

The Fair Debt Collection Practices Act

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This information was updated as of January 2007 and is believed to be accurate as of this date. We assume no responsibility to update this information. This is not intended to be a comprehensive review of the law related to debt collection. It is not intended to be a legal research tool and should not be interpreted as legal advice.

The Fair Debt Collection Practices Act

You just gave a telemarketer your credit card number. Or, you owe creditors money for your new car or family home. Maybe you are falling a bit behind on your payments, or maybe someone else claims you are falling behind -- but you're not. You may be receiving phone calls from the bank, credit-card company, or collection agency. Sound familiar? No fun, is it?

There are things you can do to make sure you are a bit more in control of those pesky debt collectors. The Fair Debt Collection Practices Act (the "Act") was passed by Congress to protect consumers by making **some** debt collection activities illegal. Some of those illegal practices and activities are described in this document. (*15 U.S.C. § 1692e*)

Definitions used throughout this document

For purposes of the Fair Debt Collection Practices Act, the terms below will have the following meanings:

Consumer

If you owe money or use a credit card, you are a **Consumer**. (*15 U.S.C. § 1692a(3)*). Consumer also means your spouse, parent, and if you are a minor, your guardian, executor or administrator. (*15 U.S.C. § 1692c(d)*)

Debt

If you owe a debt to a creditor, for personal and household purposes, NOT business or commercial purposes, you owe a **Debt**. (*15 U.S.C. §§ 1692a(5); § 1692c(d)*)

Collector

If you ever fall behind in paying your creditor, you may be contacted by a **Collector**. A Collector might be an individual, an attorney, or a company, who ordinarily receives a payment from a Creditor for collecting on overdue payments. A third party Collector collects Debts owed to someone else – your creditor. The Act does not apply to creditors who collect their own Debts – ONLY to third party collectors who collect Debts for creditors. (*15 U.S.C. §1692a(6)*).

Creditor

A Creditor is a Collector for purposes of this act if, he or she uses or operates under a different name than his or her own to collect Debts and regularly collects Debts for other people. For example, Number One Collection Agency is called a Collector when it asks

you to pay your medical bill debt for your Creditor, Tri-Valley Medical Clinic, where you visit your doctor.

The FDCPA does not apply to Debt Collectors who are affiliated with the creditor they collect for. A Collector is considered to be affiliated with a Creditor if he or she is related by common ownership or control. For example, ABC Credit Card Company can collect its own Debts and won't fall under this act. Likewise, a company owned by ABC Credit Card Company can collect Debts for ABC and not be covered by the restrictions of the act.

Special rules for some bad-check-enforcement-agencies

Some bad check enforcement programs operated by private entities under state regulatory oversight are exempt from the limitations of this act, if they meet specific requirements detailed in the act. If you are contacted by check enforcement agency it may be a collector who is not subject to the restrictions of this Act. To find out if the agency is covered by the Act, ask the agency if it is under state oversight, and if so, by which agency. Then you can verify whether the collector is legitimate and whether it is covered under the Act.

Can Collectors contact you? If, so, when can they contact you?

Yes. Under the Act, a Collector may contact the Consumer, which means you, your spouse, executor, or administrator and if you are a minor, your parents or guardian. Collectors can contact the Consumer by telephone, fax, mail, or telegram. Collectors may not contact you at unusual times or places, such as before 8:00 a.m. or after 9:00 p.m. unless you tell the Collector that they may contact you at any time. (*15 U.S.C. § 1692c(a)(1)*).

TIP: Keep track of all of the communication between you and the Collector, including his or her name, the date of the communication, and what you discussed. If you ever complain about the Collector you will have all of the details at your fingertips. See also '*What should a Collector tell you about the Debt?*' on

In general, they may not contact you if you tell them you have an attorney and your attorney is handling your Debt(s) for you. See also: '*What if you have an attorney?*' on page 4 (*15 U.S.C. § 1692c(a)(2)*)

Can Collectors contact my family, friends, or workplace?

Under the Act, a Collector may only contact the Consumer (e.g. you, your spouse, or parents if you are a minor, your guardian executor or administrator) to discuss the Debt. A Collector is only permitted to communicate with other people for the purpose of finding out how to contact you, where you live, or your phone number. Collectors may contact other people **one time only**, to find out where you live, work, and what your phone number is. (*15 U.S.C. §1692c(b)*).

When dealing with third parties:

A Collector must:

- Clearly identify him or herself

- Explain that he or she is confirming or correcting location information about you; and

A Collector may not:

- Contact another person more than once -- unless that person tells the Collector it has been given permission to call again; or
- Tell the person he contacts that he or she is in the Debt collection business;
- Send the Consumer a postcard, or any type document with any information or marks on the envelope that may communicate that the Collector's purpose is to collect a Debt;
- Continue to contact you if he or she knows you have an attorney.
- Refer to the Debt; or
- Indicate the collection nature of his or her business in any communication.

See also: '*What can a Collector say? What a Collector may not say.*' on page 8.

Employers

A Collector may only make one contact with your employer. A Collector who has not contacted your employer can send a letter asking for verification of your employment. Collectors are not allowed to ask your employer or co-workers personal information about you. If the Collector contacts your workplace more than one time, for the same purpose, you may tell the Collector not to phone you at work because your employer does not want you to receive those kinds of calls at work. (15 U.S.C. §§ 1692b-c)

Friends and Family

Your friends and family may tell the Collector not to phone them any more after the Collector has phoned there the one time allowed under the Act. The Collector is not allowed to continue contacting them unless they tell the Collector it is alright to continue the contact. (15 U.S.C. §§ 1692b-c).

Your Attorney

A Collector may contact your attorney, if you have one, and discuss the Debt. (15 U.S.C. §§ 1692b(6).) See also: '*What if you have an attorney?*' on page 4.

Can you stop Collectors from contacting you?

Yes, but only if you write them a letter telling them to stop. Be sure to keep a copy of the letter. Once Collectors receive your letter, they may not contact you about the Debt again, except to tell you that the Collector or the Creditor will take a specific action to resolve the Debt. For example the Creditor may decide to sue you to recover the Debt. (15 U.S.C. § 1692c; and § 1692i).

TIP: The best way to protect yourself and stop all further activity is to get the Creditor to release you from the Debt obligation. Ask the Creditor for a letter that states that you are released from, or are not obligated to pay the Debt. If you make a deal with a Collector to settle a Debt, make sure you get (1) the terms of the deal in writing; and (2) a statement releasing

NOTE: Telling a Collector "Don't call," will NOT make the Debt go away, and it won't prevent creditors from filing suit against you – it only prevents the Collector from hassling you. See also 'Is there a Statute of Limitations on Debts?'

What if the Debt Collector is an attorney?

If an attorney is collecting a Debt for the Creditor, and has instigated a lawsuit, you will probably continue to receive court documents and letters. You can tell the Debt Collector (attorney) to contact your attorney instead of you. However, the Act permits communications with debtors represented by attorneys with the express permission of the court. (15 U.S.C. §1692c(1)) Even a Collector who is an attorney is required to send you the validation notice containing information about the Debt (15 U.S.C. § 1692g(a)(1)-(3)). The notice must include a statement that if you dispute the Debt within 30 days of the notice, the Debt Collector will obtain and send you verification of the Debt and upon your written request the name and address of the current creditor if different from the original Creditor. (15 U.S.C. § 1692g(a) (4)-(5)) See also: 'What should a Collector tell you about the Debt?' on page 4.

NOTE: Sending a letter to the Collector will NOT make the Debt go away. Sending a letter to the Collector who is an attorney will not make a lawsuit go away.

What if you have an attorney?

If you hired an attorney to help you settle your Debt, tell the Collector the name of your attorney. If you prefer that your attorney handle the situation, you can tell the Collector not to contact you again. The Collector should not contact you again unless your attorney gives the Collector permission to contact you, or unless your attorney fails to respond to the Collector in a reasonable amount of time. (15 U.S.C. § 1692b(6))

This does not apply to other Debts with the same Creditor that arise later. A Collector may contact you again about those different Debts that result as a result of your arrangement with the same or different Creditor. Tell the Collector that you are still represented by an attorney and that he or she should contact your attorney.

What should a Collector tell you about the Debt?

The Collector has 5 days after the first contact with you to notify you in writing:

- that you owe the Creditor money;
- the amount of the Debt;
- the name of the Creditor; and
- of your right to dispute all or part of the Debt, in writing, within 30 days of receiving the notice.

The initial notice cannot be in the form of a legal pleading or

LEGAL INTERPRETATION:

According to the Federal Trade Commission, if your initial notice is by telephone, the Collector may make the required disclosure at that time and is not required to send written notice. However, the Collector must be able to prove that it provided you with the notice required under the Act.

other communications such as 1099-C forms. (15 U.S.C. §1692g)

NOTE: The 30 day time frame starts running on the day you receive the notice, NOT the date of the letter or the postmark. See also: '*What if you think you don't owe money to the creditor?*' on page 5.

The purpose of this part of the Act is to help Consumers who might have been mistaken or misidentified. For this reason, you must receive written verification or 'validation' of the name of the Consumer and amount of the Debt as it was obtained from the Creditor.

A Collector may continue collection activities and attempt to communicate with you during the 30 day period so long as the collection activities and communications are not inconsistent with your right to dispute the Debt, or obtain the notice of the Debt required under the Act. This means that once a Collector gives you adequate notice of the Debt, it cannot take any further action that denies you your rights to additional information about the Debt, to be free from threats or harassment, or any other action detailed in this document. See also "*What can a Collector say? What a Collector may not say.*" on page 8.

If the Collector is an attorney who files a lawsuit against you, you may receive notice before, at the same time as, or after you are served with legal documents. Chances are it will be at the same time or shortly after you are served with legal documents. If this is the case, your rights or obligations with respect to the lawsuit will not change. Although you still have the right to have the Debt validated, you will still be obliged to honor any deadlines a court may impose upon you.

NOTE: If the Collector can establish proper and timely mailing of the notice validating your Debt, a court will presume you received it unless you can produce evidence to the contrary.

What if you think you don't owe money to the creditor?

If you think you don't owe the Creditor money, you must send the Collector a letter stating that you do not owe the money to the Creditor. You **must** send this letter to the Collector within **30 days** of the date you receive the written notification of the Debt. (See also: '*What should a Collector tell you about the Debt?*' on page 4.) (15 U.S.C. § 1692g(b))

You may tell the Collector not to contact you until you receive proof of the Debt. If you decide to do this, you **must** do it in writing.

Once you dispute the Debt in writing, the Collector must stop trying to collect money from you until you receive written proof that you really owe the Debt from the Collector. *Proof* should include a written document with your name, the name of the Creditor, and the amount you owe.

NOTE: This will NOT make the Debt go away. The 30-day period is NOT a grace period – it is just a period of time during which the Creditor must prove that you owe the Debt. (15 U.S.C. § 1692g(b))

What if the amount is incorrect?

If you don't think the amount of money the Collector is trying to collect from you is the correct amount, you **must** send the Collector a letter stating that you do not owe the amount of money the Collector is asking you to pay. You **must** send this letter to the Collector within **30 days** of the date you receive the written notification of the Debt. (15 U.S.C. § 1692g(b)). See also: 'What should a Collector tell you about the Debt?' on page 4' and 'What if you think you don't owe money to the creditor?' on page 5.

Can the Collector change the terms you negotiated with the Creditor

If you negotiated partial payments with the Creditor, you may be frustrated if the Collector refuses to accept partial payments. Although this may be frustrating to you, it is not a violation of the law. The Collector is allowed to demand larger installments in an accelerated time frame. The Collector is allowed to negotiate its own terms, but the Collector may not make any false statements or use misleading means to collect a Debt from you. So, if you suggest a partial payment knowing the Creditor will accept a partial payment, the Collector is not allowed to tell you "The Creditor will only accept full payment." (15 U.S.C. § 1692e).

Can a Collector demand more than what you actually owe?

The FDCPA prohibits Collectors from misrepresenting the amount of Debt you owe, the type or character of the Debt, or the legal status of your Debts. In general, Collectors may NOT add interest, fees, expenses, or charges of any kind to the original Debt. However, a Collector may charge an additional amount if:

- The Creditor included a condition for the fees or expenses in its agreement with you when you incurred the Debt; or
- If it is allowed in the State where the contract was created; or
- If it is allowed in the State where a judgment was entered.

(15 U.S.C. § 1692f) See also: 'What to do if you think a Debt Collector broke the law?' on page 9.

What if you owe multiple Debts to the same Creditor and you want to pay some on one Debt and none on another?

If you owe more than one Debt and you make a payment to a Collector, the Collector must follow your instructions apply the money to the Debt you tell them to apply it to – it cannot apply it to any other debt. (15 U.S.C. § 1692h)

TIP: Dispute the Debt immediately. A Collector may report the Debt to a Consumer Reporting Agency, or send you notice of the Debt the same time it sends you a summons to appear in court. If you receive a summons to appear in court after you disputed the Debt in writing -- go to court! Bring a copy of the letter you sent the Collector disputing the Debt, and tell the Judge that the Collector did not send you proof of the Debt. See also: 'What should a Collector tell you about the Debt?' on page 4'

What happens during the 30-day dispute period?

The 30-day dispute period is NOT a grace period. The Collector can continue to try to collect the Debt from you until you dispute the Debt in writing, within 30 days of receiving the notice of Debt. --NOT the postmark or the date of the letter.

Is there a statute of limitations on Debts?

Yes. There is a 'statute of limitation' on collecting some types of Debt. That means that Creditors only have a certain amount of time in which they can legally sue you in court to collect on a Debt.

Statutes of limitations vary from state to state and are based upon the kind of Debt in question. For example, statutes of limitations are different for credit card accounts than for mortgages and auto loans. Credit cards are generally considered 'Open Accounts,' but in some states they are considered 'Written Contracts' like auto loans, which are installment agreements.

TIP: It's wise to have proof of the running of the statute. One way to prove when the statute runs is to get a copy of your credit report. It will list the dates as reported by your Creditor, which makes solid proof if you are hauled into court by a creditor.

The clock usually starts ticking on the statute of limitations on the date you become delinquent. For example, if you live in Arizona and became delinquent on a credit card in January 2001, and there was no further activity on that account, the statute of limitations on that account expired in January of 2006.

If you need to know the statute of limitations for your state, contact your state's Attorney General's office by phone or via the Internet. Some states apply the law of the foreign state to credit cards; some apply the law of the state of the resident; while others apply what is expressly stated in the credit agreement.

Keep in mind that if there has already been a lawsuit resulting in a judgment against you, there is a different time limit for collecting that judgment. And many states allow judgments to be renewed one or more times, which extends the enforceability of a judgment. This means you risk a permanent legal obligation until the credit card Debt is paid in full. See also: '*Can Collectors try to collect on time-barred Debts?*' on page 7.

Can Collectors try to collect on time-barred Debts?

The Statute of Limitations only covers lawsuits and does not cover other types of collection activities -- Creditors or Collectors may still continue to try to collect on your Debt but are subject to the provisions of the act. In reality, most Creditors will put less effort into collecting Debts that are out of statute. But Creditors may still report your delinquency to the credit reporting agencies for the time limits specified in the Fair Credit Reporting Act.

Most courts that have addressed this issue have ruled that Collectors can try to collect on time-barred Debts. However, Collectors may not sue you or threaten to sue you for the time-barred Debt. In general, if they do sue, you can ask to have the suit dismissed.

If you don't think you owe the time-barred Debt, you can send the Collector a letter stating that you do not owe some or all of the Debt within 30 days after you receive written notice. The Collector must stop trying to collect until you've been given written verification of the Debt. See also: '*Can you stop Collectors from contacting you?*' on page 3.

What can a Collector say? What a Collector may not say.

Collectors are required to tell you who they are, who they are collecting for (the name of the creditor) and the amount of the Debt. (*15 U.S.C. §§ 1692d-f*)

They may NOT:

- Contact you by postcard;
- Use a false name;
- Give you false contact information;
- Tell you that you owe more than you really do (unless they were given the wrong information from the Creditor);
- Tell you they work for a credit reporting agency;
- Tell you are guilty of a crime;
- Tell you they will sue you if they don't intend to sue you, or don't expect the Creditor to sue you;
- Tell you they are an attorney if they aren't;
- Tell you they represent an attorney if they don't;
- Send you something that looks like an official court document if it is not;
- Send you papers and tell you the papers are not legal forms if they really are legal forms;
- Give false information to anyone about you;
- Tell or threaten to tell anyone about your Debt;
- Tell you, you will be arrested if you refuse to pay;
- Harass you by threatening you with violence or harm; (NOTE: Infrequent contacts such as once a week or twice a month may be stressful, but is not considered harassment under the FDCPA.) (*15 U.S.C. § 1692d*)
- Threaten you, any members of your family, workers, or friends (*15 U.S.C. § 1692d*);
- Threaten to or publish your name as someone who refuses to pay his or her Debt, except to a Credit Reporting Agency (*15 U.S.C. § 1692d*);
- Use obscene language (*15 U.S.C. § 1692d*);
- Continue to contact you if you tell them not to contact you in writing, or tell them that you have an attorney (NOTE: If an attorney represents the entity or person attempting to collect from you, you may still continue to receive documentation from the attorney);
- Collect an amount greater than the amount of your Debt (most states). (NOTE: Some states allow an additional charge for Collectors);
- Deposit a post-dated check prematurely; or
- Threaten to take your property unless the Creditor or Collector can do so legally.

What to do if you think a Debt Collector broke the law?

Report any problems you have to:

- The Federal Trade Commission. The FTC works for consumers to prevent fraudulent, deceptive, and abusive business practices. To file a complaint, visit <http://ftc.gov>, or call 1-877-FTC-HELP. (*15 U.S.C. §1692l*)
- File a complaint with your state's Office of the Attorney General. Click here for the Attorney General's office in your state where you can find on-line complaint forms in order to file complaints against Collectors and Creditors who violate the Federal Fair Debt Collection Practices Act and your State's Debt collection and Creditor collection laws: <http://www.fair-debt-collection.com/ag-complaint-forms.html>
- You have the right to sue a Collector in either a Federal or State Court within one year of the date the law was violated. If you win your case against the Collector, you may recover damages. (*15 U.S.C. § 1692i.*) You may wish to contact an attorney to help you with this process. If you do not have an attorney or cannot afford one, contact the Local Legal Services provider, or Lawyer Referral Service of the state, county, or local bar association near your home.

Consumer Protection is different in every State. The Federal Act does not change the laws of any State Debt Collection Practice unless that law conflicts with any part of the Act. If State law conflicts with the Act, but provides better protection for you, then the State Law applies. (*15 U.S.C. §§ 1692a, and 1692n*). An attorney can advise you of your rights.

Disclaimers

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