassing contact by the collection agency. If appropriate, provide information about why you cannot pay the bill or do not owe the money].

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

### • The Lawyer's Letter

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 for violations of the federal law that prohibits debt collection harassment.

Federal law requires collection agencies, debt buyers, and collection lawyers to 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 this requirement does not apply to creditors collecting their own debts, these creditors also will usually honor requests from a lawyer. A lawyer working for a creditor or collection agency also is generally bound by legal ethics not to contact debtors represented by a lawyer.

### • Raise Complaints About Billing Errors and Other Defenses

When a collection letter contains a mistake, consumers can write to request a correction. Collection agencies, by law, must inform consumers of their right to dispute the debt. They must do this the first time they communicate with the consumer or within five days after the first communication. If the consumer then disputes the debt in writing within the next thirty days, the collection agency must stop collection efforts until it verifies the debt.

If the dispute involves a line of credit, a credit card, or an electronic transfer of money, the consumer may have the additional legal right to require the creditor to investigate the bill.

## • Complain to a Government Agency

Consumers should consider writing 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.

Consumers can file a complaint on-line at [www.ftc.gov](http://www.ftc.gov) or call the Commission toll-free at 1-877-FTC-HELP (382-4357). A letter of complaint can be sent to the Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Ave. NW, Washington, D.C. 20580. The online complaint is shared with other agencies. Copies of a mailed 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.

## • Bankruptcy

In most cases, filing initial papers for personal bankruptcy triggers the "automatic stay." This is a very powerful tool because it stops all collection activity from collectors, creditors, or even government officials. But, as a general rule, a bankruptcy filing is not the best strategy where the consumer's only concern is debt harassment. Bankruptcy should be saved for when consumers have serious financial problems and need it to protect their property or their future wages. Debt collection harassment can usually be stopped without having to resort to bankruptcy. It is a good idea for a consumer to consult a bankruptcy attorney to determine its advantages.

## • 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 do not know about their rights or lack the resources to fight back. Fortunately there are hundreds of lawyers across the country that specialize in representing consumers harassed by debt collectors, usually with their fee paid by the debt collector when they win your harassment suit.

The best place to find a lawyer if a consumer has been seriously harassed by a debt collector is the lawyer directory on the National Association of Consumer Advocates' website, [www.naca.net](http://www.naca.net) (Find a Lawyer).

## CAUTION: Say NO to Debt Settlement Companies

Consumers should be counseled **NOT** to try a debt settlement company to deal with their debt problems. Debt settlement is seldom successful and costs a lot!

# Federal Fair Debt Collection Practices Act

The federal Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. §1692 et seq.) prohibits collectors from engaging in a wide range of abusive and harassing conduct. Below is an outline of key provisions of this law.

## • Who is covered?

Only consumer debt transactions, as defined in the law, are covered. Only “debt collectors” are covered which includes collection agencies, debt buyers, and attorneys regularly collecting debts. Original creditors and their employees are excluded from the federal law, but creditor’s attorney debt collectors are covered.

## • Privacy Protections

The law protects a consumer’s privacy by limiting the ways in which debt collectors are allowed to communicate with consumers. Key privacy provisions include:

- Collectors are prohibited from communicating with third parties like friends, neighbors, and children. They are allowed to contact the consumer’s spouse, parent (if the consumer is a minor), guardian, lawyer, executor, or administrator.
- No communication at any unusual time or place. In the absence of other knowledge, the law assumes that after 8:00 a.m. and before 9:00 p.m. is the only convenient time.
- No communication with consumer if the collector knows the consumer is represented by an attorney. Communication must then be with the attorney.
- No communication at consumer’s place of employment if the collector knows or has reason to know that the employer prohibits such communication, or personal calls in general.
- If the consumer notifies the collector in writing that s/he refuses to pay the debt or wishes the collector to cease communication, the collector must cease requesting payment and may communicate only:
  1. to advise the consumer that the collector’s further efforts are being terminated;
  2. to notify consumer that the collector or creditor may invoke specified remedies;
  3. where applicable, to notify the consumer that the collector intends to invoke a specified remedy.

The collector can still sue on the debt. This section limits further communications only.

## • Harassment and Abuse Is Prohibited

The law includes a non-exhaustive list of harassing tactics, including prohibitions on threats of violence; obscene language; causing a telephone to ring repeatedly; and placing calls without meaningful disclosure of the caller’s identity.

## • False or Misleading Representations Are Prohibited

For example, collectors may not make false representations of the amount or legal status of any debt. They cannot threaten to take any action that cannot legally be taken, like suing on a very old debt. They violate the law if they threaten to sue and do not intend to sue.

In addition, the collector must disclose in the initial written communication with the consumer (and in addition, if the initial communication is oral, in that oral communication) that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and must disclose in subsequent communications that the communication is from a debt collector.

## • Unfair Practices Are Prohibited

For example, collectors are prohibited from collecting any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law; communicating by post cards; using language or symbols other than the debt collector's address on any envelope (a business name is allowed only if the name does not indicate the collector is in the debt collection business). The consumer must not be sued by a debt collector in a court far away from where he or she resides or entered into the contract involved.

## • Validation of Debts

Within five days after the initial communication, debt collectors must provide information about the consumer's federal right to request the debt collector verify the debt. Consumers have thirty days to dispute the debt's validity. The collector must cease collection if verification is requested until the collector provides verification of the debt.

## • Private Remedies

- Up to \$1,000 in statutory damages
- Attorney's Fees
- Actual Damages proven to the court
- Injunctive Relief generally not available.

Suit must be filed within one year of the violation in most instances.

## • Collector Defenses

The collector has specific defenses under the law, including a bona fide error defense. This is a limited defense and applies only where violation results from an unintentional error, notwithstanding maintenance of reasonable procedures adopted to avoid the error.

## • Other Claims

Additional claims to consider in debt collection harassment cases include:

- Tort claims such as invasion of privacy or defamation
- State debt collection remedies
- State unfair and deceptive acts and practices laws
- State credit repair organization laws
- Unauthorized practice of law statutes
- Criminal laws

## Useful Information and Websites

### National Consumer Law Center Publications and Articles

National Consumer Law Center, Fair Debt Collection (6<sup>th</sup> ed. 2008 and Supp.).


National Consumer Law Center, Guide to Surviving Debt (2010).

National Consumer Law Center, Collection Actions (2008 and Supp.).

National Consumer Law Center, Unfair and Deceptive Acts and Practices (7<sup>th</sup> ed. 2008 and Supp.).

Also see NCLC's brochure on Dealing with Debt Collection Harassment.

The Federal Trade Commission also has information about debt collection issues. You can get more information on-line at [www.ftc.gov](http://www.ftc.gov).



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