

Fair Debt Collection Practices Act

What is a debt collector? A debt collector is defined as any person who regularly collects or attempts to collect, directly or indirectly, consumer debts asserted to be owed to another person.

What is a consumer debt?

A consumer debt is a debt incurred by an individual primarily for personal, family, or household purposes.

What can't the debt collector do to acquire information about a debtor's location?

- 1) They can't say that they want the information for collection purposes.
- 2) They can't state the consumer owes any debt.
- 3) The collector can't talk with any one person twice unless requested to do so by the person or unless the collector feels that the earlier response of the person was erroneous or incomplete.
- 4) The collector can't communicate by postcard or use any language or symbols on the envelope or letter or telegram that indicates it is for collection purposes.
- 5) Once the collector learns that the consumer has an attorney, he can only communicate with the attorney as long as the attorney responds in a reasonable amount of time.

How can the debt collector communicate with the debtor?

1) **Time of Day**

- A) Not at inconvenient places without the permission of the debtor
- B) 8 AM - 9 PM, or with consent of debtor otherwise.

2) **Place of Employment**

The collector cannot contact the debtor at work if the collector knows that the employer won't allow debtor to receive such calls.

3) **Third Parties**

The collector can talk to only these people without consent of the consumer or court:

- consumer himself
- spouse
- parent (if consumer is a minor)
- guardian
- executor or administrator
- consumer's attorney

- the creditor for whom the debt is being collected
- a consumer reporting agency if permitted by law
- the attorney for the creditor
- the attorney of the debt collector

4) **When the Debtor Says “No More”**

The collector has to stop making contact when he receives a letter that says either the consumer refuses to pay the debt or that they just want to cease further communication.

- At this point the collector has three choices:
 - A) advise the consumer that the collection efforts are being terminated
 - B) inform the consumer that the collector or creditor *may* invoke special remedies (i.e., take legal action)
 - C) inform the consumer that the collector or creditor *will* invoke special remedies (i.e., like take legal action)

What actions are permitted or restricted by the Fair Debt Collection Act?

1) **Harassment or abuse is illegal.** Examples include:

- threatening physical harm, reputation, or property
- using obscene or profane language
- publishing a list of consumers who allegedly refuse to pay debts
- threatening to advertise the sale of any collateral to coerce payment of the debt
- causing a telephone to ring repeatedly or continuously engaging in placing calls without the meaningful disclosure of the callers

2) **False or misleading representations are prohibited.** Examples of misleading representations include:

- using deceptive communication such as falsely representing the character, amount or legal status of any debt, or falsely representing any services rendered or compensation that may be lawfully due the debt collector for the collection of a debt
- disgracing a consumer by falsely representing or implying that the consumer engaged in any crime or other conduct
- using false information or deceptive means to obtain information taken or is not intended to be taken
- representing or implying either that a sale, referral or other transfer of any interest in a debt will cause the consumer to become subject to any practice prohibited by the Fair Debt Collection Practices Act or that the accounts have been turned over to innocent purchasers for value
- communicating or threatening to communicate any credit information which he knows to be false
- misrepresenting the legal status of a debt, misrepresenting the compensation

that may be lawfully received by the debt collector or falsely imply that a sale, referral or other transfer or interest in a debt will cause the consumer to lose any claim or defense to payment

- representing or implying that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure of property. These statements/actions can only be made if such action is lawful and the collector and the creditor intends to take action.
- representing or implying documents are not in legal process or do not require action by the consumer
- misrepresenting identity, profession or affiliation of a debt collector.
- implying that he operates or is employed by a consumer reporting agency, or representing or implying that he is vouched for, bonded or affiliated in any way with the United States Government or any state, including the use of any badge, uniform, or facsimile thereof
- designing, compiling and furnishing any form with the knowledge that the form will be used to create a false belief by a consumer that a person other than the creditor of that consumer is participating in the collection or attempted collection of a debt

3) The Act prohibits the use of “unfair or unconscionable” means to collect or attempt to collect any debt. Examples include:

- collecting any fees incidental to the principal obligation unless they are authorized by the agreement creating the debt
- taking or threatening to take non-judicial action to effect dispossession or property if there is no present right or intention to do so, or if the property is exempt by law from such a disposition or disablement is prohibited.
- causing charges to be made to any person for communications when concealment of the true purpose of the communication has taken place (ex: collect telephone calls or telegram fees)

What are the civil liabilities for the violations of the Fair Debt Collection Act?

There are no criminal penalties for violation of the Fair Debt Collection Practices Act. It is enforced through civil suits brought by consumers against debt collectors.

Who do you call if you think your rights have been violated?

- 1) Personal attorney
- 2) Attorney General
- 3) Better Business Bureau

Consumers beware.

The Fair Debt Collection Practices Act contains a provision concerning intent which provides that a debt collector cannot be held liable in any action brought under the Act if he shows by preponderance of evidence that the violations were not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

Who enforces the Act?

Compliance of the Act can be enforced by the Federal Trade Commission (FTC) as well as by other federal agencies when necessary. The enforcement powers of the FTC may use any tool it has, including lawsuits, injunctions, cease and desist orders, etc., against violations of the Act. Only under rare and complex situations does the FTC usually get involved in enforcing the Act.

What is the legal process?

The legal process begins when the creditor(s) files a lawsuit against the debtor. The debtor will be served a summons and be requested to appear in court. Within 20 days of being served the summons the debtor can take one of four actions:

- 1) settle with the creditor
- 2) fail to answer the summons, thus agreeing to the settlement established by the court (default judgment).
- 3) deny the debt and contest the case. A trial would result in dismissal or a judgment.
- 4) acknowledge the debt and agree to the settlement terms (judgment) set by the court

If the creditor receives the judgment, then there is a legal procedure for seizing the debtor's property to settle the debt. This process is called the Execution of Judgment. The collection of the judgment will depend on the type of debt (secured or unsecured) and the type of property (personal or real).

What is a Secured Debt?

- A secured debt is a loan that is taken where collateral or securities are used.
- A secured debt can either be personal property or real property.
- Secured debts can be either repossessed or foreclosed to meet a judgment.
- Examples of secured debts are: loan for a house, loan for a car.

What is an Unsecured Debt?

- Unsecured debts are created as a result of obtaining personal property or real property; there is no collateral to secure the debt.
- Examples of unsecured debts are: credit cards, medical debt.
- Real or personal property can be seized via a court judgment order to cover the amount of unsecured debt. In this case these items would be sold to cover the amount of the debt.

What is a Wage Garnishment?

A wage garnishment is used in circumstances when the court rules for the creditor (judgment creditor). The court judgment requires an employee to deduct a percentage of the debtor's wages each pay period to satisfy the debt.

Can my wages be garnished?

A judgment creditor, by filing a writ of attachment in the court in which the judgment was obtained, can attach up to 15% of the judgment debtor's wages. There can be only one wage attachment at a time on a debtor's paycheck. However, if there is a prior attachment on the debtor already, the debtor's employer is compelled to begin honoring the next wage attachment when the prior attachment is completed.

Can anything else be attached?

Under the Delaware law, all "goods, chattels, rights, credits, monies, lands and tenements may be attached." Any third party, including individuals, partnerships or corporations can be subject to attachment. However, in the state of Delaware, banks, savings institutions, and loan associations, except with respect to wage attachments against wages of an employee, are not subject to the attachment process. Therefore, a savings account or checking account owned by a judgment debtor cannot be attached. Furthermore, under the same statute, insurance companies are exempt as well, except with respect to monies due in consequence of the happening of the risk provided in the policy of insurance and also, exempt with respect to wages of the employee of the insurance company.

Source: The Legal Issues of Problem Collections in Delaware. Edward T. Ciconte, Elwyn Evans, Jr., and Douglas A. Sachlman & Associates. Copyright 1989, National Business Institute, Inc. Eau Claire, WI. Adapted with permission.