

[Debt Collection and Your Rights](#) [1]

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Posted Feb 01 2004
Revised Jan 23 2019

1. [The Fair Debt Collection Practices Act \(FDCPA\)](#)
2. [Common Concerns Addressed by the FDCPA](#)
 - [Annoying Phone Calls](#)
 - [Contacting Friends, Family, or Coworkers of the Debtor](#)
 - [Threats and Deceptive Practices](#)
3. [Debt Collection in California](#)
4. [Debts That You Do Not Recognize](#)
5. [What You Can Do](#)
6. [Resources](#)

1. The Fair Debt Collection Practices Act (FDCPA)

The [Fair Debt Collection Practices Act](#) [2] (FDCPA) sets national rules for collection agencies. It covers personal debts, including money you owe on a personal credit card account, an auto loan, a medical bill, and your mortgage. The FDCPA only applies to companies that *collect debts for others*.

The following activities that are *not* subject to the FDCPA:

- A creditor that collects its own overdue accounts. The law defines "debt collector" as one in the business, the principal purpose of which is the collection of debts due another. But in-house collections are covered by the FDCPA if they create the impression that they are either an independent collector or a governmental agency. State collection laws such as California's may apply to both outside and in-house collection activities.
- Government employees whose job is to collect debts as an official duty. Debts collected by the [Internal Revenue Service](#) [3] (IRS) are a good example of debts collected by government employees. [The Debt Collection Improvement Act](#) [4] applies to debts owed to the federal government. However, when the government refers collection of debts to an outside agency, the FDCPA applies.
- Consumer credit counseling services, if the service is a nonprofit organization and receives payments from the debtor for distribution to creditors.
- Debts you incurred to run a business.

The FDCPA includes provisions intended to safeguard privacy. Discussions about the debt can only be held with (1) the individual, (2) the creditor, (3) an attorney representing one of the parties, and (4) a credit bureau. Under the FDCPA, debt collectors:

- Cannot exchange (with other agencies) information about individuals who allegedly owe a debt.
- Cannot distribute a list of alleged debtors to its creditor subscribers.
- Cannot advertise a debt for sale.
- Cannot compile a list of debtors for sale to others.
- Cannot leave messages with third parties, asking them to have the debtor call the collector.

An attorney that regularly collects or attempts to collect consumer debts owed another, directly or indirectly, must comply with the FDCPA. The law also applies to attorneys who act as in-house counsel and who send dunning letters or make telephone calls on behalf of their employer/client.

Both the [Consumer Financial Protection Bureau](#) [5] (CFPB) the [Federal Trade Commission](#) [6] (FTC) enforce the FDCPA. The CFPB has jurisdiction over large debt collectors with \$10 million in annual receipts from consumer debt collection activities. The

FTC has jurisdiction over smaller debt collectors.

Some consumers may have additional legal protections in addition to the FDCPA:

- Over half of the states have laws that govern the activities of debt collectors. These laws may provide additional protections not found in the federal law. To find out more about your state's collection laws, contact your [state attorney general](#) [7]. California's debt collection laws are discussed [below](#).
- Individuals in active duty military service have additional rights under the [Servicemembers Civil Relief Act](#) [8]. If you are in the military and need legal help, contact your [Armed Forces Legal Assistance Office](#) [9].

2. Common Concerns Addressed by the FDCPA

Annoying Phone Calls

Debt collectors may only call you between the hours of 8 a.m. and 9 p.m. unless you request otherwise. They cannot call you repeatedly or use the phone to harass you or trick you into accepting collect calls. Debt collectors are also prohibited from using obscene language, making negative comments about your character, or making religious or ethnic slurs. Additionally, if you instruct them to contact your attorney, they must comply with your request.

You may also ask the debt collector in writing to stop contacting you. This does entitle the collector to contact you one more time to inform you of what, if any, action he or she intends to take to collect the debt, but not to threaten you. Telling the collection agency not to contact you should stop the phone calls, but it won't stop the collection efforts.

The FDCPA also states that debt collectors cannot call you at work if the collector knows your boss does not allow such calls or if you have requested that they not call you there. If the debt collector ignores this request, keep detailed notes about each violation, making sure that both you and any witnesses to the contact will be able to testify if you decide to take legal action against the collector. Consider having the witness(es) write a statement specifying the date, time, and details of the contact. Each person should retain a copy.

Collectors Contacting Friends, Family, or Coworkers of the Debtor

Under the FDCPA, contacting a spouse, the parent of a minor, a guardian, a cosigner or guarantor, an executor, or an administrator is considered the same as contacting the debtor directly. However, debt collectors can only contact others (such as neighbors, friends, or family members) if they do not have your information and are trying to locate you. A debt collector:

- Cannot tell others you owe a debt or discuss details of the account.
- Must identify him or herself by name, but not as a debt collector.
- Must identify the name of the collection agency only if asked.
- Can only contact the party once unless the collection agency has reason to believe the person has new information.
- Cannot leave information about a debt on a third party's answering machine or voice mail service.

Debt collectors can also contact your employers to get your address or telephone number. The FDCPA creates no specific restrictions on contacts with an employer since they are considered to be a third-party contact. State laws, however, may have stricter rules about contact with your employer.

You can receive mail addressed to another person from a debt collector only if you live at the same address or receive your mail at that address. The outside of an envelope sent to you by a debt collector should not include language to indicate that the mail is from a debt collector or that the letter relates to the collection of a debt. A collector is not permitted to use a postcard and should take reasonable measure to assure your privacy.

A debt collector can contact the person responsible for paying a deceased person's debts, which are generally paid out of the person's estate. This is usually clarified in the will of the deceased, but when there is no will, a court may appoint someone to be responsible for settling the estate. If you cosigned a loan with the deceased, you may be equally responsible for the debt. You may also be responsible if you are the surviving spouse or live in a community property state such as California. Questions about responsibility for a debt should always be taken up with an attorney. The Federal Trade Commission has issued guidance about [Debts and Deceased Relatives](#) [10].

If you cosign a loan with someone and the person who asked you to cosign does not pay, you may be contacted by a debt collector. When you cosign a loan, you are guaranteeing that the lender will be repaid - either by the person who asked you to

cosign or by you. As the cosigner, you have the same legal protections as the primary signer. You may also have additional claims against the creditor and possibly the collector if you were not given the special disclosures required under state and federal law advising cosigners of the risks involved. The Federal Trade Commission has issued guidance about [Cosigning a Loan](#) [11].

Threats and Deceptive Practices

Under the FDCPA, debt collectors must tell you the truth about who they are and what they intend to do. The person who calls you from a collection agency has to give you his or her name and the name of the agency. False statements and deceptive practices like the following are not allowed:

- Claiming to be an attorney or government employee when he or she is not.
- Sending you documents that look like legal papers when they are not.
- Stating that forms sent to you are not legal documents when they are.
- Saying that you committed a crime.

Your first contact with a collection agency is likely to be a telephone call. The FDCPA requires a collection agency to tell you how to contact the collector in writing. The law also requires a collection agency to send you a written notice five days after it first contacts you that includes how to dispute the debt and the information necessary to lodge a dispute. The FDCPA says the written notice should also include:

- The amount of the debt.
- The name of the creditor.
- A statement that if you notify the debt collector in writing within the 30-day period that you are disputing the debt, the collector will obtain verification of the debt or a copy of a judgment against you.
- A statement that, if you request it, the collector will provide you with the name and address of the original creditor, if different from the current creditor.
- A warning stating, "This is an attempt to collect a debt and any information obtained will be used for that purpose."
- If you do not receive the notice within five days, call the collection agency and ask for its address and fax number. Then, send a letter to the collector noting its failure to send you the required notice. As a minimum, make a note for your file.

A collection agency can file a lawsuit to collect a debt. However, a debt collector is not allowed to threaten you with a lawsuit just to get you to pay the debt. Threats of violence or arrest are also typical tactics of [fake debt collectors](#) [12]. Examples of threats and deceptive practices prohibited by the FDCPA are when the collector:

- Says it will garnish your wages or sell your property if it is not legal to do that.
- Says it will sue you, if the collector doesn't intend to sue.
- Is not truthful about the amount of money you owe.
- Says you will be arrested if you don't pay the debt.
- Threatens you with violence.

3. Debt Collection in California

California's [Rosenthal Fair Debt Collection Practices Act](#) [13] differs from the FDCA in one very important way. Unlike the federal law, the California law applies *both* to third-party debt collectors and creditors that collect debts for themselves.

California law also gives you added protections against unwarranted contact with your employer. In California a debt collector may only contact your employer to:

- Verify your employment status.
- Verify your business address.
- Garnish your wages when a court issues a judgement against you.
- Find out about insurance coverage if the debt involves a medical bill.

Under California law, the debt collector must first attempt to contact your employer in writing for any one of the allowed purposes (except for verification of employment, in which case a single oral contact is permitted). The collector may only telephone or make a personal contact with your employer regarding the issues listed above if after 15 days there has been no response to the written inquiry. For more on debt collection in California, see the California Attorney General's [guide](#) [14].

4. Debts That You Do Not Recognize

When a collection agency contacts you about a bill you know nothing about, you may be the victim of identity theft. If you think someone else opened an account in your name or made charges to your existing account without your permission, you should follow the steps in our Consumer Guide [Identity Theft: What to Do if It Happens to You](#) [15]. Be sure to write the collection agency and explain that you are an identity theft victim. The Identity Theft Resource Center's publication [Collection Agencies and Identity Theft: How to Effectively Clear Identity Theft Accounts from Collection Agency Records](#) [16] contains helpful guidance.

Medical identity theft is a largely unreported type of identity theft. This type of identity theft occurs when an imposter uses your identifying information to obtain medical treatment or medical supplies. If you become a victim of this crime, you may find yourself dealing with a medical debt collector as well as erroneous negative data included on your credit report. Medical identity theft may also involve false claims made to a victim's health insurance plan. The [World Privacy Forum](#) [17] examines the unique character of medical identity theft and provides tips for victims.

We suggest that you ask the collector for copies of documentation such as transaction receipts and statements that are associated with the fraudulent account. You should also ask the collector and the creditor to send you their fraud affidavit form. If a debt collector learns that you may be the victim of identity theft, the collector must: (1) Notify the original creditor about the fraud or identity theft, (2) Give you information about the debt, such as account applications and statements.

Many states have a statute of limitations that limits the amount of time a debt collector has to file a lawsuit. A debt that is older than the state law allows for a collector to sue you is said to be "time barred." This does not mean, however, that a debt collector can't attempt to collect the debt. A state's statute of limitations [may be as long as fifteen years but is usually three to six years](#). [18]

If you are still being contacted about a debt that is this old, quite likely this account has been sold and perhaps resold a number of times. There is a thriving business in debt reselling. Some companies buy old debt for pennies on the dollar. Companies then stand to reap huge profits if you agree to pay the original amount owed. As we have said, there is no statute of limitations on how long a collection effort can go on. When the debt is older than your state's statute of limitations allows for a lawsuit, the debt is said to be "time barred." The FTC provides guidance on [Time-Barred Debts](#) [19].

In cases where the debt is believed to be an error, it is important to address this issue as soon as possible. If the debtor agrees to pay a debt that is not theirs, they are technically acknowledging the debt and may get a negative entry on their credit report even after it has been paid.

Be on the alert when a caller claiming to be a debt collector asks you for your Social Security number or information about your bank and credit card accounts. The caller may be a fake who may even go so far as to threaten you with jail. Calling and claiming to be a law enforcement official or threatening arrest is a typical tactic of what the FTC calls [fake debt collectors](#) [12]. Such callers often attempt to scare you, even with threats of jail.

5. What You Can Do

We suggest you start a file to keep records of your contact with a debt collector. You should include all letters, including the written notice sent by the debt collector and the ones you send, and record the date, time, and details of each contact. Your records will be extremely helpful if it's necessary to complain to a government agency or file a lawsuit.

There are many reasons to write to a collector including:

- It is not your debt. The collector has you confused with someone else.
- You are a victim of identity theft - someone used your identity to run up charges.
- You already paid the debt.
- The creditor sent the bill to an old address, even though you told the creditor you moved.
- The collection agency says you owe more than you think or says you owe an exorbitant amount in fees and extra charges.
- You need to clarify your conversation with a collection agent.
- You would like to stop phone calls to you or others.

It is important to send correspondence to a debt collector by Certified Mail, Return Receipt Requested so that you receive a signed and dated notice that the collector has received your letter. Without confirmation, it may come down to your word against the collector. You may also want to fax your letter before mailing it.

After you file a letter that disputes a debt, the collection agency must stop collection efforts until it has conducted an investigation. This means the debt collector cannot put the debt on your credit report and must validate the debt by obtaining a verification of the debt or a copy of a judgment from the creditor. A copy of documents that verify the bill should then be mailed to you.

You can sue for violations of the FDCPA. You may recover actual damages plus up to \$1,000. Attorney fees and court costs may also be recovered. Members of a class action may recover actual damages plus a total of \$500,000 or one percent of the net worth of the debt collector. There are many private practice attorneys who specialize in assisting consumers who have experienced violations of state and federal debt collection laws. You can use the National Association of Consumer Advocates' online attorney [directory](#) [20] to find a lawyer near you who specializes in debt collection law.

Consumer complaints are the federal government's primary source of information about abusive collection practices. Both the [Federal Trade Commission](#) [6] (FTC) and the [Consumer Financial Protection Bureau](#) [21] (CFPB) offer an online complaint form on their websites. Since both the FTC and CFPB investigate FDCPA violations, complaints may be made to both agencies.

6. Resources

Government Agency Contacts (File a Complaint)

- [Federal Trade Commission Complaint Assistant](#) [22]
Consumer Response Center
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580
Telephone: (877) FTC-HELP (877-382-4357)
- [Consumer Financial Protection Bureau](#) [23]
1700 G. Street, N.W.
Washington, D.C. 20552
- [California Attorney General](#) [24]
Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (800) 952-5225 and (916) 322-3360
- [State Attorneys General Offices](#) [25]
National Association of Attorneys General
- [Consumer Protection Offices in the States](#) [26]
Federal Government's Consumer Action Web site

Additional Resources

- Consumer Financial Protection Bureau [Debt Collection page](#) [27](includes sample letters to send to a debt collector)
- Bob Sullivan (Consumer Advocate), [Seven Questions That Will Help You Sniff Out a Debt Collector Scam](#) [28]
- Consumer Action, [The Fair Debt Collection Practices Act: How it restricts collectors and protects consumers](#) [29]
- Consumer Action, [Debtors' Rights: Protecting yourself from debt collection lawsuits](#) [30]

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Links

- [1] <https://www.privacyrights.org/consumer-guides/debt-collection-and-your-rights>
[2] <https://www.ftc.gov/tips-advice/business-center/guidance/fair-debt-collection-practices-act>
[3] <https://www.irs.gov/>
[4] <https://www.dol.gov/ocfo/media/regs/DCIA.pdf>
[5] <http://www.consumerfinance.gov/>
[6] <https://www.ftc.gov/>
[7] <http://www.naag.org/naag/attorneys-general/whos-my-ag.php>
[8] <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scr>
[9] <http://legalassistance.law.af.mil/content/locator.php>
[10] <https://www.consumer.ftc.gov/articles/0081-debts-and-deceased-relatives>
[11] <https://www.consumer.ftc.gov/articles/0215-co-signing-loan>

- [12] <https://www.consumer.ftc.gov/articles/0258-fake-debt-collectors>
- [13] [http://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?
tocCode=CIV&division=3.&title=1.6C.&part=4.&chapter=&article=](http://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CIV&division=3.&title=1.6C.&part=4.&chapter=&article=)
- [14] https://oag.ca.gov/consumers/general/collection_agencies10
- [15] <https://www.privacyrights.org/consumer-guides/identity-theft-what-do-if-it-happens-you>
- [16] <http://www.idtheftcenter.org/Fact-Sheets/fs-116.html>
- [17] <https://www.worldprivacyforum.org/category/med-id-theft/>
- [18] <https://www.bankrate.com/finance/credit-cards/state-statutes-of-limitations-for-old-debts-1.aspx>
- [19] <https://www.consumer.ftc.gov/articles/0117-time-barred-debts>
- [20] <http://www.consumeradvocates.org/find-an-attorney>
- [21] <https://www.consumerfinance.gov/>
- [22] <https://www.ftccomplaintassistant.gov/#crnt&panel1-1>
- [23] <http://www.consumerfinance.gov/complaint/>
- [24] <http://ag.ca.gov/consumers/general.php>
- [25] <http://www.naag.org>
- [26] <http://www.consumeraction.gov/state.shtml>
- [27] <https://www.consumerfinance.gov/consumer-tools/debt-collection/>
- [28] <https://bobsullivan.net/gotchas/seven-questions-that-will-help-you-sniff-out-a-debt-collector-scam/>
- [29] http://www.consumer-action.org/modules/articles/the_fair_debt_collection_practices_act
- [30] http://www.consumer-action.org/modules/articles/debtors_rights