

Fair Debt Collection Practices

Most of us have, at one time or another, disputed a bill sent to us by a vendor. Since 1977, a federal law known as the Fair Debt Collection Practices Act, has protected consumers from unscrupulous conduct committed by anyone attempting to collect the debt on the vendor's behalf.

First, it is important to note that the Act applies only to consumer debt. Under the Act, a consumer debt is any obligation to pay money for a transaction that was primarily for personal, family, or household purposes. Debts that are primarily for business purposes are not covered by the Act.

A person is a debt collector under the Act if they regularly use the U.S. mail or telephones to collect or attempt to collect a consumer debt owed to another (i.e., owed to a person other than the debt collector). Although the Act usually applies to debt collection firms, it could also apply to business owners. If you are attempting to collect a consumer debt for your incorporated business, you too could be a debt collector. This is because the debt is owed to your corporation, not to you personally. When collecting a debt for your corporation, you must make it clear to the debtor that you are acting on behalf of the corporation. One court ruled that a business which obtained only four percent of its revenue from debt collection was "regularly" using the mail for purposes of the Act. So, by spending four percent of your time collecting consumer debts for your business through the mail or by the telephone without disclosing that you are acting on behalf of your business, you might be "regularly" attempting to collect those debts.

The Act contains some fairly complicated rules governing collection of consumer debt. A debt collector cannot threaten to take any action that is illegal or which the collector does not actually intend to do. For example, if you cannot threaten to sue someone if you do not intend to do so. The Act also forbids a debt collector from attempting to collect any amount not authorized by the agreement creating the debt or not otherwise allowed by any applicable law.

The Act prohibits a debt collector from misrepresenting any of the following: (1) the character, amount, or status of the debt, (2) credit information pertaining to the consumer, (3) the debt collector's name, (4) or any other facts in order to obtain information about the debt. In addition, a debt collector may not falsely state that the debtor has committed a crime or similar wrongdoing and a debt collector may not use writings (such as letters or forms) that falsely appear to have some sort of official approval (such as a fake court seal).

The Act also bars a debt collector from engaging in conduct that harasses, oppresses, or abuses the debtor. Examples include profane language and repeated telephone calls. The Act expressly forbids calls to a debtor between 9:00 pm and 8:00 am (without the debtor's consent), calls to a debtor when the debt collector knows the debtor has an attorney and calls to a debtor's workplace if the debt collector reasonably should know that the debtor's employer forbids such calls. A debt collector must cease all communications after a debtor informs the debt collector in writing that the debtor refuses to pay or wants the debt collector to stop calling.

All communications by a debt collector to a debtor must contain disclosures prescribed by the Act. These are as follows: (1) the purpose of the communication is to collect a debt, (2) the amount of the debt, (3) the name of the current creditor, (4) a statement warning the debtor that the debt collector will assume that the debt is valid unless the debtor disputes the debt within 30 days, (5) a promise to mail the debtor verification of the debt if the debtor disputes the debt within 30 days, and (6) a promise to give the debtor the name of the previous creditor (if any) if the debtor disputes the debt within 30 days. Once a debtor disputes a debt, the debt collector must cease collection efforts until the debtor receives the verification of the debt.

The Act limits the communications that a debt collector may have with others regarding the debt. A debt collector may communicate only with the debtor's attorney, a credit reporting agency, the creditor, and the creditor's attorney. The only exceptions are when the debt collector is attempting to locate the debtor or to enforce a judgment.

The Act contains some harsh penalties that may be imposed on debt collectors who violate the Act. These include the actual damages suffered by the debtor as a result of the violation of the Act, statutory damages up to \$1,000, attorneys fees (which can be enormous), and court costs. The Act shows debt collectors some mercy, however. A debt collector might avoid the penalties if they can prove that the violation was unintentional and resulted from a bona fide error despite procedures that the debt collector has in place to avoid such errors.

It's bad enough when someone does not pay you. Do not compound the problem by violating the Fair Debt Collection Practices Act. To be on the safe side, you should review your debt collection procedures with an attorney