



**UNDERSTANDING
YOUR RIGHTS:
THE FAIR DEBT
COLLECTION
PRACTICES ACT**

THE
KIM LAW FIRM
LLC

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DEBT COLLECTION

Understanding Your Rights Under The Fair Debt Collection Practices Act

WHAT IS THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)?

The Fair Debt Collection Practices Act (FDCPA) is a federal law codified in [15 U.S. Code § 1601](#), et seq. governing how debtors and consumers are to be treated by debt collectors. The law aims to protect consumers who are in a debt position from being taken advantage of, deceived, or abused by third party debt collectors who are acting on behalf of a creditor. The FDCPA only applies to third party debtors and does not necessarily apply to the creditors themselves (although, some creditors who are in the business of providing credit and acting as a debt collector, may be considered a “debt collector” for the purposes of the FDCPA).

A “debt collector,” for the purposes of the FDCPA, is any debt collector who regularly engages in the collection of outstanding debts on the behalf of another. This definition under the FDCPA is broad, and makes nearly all debt collectors subject to the regulations that it contains. However, a creditor who takes it upon themself to collect an outstanding debt owed to them is

generally not considered a “debt collector” under the FDCPA, since they are trying to seek repayment on their own lines of credit or loans.

WHAT DEBTS ARE COVERED UNDER THE FDCPA?

The act applies to consumer debts. Consumer debts can include:

- Family debts;
- Personal debts;
- Household debts;
- Auto loans;
- Credit card debt;
- Unpaid cell phone bills;
- Medical debts;
- Student loan debts;
- Rent;
- Mortgages; and
- Insurance premiums.

Some debts are excluded from the FDCPA. Debts that are excluded include:

- Business or corporate debts; and
- Debts owed to original creditors.

Consumers who are in debt need to be protected from abusive, deceptive, and unfair debt collection practices, and that is why the FDCPA exists. Abusive and deceptive debt collection practices that go unchecked can lead debtors into bankruptcy, place them in distress, and can cause them severe financial troubles, which can translate into other problems down the road, such as marital difficulties, loss of job, as well as psychological issues such as anxiety and depression.

If you or a loved one is being mistreated by a debt collection agency, you should not stand for it. There are legal protections for you under state and federal law, and you should contact an experienced FDCPA lawyer immediately to discuss your situation. Your lawyer will act quickly to address the issues you are having with your debt collector, and will put a stop to any harassing contact you have been experiencing from your debt collector and end the abusive behavior of your debt collector.

YOUR RIGHTS UNDER THE FDCPA

Debt collectors have a reputation for bad behavior, which can include using overly aggressive tactics, harassing communications or generally mistreating debtors, which is in violation of federal and state consumer protection laws. The

FDCPA contains specific rights afforded to debtors, which debt collectors must respect and abide by. Below is a brief summary of the rights that debtors have when it comes to debt collection practices:

1. Debt Collectors are Restricted in How They Can Acquire Location Information On You.

Debt collectors are only allowed to talk to the debt holder, or debtor, about any outstanding debts. However, while debt collectors are only allowed to discuss the details of a debt with debt holder, they are also allowed to contact other people that the debtor may know in order to acquire location information about the debtor. This contact with others besides the debt holder is very narrowly limited.

When a debt collector must contact third parties to locate a debtor, the debt collector must identify him or herself and only confirm the location or contact information that the debt collector has for the debtor. If the third party states that the debt collector's location information for the debtor is incorrect, the debt collector can take down the correct location information from that third party and nothing else. A debt collector is only permitted to make contact with the third party one time, unless the third party requests that the debt collector call back at a later time, or if the debt collector thinks that the location information given by the third party contains an error.

The debt collector is not permitted to disclose his or her employer, unless requested to do so by the third party. The debt collector is also not allowed to tell the third party whether the debtor that the debt collector is looking for owes any debts or what the amount of those debts is. If the communication is

made via mail, the debt collector must use an envelope with no identifying marks indicating that the letter is from a debt collection agency, and may not use a post card.

If the debt collector knows or has reason to know that the debtor has a lawyer, then all communications, including location acquisition communications, must be made through the debtor's lawyer. No other third parties can be contacted regarding the acquisition of the debtor's location information if the debtor has an attorney, unless the attorney is unreachable, or fails to respond within a reasonable amount of time. In only such cases may a debt collector reach out to a third party concerning the acquisition of location information for a debtor who has legal representation.

2. Debt Collectors Must Adhere to Specific Rules When It Comes to Communicating with Debtors.

Everyone is well aware that debt collectors make contact with debtors in order to collect on old debts, but there are certain limitations on how debt collectors can contact debtors, and debt collectors must follow certain rules when they do try to contact debtors. For starters, debt collectors are limited in when they can contact debtors, how frequently they can contact debtors, and where they can make contact with debtors.

Debt collectors are only permitted to make communication with a debtor at a convenient time, which is presumed to be between 8:00am and 9:00pm of the time zone in which the debtor resides. Debt collectors also cannot contact debtors at unusual places, or places where it would be inconvenient to be contacted by debt collectors, such as the debtor's place of employment.

Debt collectors can only discuss debts with the debtor directly, or the debtor's attorney if the debtor has one. Debt collectors may not discuss the debtor's debts with any other third parties: not the debtor's family members, friends, employers or coworkers. The only exception to this rule is if the debtor expressly provides written consent to the debt collector about such communications with third parties.

The debtor can take steps to have debt collection communications stopped, by stating in writing that the debtor is refusing to pay the outstanding debt or by stating that he or she is disputing the debt. After such a written communication is received by the debt collector, the debt collector must cease making communications with the debtor regarding the debt. However, the debt collector may further communicate with the debtor if the debt collector is:

- Indicating that the debt collector is no longer pursuing the debt;
- Notifying the debtor that the debt collector has the right to invoke certain remedies under the law that are typical in debt collection cases; or
- Notifying the debtor that the debt collector will be invoking specific remedies against the debtor afforded to the debt collector under the law.

3. Debt Collectors Cannot Harass or Abuse Debtors.

Debtors are afforded protection against harassing or abusive debt collection practices under the FDCPA. Under the FDCPA,

debt collectors are specifically not permitted to:

- Threaten debtors with acts of violence or other criminal means with the goal of harming the physical well-being, reputation or property of the debtor;
- Publish the name of the debtor, except in limited circumstances done in accordance with the law;
- Use offensive, obscene or profane language, or to speak abusively to the debtor;
- Call the debtor repeatedly with the intention of annoying, harassing or abusing the debtor;
- Advertise for sale the debts of a debtor in an attempt to coerce the debtor into paying their outstanding debts; or
- Place phone calls to debtors with no intention of providing meaningful disclosure of the debt collector's identity to the debtor.

4. Debt Collectors May Not Make False or Misleading Representations to Debtors.

Debt collectors are required to be honest when dealing with debtors under the FDCPA. This means that the debt collector cannot make any deceptive, false, or misleading representation or implications to a debtor regarding the collection of an outstanding debt. Specifically, under the FDCPA debt collectors are not permitted to:

- Misrepresent the amount owed, the character of the debt, or

the legal status of the debt;

- Use any false representation or deceptive practices to collect information or payment from a debtor;
- Misrepresent that the debt collector is to be compensated for any services rendered concerning the collection of the debt;
- Threaten to communicate to others false credit information regarding a debtor, or actually communicate to others false credit information regarding a debtor;
- Imply or misrepresent to the debtor that by not paying his or her debts, the debtor has committed a crime;
- being arrested or jailed, or that the debtor will be subjected to wage garnishment, attachment, seizure or sale of the debtor's property will occur if the debts go unpaid. The debt collector can only make these types of claims if they are lawful, and only if the debt collector intends to pursue one or more of these legal remedies;
- Debt collectors may not threaten debtors with legal action. Debt collectors may only notify debtors that the debt collector intends to take certain legal actions that they lawfully have a right to pursue against the debtor;
- Misrepresent to the debtor that the debt collector is an attorney, or that any communication from the debt collector is being made by an attorney;
- Misrepresent to debtors that the debt collector is backed, supported, vouched for or affiliated with the United States or

any state;

- Debt collectors cannot use or distribute to debtors any written communication that looks like or simulates a document that is misrepresented as being authorized, approved by or issued by a court, official, or an agency of the United States or any state;
- Misrepresent that documents that have been provided to the debtor are, or are not, legal process forms, or imply that the debtor is not required to respond to these forms;
- Misrepresent to the debtor that his or her debts have been sold for value to someone else;
- Imply or misrepresent to a debtor that if the debt collector sells, refers, or transfers, the debtor will become a victim to any one of the prohibited practices under the FDCPA, or lose any legal defense the debtor may have against the debt collector;
- Use any name other than the true debtor's name;
- Misrepresent or imply that the debt collector works for a credit reporting agency;
- Fail to express in the first written communication to the debtor that the debt collector is attempting to collect an outstanding debt; or
- Fail to express to the debtor in the initial written communication that any information that is gathered during the debt collector's efforts to collect on the debt will be used solely for the purpose of collecting the debt.

5. Debt Collectors Cannot Use Unfair or Unconscionable Debt Collection Practices.

When working with a debtor, debt collectors are prohibited from using unfair or unconscionable debt collection practices. Under the FDCPA, debt collectors are prohibited from:

- Collecting an amount of money from a debtor that is not part of the debt or permitted by law. This could mean collecting a fee or payment for collecting the debt.
- Accepting checks from debtors that are postdated by more than five days, without notifying the debtor in writing that the debt collector will not deposit the check not more than ten days, or less than three days prior to the deposit.
- Depositing or threatening to deposit any postdated checks or payment provided by the debtor prior to the date that is written on the check or payment.
- Soliciting a postdated check or payment from a debtor with the intention of using the actual deposit of the check or payment, or threat of deposit of the check or payment, of the postdated check as leverage to get the debtor to pay the debt or to harass the debtor.
- Communicating with a debtor via a post card.
- Placing any indication on the envelope containing a written communication from the debt collector, other than the debt collector's address, that would suggest that the letter is from a debt collector or contains communications from a debt collector. No one should be able to look at the envelope and know that it is from a debt collector or that it contains debt

collection related communications.

- Causing charges (such as collect call fees) for communications to be incurred to the debtor.
- Threatening to take, or actually taking, the debtor's property or disabling the debtor's property in a way that has not been judicially approved.

6. Debt Collectors Must Validate Debts.

When a debt collector alleges that a debtor owes on an outstanding debt, the debt collector must provide validation of the debt. This includes providing information to the debtor concerning the amount of the debt, identification of the creditor seeking repayment of the debt, and several statements concerning the debtor's rights.

The validation must include several statements, including:

- A notification to the debtor that he or she has thirty days from the validation to dispute the debt and request verification of the debt from the debt collector.
- A notification to the debtor that if he or she does not dispute the debt within thirty days, the debt will be presumed to be valid.
- A statement indicating that if the debtor makes a written request within thirty days of the verification, the debt collector will provide the name and contact information for the original creditor of the outstanding debt, when the original creditor is different than the current creditor (in

situations where the debt may have been sold).

The validation must either be sent as the initial communication from the debt collector to the debtor, or with the initial communication to the debtor, and if it is not included, then the validation must be sent within five days of the initial communication.

If a debtor disputes the debt, he or she must assert such in writing for each debt separately that is being disputed. The debtor must provide this information to the debt collector within thirty days of receiving the validation. Upon receipt, the debt collector is prohibited from further collecting on the debt until the debt collector can obtain a verification of the debt and send it to the debtor.

If the debtor fails to dispute the debt during the thirty day window of time after the validation of debts is received from the debt collector, it is not construed as an admission of the debtor's liability for the debt.

7. Debt Collectors Must Treat Multiple Debts as Separate Debts.

When a debt collector is attempting to collect on multiple debts held by a debtor, the debt collector must treat each debt separately. This means sending separate communications for each debt, including separate validations for each debt. Additionally, when a debtor makes a payment to a specific debt, the debt collector must apply that payment to the debt specified by the debtor, and cannot apply it to a different one of the multiple debts being collected by the debt collector.

8. Debt Collectors Have Certain Obligations When Taking Legal Action Against A Debtor.

A debt collector can take legal action against a debtor, but the debt collector must do so in a lawful way and in compliance with the FDCPA. The debt collector must be authorized to bring a legal action against the debtor. Debt collectors have certain obligations to debtors when bringing a legal action.

Legal actions need to be brought in the appropriate court based on the type of legal action that is being pursued. For instance, if the action that is being brought by the debt collector is one to enforce an interest in real property to secure the debtor's obligation, the action must be brought in the court district or other legal entity where the property is located. Other actions not involving real property must either be brought where the debt agreement was signed or where the debtor resided at the time the debt was first incurred.

9. Debt Collectors May Not Furnish Certain Deceptive Forms.

Debt collectors are not allowed to furnish deceptive forms to debtors. Any form that is designed or furnished to a debtor in a way that is intended to generate a false belief in the debtor that someone other than the creditor has a stake in the collection of the debt, when such is not true is considered deceptive. Debt collectors are required to be clear and direct when it comes to providing forms to debtors.

10. Debt Collectors Who Violate the FDCPA Are Subject to Civil Liability.

When a debt collector violates any portion of the FDCPA, the debt collector can be held liable for their actions under the law. When determining a debt collector's liability under the FDCPA, the court will consider many factors, some of which include:

- The persistence and frequency with which the debt collector contacted or annoyed the debtor.
- The nature of the debt collector's noncompliance with the FDCPA.
- The resources that the debt collector has.
- Whether the debt collector's acts were intentional.
- The number of people who were adversely affected by the debt collector's actions.

For a violation of the FDCPA, a debt collector can be held civilly liable to the debtor for actual damages due to the debt collector's violation of the FDCPA, along with statutory damages and additional damages. In terms of the statutory damages, a debtor can be awarded up to one thousand dollars for a debt collector's violation of the FDCPA, and the debtor does not have to show that the debt collector's violation of the FDCPA caused the debtor any actual harm. The additional damages, such as costs and attorney's fees, are determined and assigned by the court. If the debtors are part of a class action, the debt collector can be held liable up to \$500,000, or one percent of the net worth of the debt collector. Costs and attorney's fees are awarded at the court's discretion.

Debtors can also obtain relief through the courts by obtaining an injunction against their debt collector, which is a court order requiring that the debt collector stop engaging in harassing or abusive conduct against the debtor. Injunctive relief often is used to put a stop to harassing phone calls or the relentless mailing of written communications.

Additionally, third parties might also have a claim against your debt collector, if the debt collector has contacted them in a way that violates the FDCPA. Third parties that often sue under the FDCPA include family members of the debtor, friends, coworkers, receptionists, neighbors and anyone else who has been burdened by the debt collector's violation of the FDCPA. These third parties must demonstrate that the debt collector violated the FDCPA and also that they suffered harm as a result of the debt collector's actions.

DEBTORS DON'T HAVE THE SAME OBLIGATIONS

Debt collectors can be overly aggressive when they try to recover debts, and that is why the FDCPA exists - to protect debtors. The FDCPA is meant to put restrictions on debt collectors, but debtors are not burdened with the same kinds of obligations to the debt collector. For instance, debtors are under no legal obligation to:

- Answer their phone when they know a debt collector is calling.
- Talk to a debt collector about a debt if the debtor does not

want to speak to the debt collector.

- Allow a telephone conversation to play out; debtors can simply hang up on the debt collector.
- Answer any questions a debt collector might ask.
- Provide any information, personal, financial or otherwise, to a debt collector.
- Admit to owing anything on any debt.

But avoiding or ignoring your debt collector will not make them or the alleged debt go away. You may need to take legal action by consulting with a lawyer about what to do. You might need to have a consumer protection lawyer prepare a cease and desist letter to get your debt collector to stop hounding you. You might want to have a FDCPA lawyer represent you in negotiations with your debt collector to develop a debt repayment plan. Or your problem might be so bad that the best thing to do would be to sue your debt collector for violations under the FDCPA. Your lawyer can advise you of what legal options are available to you based on your specific situation.

WHY FDCPA RIGHTS MATTER

The rights provided under the FDCPA are meant to protect consumer debtors from being taken advantage of, threatened or abused by debt collectors in the context of debt repayment. Whether a debtor genuinely owes a debt, or a debt is mistakenly or erroneously attributed to a debtor, it is important that these

individual have protections from overly aggressive and abusive debt collection practices. Debtors can be assured that the regulatory measures contained in the FDCPA will ensure that debtors are treated fairly and with respect, and also provides debtors with the right to dispute their alleged debts

TIPS FOR DEALING WITH DEBT COLLECTORS

Dealing with debt collectors can be challenging, but most of the time debt collectors will treat you fairly. Fair treatment of debtors is the norm; mistreatment is more-rare. There are some things that you can do to help make your debt collection process go as seamlessly as possible. Below are a few tips for dealing with your debt collectors.

1. Know Your Rights.

It is always important to know what rights you have and to understand what obligations that your debt collector has to you under the FDCPA. This guide is a good way to start learning about your rights under the FDCPA, but other information is available to you as well. There are a number of online resources that you can access to learn more about the FDCPA, or you can contact an experienced FDCPA attorney if you want to discuss your specific situation.

2. Don't Assume All Debt Collectors Are Going to Treat You Badly.

A majority of the time, debt collectors will treat debtors in

the manner required by the FDCPA. When a debt collector approaches you about an outstanding debt, keep in mind that they are probably going to communicate with you in accordance with the protections provided under the FDCPA. However, it is important to be on the lookout for any signs of unscrupulous behavior on the part of the debt collector that could be in violation of the FDCPA.

3. Be Honest With Your Debt Collector.

If you are feeling mistreated, or simply are embarrassed that a debt collector is contacting you, you might feel the need to be combative, or dishonest when you speak with the debt collector. It is never a good idea to lie about anything concerning your debts, even when you are dealing with a debt collector, but there is a difference between lying to your debt collector and simply not telling your debt collector anything that they want to know. You do not have to talk to a debt collector, answer any questions that the debt collector may have for you, nor do you have to admit to the debt collector that you owe money on any debt. You have no obligation to tell them anything, so don't feel like you must.

4. Inform The Debt Collector That You Know Your Rights Under the FDCPA.

If a debt collector starts to get out of hand, and begins to engage in practices that you believe are in violation of the FDCPA, one of the first things you can do is remind the debt collector that you have rights under the FDCPA. If the debt collector doesn't shape up after you inform them that you know and understand your rights, you may need to get a lawyer to

help you deal with your debt collector's violations of the FDCPA.

5. Get an FDCPA Attorney.

When things get ugly with your debt collector, it might be a good idea to consult with a FDCPA attorney. Your lawyer will know your rights and will be able to assess whether your debt collector is required to abide by the FDCPA and whether your debt collector is in violation of those laws. Your lawyer will help you seek relief from the unfair and abusive practices you are enduring at the hands of your debt collector.

6. Develop A Realistic Plan For Repayment.

If the debt is yours, and the debt collector has notified you that they will take legal action against you, you should consider working with the debt collector to develop a realistic and mutually acceptable repayment plan that works for both you and the debt collector. If the debt collector moves forward with legal action against you, it can result in a security interest being placed on your property, or a judgement being rendered against you, among other undesirable legal repercussions. Collaboration on a repayment plan could help you avoid such legal actions being taken against you. If you are uncomfortable or scared of the preposition of working with a debt collector to develop a repayment plan, you can also hire an FDCPA attorney to help you with the development and negotiations involved in arriving at a repayment plan.

HOW CAN A FDCPA ATTORNEY HELP?

Dealing with debt collectors and violations of the FDCPA can be tough, and having a FDCPA attorney who has handled similar cases for other clients in the past will aid you in getting the resolution that you need. An FDCPA lawyer will have a deep understanding of the law and will know what potential pitfalls your case may face, so they will be better equipped to prepare your case for what is to come.

The FDCPA is fairly easy to read, but the legal concepts it contains are sometimes difficult to fully understand. But an FDCPA lawyer knows the law inside and out and will know which provisions apply to your case and will be able to explain the relevant details to you concerning your specific case. Not only is there Federal statutes (the FDCPA) that governs these types of cases, but there is also court-made law and interpretations of the FDCPA that need to be taken into consideration concerning your case. Your lawyer will be up to date on the most recent and relevant case law that is applicable to your situation.

A FDCPA lawyer knows your rights under the act and will fight to enforce them. You have a right to dispute any of your debts, in part or in whole, and you have a right to verification of your alleged debts. You also have the right to stop debt collectors from harassing you. Your lawyer will guide you through the enforcement of your rights under the FDCPA.

Once you have legal representation, your debt collectors can no longer contact you directly and must instead contact your lawyer. Putting a stop to unwanted calls from your debt collector is just one of the many benefits of having an FDCPA attorney representing your interests. In accordance with the

FDCPA, all communications from the debt collector must be made to your lawyer, and you will no longer have to be distressed by calls from your debt collector.

LEGAL OPTIONS AVAILABLE TO CONSUMERS IF AN AGENCY FAILS TO COMPLY WITH THE FDCPA

If you think that you have been the victim of unfair debt collection practices, you should contact a consumer protection lawyer about your situation. Your lawyer can help you determine if your rights have been violated under the FDCPA, and will advise you on what to do next. Depending on what violation you believe your debt collector has committed, your lawyer will be able to determine what type of legal recourse you need.

Cease and Desist

If you are being harassed by a debt collector, you might consider sending the debt collector a cease and desist letter concerning the harassing contact. Your lawyer can help prepare a cease and desist letter that complies with the requirements under the FDCPA and could send one on your behalf.

Reporting the Debt Collector

You might want to report your debt collector for their violation of the FDCPA. Reports of unfair or abusive debt collection practices can be filed with your state Attorney General's

office, the Consumer Protection Bureau, and the Federal Trade Commission. Your lawyer can help you report your debt collector to the appropriate agency.

Filing a Lawsuit

Your particular situation might call for filing a lawsuit against your debt collector for their violation of the FDCPA. Your lawyer will be able to help you prepare and file your lawsuit, and will be able to represent your interests in court in the event that your case makes its way before a judge.

CONTACT THE KIM LAW FIRM, LLC

If you are being harassed or abused by debt collectors and need help understanding your rights under the FDCPA, your legal options, or how to make your debt collectors stop contacting you about your outstanding debts, contact the experienced FDCPA lawyers at the Kim Law Firm, LLC. We understand the pressure and stress that comes with debt collectors hounding you over old debts. We focus our practice on providing all of our clients with the most thorough, diligent and skilled legal representation possible. After you have read through this report, take a moment to [contact the firm either by phone or online](#). The firm's phone number is 855-996-6342 and we have offices in Philadelphia, Pennsylvania and Cherry Hill, New Jersey.

