



CYBER LEGAL ADVOCACY BRIEF

A Preventive Law Series
Cyber Center of Excellence Office of the Staff Judge Advocate
Legal Assistance Division, Fort Gordon



DEBT COLLECTION

AM I A DEBTOR?

If you use credit cards, you owe money on a loan, or are paying off a mortgage, you are a "debtor." Most Americans are. You may never come in contact with a debt collector. But if you do, you should know that there is a law that ensures you are treated fairly. Congress passed the Fair Debt Collection Practices Act (FDCPA) in 1978 to prohibit certain methods of debt collection. Of course, the law does not erase any legitimate debt you owe.

WHAT DEBTS ARE COVERED?

Personal, family, and household debts are covered under the FDCPA. This includes money owed for the purchase of a car, for medical care, mortgages, credit cards, or for charge accounts.

WHO IS A DEBT COLLECTOR?

"Debt collectors" include collection agencies or companies, debt buyers, and lawyers who are in the business of regularly collecting debts. Generally a debt collector is anyone, other than the creditor or the creditor's attorney, who regularly collects debts for others.

HOW MAY A DEBT COLLECTOR CONTACT ME?

A debt collector may contact you in person, by mail, or by telephone. However, a debt collector may not contact you at inconvenient or unusual times or places, such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector may not contact you at work if your employer disapproves. The military services consider military supervisors or commanders to be "employers." Thus, a debt collector who contacts you at your installation office or work site, where your commander or supervisor prohibits it, violates the law.

WHAT IS MY COMMANDER'S ROLE IN THIS TYPE OF DEBT COLLECTION?

The commander should only take down the identity of the debt collector, inform you, and send you to Legal Assistance. There is no regulatory obligation for commanders to speak to or assist debt collectors who call the command. In some situations, a debt collector even telling your commander that you owe a debt may be a violation of the FDCPA.

CAN I STOP A DEBT COLLECTOR FROM CONTACTING ME?

You may stop a debt collector from contacting you by writing a letter to the collection agency telling them to stop. Once they receive this letter, they may not contact you again except to say there will be no further contact. The debt collector is allowed to notify you that some specific action may be taken, but only if the debt collector or the creditor usually takes such action. Ceasing communication does not discharge any legitimate debt you may owe to the debt collector.

MAY A DEBT COLLECTOR CONTACT ANY OTHER PERSON CONCERNING MY DEBT?

If you have a legal assistance or private attorney, the collector may not contact anyone but the attorney. If you do not have an attorney, a debt collector may contact other people, but only to find out where you live or work. The collector is not allowed to tell anyone other than you or your attorney that you owe money. In most cases, collectors are prohibited from contacting any person more than once.

WHAT IS THE DEBT COLLECTOR REQUIRED TO TELL ME ABOUT THE DEBT?

Within 5 days after you are first contacted by the debt collector, the debt collector must send you a written notice telling you the amount of money you owe, the name of the creditor to whom you owe the money, that you can dispute the debt and that you can request the name and address of the original creditor, if different from the current creditor.

IF I BELIEVE I DO NOT OWE THE MONEY, MAY A DEBT COLLECTOR CONTINUE TO CONTACT ME?

The debt collector may not contact you if you send the collector a letter within thirty days after you are first contacted saying you do not owe the money. However, a debt collector can begin collection activities again if you are sent proof of the debt, such as a copy of the bill.

WHAT TYPES OF DEBT COLLECTION PRACTICES ARE PROHIBITED?

Harassment. Debt collectors may not harass, oppress, or abuse any person. For example, debt collectors may not:

1. Use threats of violence or harm to property or reputation;
2. Publish a list of consumers who refuse to pay their debts (except to a credit bureau);
3. Use obscene or profane language;
4. Repeatedly use the telephone to annoy someone;
5. Telephone people without identifying themselves; or
6. Advertise your debts.

False Statements. Debt collectors may not use any false statements when collecting a debt. For example, debt collectors may not:

1. Falsely imply that they are an attorney or government representative;
2. Falsely imply that you have committed a crime;
3. Falsely represent that they operate or work for a credit bureau;
4. Misrepresent the amount of the debt owed;
5. Indicate that papers being sent are legal forms when they are not; or
6. Indicate that papers being sent are not legal forms when they are.

Additional Prohibitions. Also, debt collectors may not say that:

1. You'll be arrested if you do not pay the debt;
2. They will seize, garnish, attach, or sell your property or wages, unless the collection agency or the creditor intends to do so, and such sale would otherwise be legal;
3. Actions will be taken against you that legally may not be taken;
4. Give false credit information about you to anyone;
5. Send you anything that looks like an official document which might be sent by any court or agency of the United States or any state or local government; or
6. Use any false name.

WHAT CONTROL DO I HAVE OVER SPECIFIC DEBTS?

If you owe several debts, any payment you make must be applied to the debt you choose. A debt collector may not apply a payment to any debt you feel you do not owe.

WHAT CAN I DO IF THE DEBT COLLECTOR BREAKS THE LAW?

You have the right to sue a debt collector in a State or Federal court within one year from the date the law was violated. If you win, you may recover money for the damage you suffered. Violations can cost the debt collector up to \$1,000 per violation. Court costs and attorney's fees also can be recovered.

WHO CAN I TELL IF THE DEBT COLLECTOR BREAKS THE LAW?

In addition to this Federal law, many states have their own debt collection laws. Federal agencies rely on consumer complaints to decide which companies to investigate. You should contact the Consumer Financial Protection Bureau CFPB at consumerfinance.gov/complaint/. Additionally, you should always contact the Fort Gordon Legal Assistance Division to arrange an attorney consult.

ARE THERE ANY ADDITIONAL LAWS THAT APPLY TO DEBT COLLECTORS?

Yes. Many states have debt collection acts with even more restrictions than those contained the FDCPA.

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This Information Paper from the Fort Gordon Legal Assistance Office contains general legal information on a topic upon which Legal Assistance Attorneys typically advise. The information provided is general in nature and does not constitute formal, specific legal advice. If you wish to receive legal advice specific to your situation, please consult an attorney. You may schedule a legal assistance appointment by calling the Fort Gordon Legal Assistance Office at 709-791-7812/7813.