

YOU AND THE LAW



Fair Debt Collection

SOUTHERN ARIZONA LEGAL AID, INC.

Fair Debt Collection
June 2012

In 1978, the U.S. Congress enacted the Fair Debt Collection Practices Act (FDCPA) to stop abusive, deceptive and unfair debt collection practices. This Act applies to “consumer debts” – meaning your personal debts and household debts. The Act does not apply to business debts.

In addition, the FDCPA only applies to **debt collectors**; it does not apply to **creditors**. A **creditor** is the person or business to whom you owe money. The **debt collector** is the person or agency who tries to collect the debt for the creditor. Debt collectors cannot treat you unfairly because you have an unpaid debt.

WHEN DEBT COLLECTORS CONTACT YOU

- ◆ Debt collectors must not call you at a time or place they know, or should know, to be inconvenient for you. They must call you between 8:00 am and 9:00 pm at your local time unless you tell them otherwise.
- ◆ If the debt collector knows that you have a lawyer representing you regarding the debt they are collecting, they must contact your lawyer and not contact you directly.
- ◆ Debt collectors are not allowed to call you at work if they know, or have reason to know, that your employer does not allow this.
 - If you are called at work, tell the collector, or have your boss tell them, not to call you at work again.
 - If they call again, refuse to speak to them and keep a record of calls made after you told them not to contact you at work.
- ◆ Debt collectors cannot communicate with you by postcard.

WHEN DEBT COLLECTORS CONTACT 3RD PARTIES ABOUT YOU

The FDCPA was intended to help protect your privacy. In most cases, debt collectors cannot contact anyone other than you to try and collect the debt. This means that they cannot call your family members, friends, or employer to say that you have not paid your debts. However, they can call those same third parties to get information about your whereabouts (location information), if they do not know it.

When debt collectors call third parties to get “location information” about you, they cannot:

- ◆ Say that you owe any debt.
- ◆ Call that person more than once unless they are asked to call again, OR, the debt collector reasonably believes that the third party gave incorrect or incomplete information and now has the complete and correct location information.
- ◆ Communicate by postcard.
- ◆ Use any language or symbol that indicates that the communication is about collecting a debt or that the sender is a debt collector.

DOCUMENTS THAT THE DEBT COLLECTOR <u>MUST</u> GIVE TO YOU (without you having to ask)

- ◆ **Debt Verification** – within 5 days of the debt collector’s first communication with you, they must send you a written notice containing:
 - The amount of the debt.
 - The name of the creditor.
 - A statement telling you that you have 30 days to dispute the validity of the debt or any portion of the debt.
 - A statement telling you that if you send them written notice disputing the debt (or any portion of it) within 30 days, then they will provide you with the verification of the debt. They **MUST** verify the debt.
 - A statement telling you that they will give you the name and address of the original creditor (if it’s different from the current creditor) if you request it from them in writing within 30 days of receiving the creditor’s written notice.

If you don’t believe that you owe the debt, send a letter to the creditor stating that you don’t owe them any money and why. Include copies of receipts, cancelled checks, or other documentation with your letter. Keep your originals in a safe place for future use. **Send the letter by certified mail, return receipt requested within 30 days of the date you received the creditor’s written notice.**

☞ Debt collectors **MUST** stop contacting you until they mail you the verification of the debt. If they can’t verify the debt, then they **MUST** stop collection procedures.

◆ **Warning Notice** – Debt collectors must give the following notice on all communications:

- “This is an attempt to collect a debt and any information obtained will be used for this purpose.”

Failure to provide this notice is considered a false, deceptive or misleading means of collecting a debt.

DECEPTIVE COLLECTION PRACTICES

Debt collectors cannot make false statements in order to try to get you to pay a debt. Deceptive collection practices include:

- Falsely stating the amount of a debt, type of debt, or legal status of a debt.
- Falsely stating an amount owed for the collector’s services in collecting from you – this includes trying to get you to pay for collect calls and telegrams.
- Falsely stating or suggesting that they are a lawyer or are represented by a lawyer.
- Falsely saying that they are a government representative.
- Telling you or suggesting that you can be arrested for not paying a debt.
- Telling you that you have committed a crime by not paying a debt.
- Saying anything intended to mean that you are or will be publicly disgraced for not paying a debt.
- Telling you that legal action, such as a lawsuit, will be taken against you when the collector really does not intend to do so.
- Falsely stating that real legal papers are fake and that you don’t need to take any action regarding them.
- Telling you or suggesting that they will seize your wages or your property unless the law allows them to and they actually intend to do so.
- Threatening to do anything that isn’t legal OR anything they don’t really intend to do.
- Providing, or threatening to provide, false information about you to anyone – including credit bureaus.
- Failing to communicate to anyone that the debt is disputed.
- Using any written materials that falsely appear to be issued or approved by a court or governmental entity.
- Using any written materials that create a false impression as to their source, authorization, or approval.
- Using a false name or lying about owning, operating or working for a credit bureau.

- Depositing a post-dated check before the date you have written on it. Debt collectors must also give you 3-10 business days notice before depositing the check.

***** **WARNING REGARDING POST-DATED CHECKS!** *****

Post-dated checks are checks that you have written and put a future date on so that the check cannot be cashed or deposited until that future date. Debt collectors may ask you to send checks post-dated for future payments. We recommend that you do not do this. If you send a collector a post-dated check and do not have enough money in your account to cover the check when the collector deposits it, then you could face criminal charges for writing a bad check.

HARASSMENT OR ABUSE

Debt collectors cannot threaten, abuse, or oppress you while trying to collect a debt. Acts considered to be harassment or abuse include:

- ◆ Threats of violence (or other criminal means to physically harm you) to you, your reputation, your family, and your friends and acquaintances.
- ◆ Telling you or suggesting that you can be arrested.
- ◆ Publishing your name alone or on a list of consumers they claim refuse to pay debts (except to credit bureaus).
- ◆ Advertising that they are trying to sell your debt in order to coerce you to pay it.
- ◆ Calling continuously, whether you speak to them or not, with the intent to annoy, abuse, or harass any person in your household.
- ◆ Calling you and refusing to tell you their identity and the name of the agency they are calling from.
- ◆ Using obscene or profane language.

DEBT COLLECTORS ARE CALLING ME. WHAT CAN I DO?

◆ Try to settle the account

Call or write to the collection agency and explain that you are unable to pay the requested amount. Try to arrange a payment schedule that will work for you. If you and the collector reach an agreement, be sure to get it in writing from the collector.

- If you do not know who the collector is and don't agree you owe the debt, DO NOT agree to pay anything.
- Instead, write a letter disputing the debt (or any portion of it) and requesting that they give you the name and address of the original creditor (if it's different from the current creditor).

◆ Document all collection activity

Keep a diary of any contacts you have with the debt collector—include dates, times, names and what was said. Save all collection notices you receive to document violations in the notices as well as the dates on which they were sent.

◆ Seek legal advice

Seek legal advice about the collector's behavior and what you should do in response. The Fair Debt Collection Practices Act gives you the right to sue collectors who violate the Act. If you are having problems with debt it is a good idea to get legal advice about bankruptcy and other legal alternatives to difficult debt situations.

◆ Request that the collectors stop contacting you

A form letter is attached to the back of this booklet that you can send to the collector after filling in your name, account number, and other information. **Keep a copy of the letter for your records.** It is best to send the letter to the collector by certified mail, return receipt requested, in order to have proof that the collector received the letter.

Debt collectors are required to honor your request. After the collector receives this letter, they may only contact you once more to tell you that they received your letter OR that they intend to pursue legal remedies. After that, they can no longer contact you.

Creditors can, of course, still sue you to collect the debt. Depending on your financial circumstances, a creditor may or may not be able to garnish your wages or come after your property. You should seek legal counsel if you are sued by a creditor in order to determine how the suit will affect you.

REMEMBER, you do not have to talk to debt collectors when they call you. You do not have to answer the phone, or you can hang up after you realize who it is. Also, you do not have to allow debt collectors into your home. If you tell a debt collector to leave your home and they refuse, then call the police and have the debt collector arrested for trespassing.

◆ **Complain to the Federal Trade Commission (“FTC”)**

The FTC monitors and regulates unfair debt collection practices by collection agencies. Write to them, outlining the violations of the Fair Debt Collection Practices Act committed by the collectors, and ask the FTC to investigate. Send a copy of this letter to the collection agency. This letter will advise the debt collectors that you have reported their violation(s) of the Fair Debt Collection Practice Act.

For more information about the Fair Debt Collection Practices Act and your rights, contact the FTC at:

FTC Headquarters
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-2222
TDD (202) 325-2502
(Toll Free) (877) 382-4357
www.ftc.gov

In Arizona contact:

Arizona Attorney General
Consumer Protection
400 W. Congress, South Building, Suite 315
Tucson, AZ 85701-1367
(520) 628-6504
www.azag.gov/

Better Business Bureau
5151 E. Broadway Blvd, Suite 100
Tucson, AZ 85719-1600
(520) 888-5353
(800) 696-2827
Tucson.bbb.org/

Date: _____

Customer Name

Customer Address

City, State, Zip

Collection Agency Name

Collection Agency address

City, State, Zip

RE: _____
Account Number and Creditor's Name

You have been attempting to collect the above debt from me in the following methods:

I am unable to pay the above debt at this time because:

Pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692(c), I am writing to exercise my right to insist that you stop all communications with me regarding this debt. The Fair Debt Collection Practices Act requires that you honor this request or be subject to a lawsuit for damages. Thank you for your anticipated cooperation.

Sincerely,

Your name

WARNING: This pamphlet contains legal information which is periodically updated by Southern Arizona Legal Aid, Inc. If you obtained this pamphlet some time ago, or if you did not receive this pamphlet from Legal Aid staff, you should call our office to determine whether this copy is current.

This pamphlet was last updated: JUNE 2012

SOUTHERN ARIZONA LEGAL AID, INC. (OFFICES)

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Tucson, AZ 85719

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(800) 248-6789; FAX: (520) 620-0443

APPLICANTS FOR NEW SERVICES #:

(520) 623-9461 **OR** (800) 248-6789

www.azlawhelp.org to apply online

Cochise, Graham/Greenlee Counties

Bisbee Convention Center

2 Copper Queen Plaza, Upstairs

P.O. Box AL

Bisbee, AZ 85603

(520) 432-1639; (800) 231+7106

FAX: (520) 432-1641

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2343 E. Broadway Blvd., Ste. 200

Tucson, AZ 85719

(520) 623-9465; FAX: (520) 620-0443

(800) 248-6789

Santa Cruz Office

1071 N. Grand Avenue, Ste. 110

Nogales, AZ 85621

(520) 287-9441; FAX: (520) 287-9268

Pinal County Office

766 N. Park

Casa Grande, AZ 85222

(520) 316-8076; FAX: (520) 316-8063

(877) 718-8086

White Mountain Legal Aid

5658 Highway 260, Ste. 15

Lakeside, AZ 85929

(928) 537-8383; FAX: (928) 537-1838

(800) 658-7958

Four Rivers Indian Legal Services

403 Seed Farm Road

P.O. Box 68

Sacaton, AZ 85247

(520) 562-3369; FAX: (520) 562-3900

(866) 312-2290

White Mountain Apache Legal Services

New Human Services Bldg.

116 East Oak St.

P.O. Box 1030

Whiteriver, AZ 85941

(928) 338-4845; FAX: (928) 338-1436

(866) 312-2291