

# Debt Collection

When a debt collector calls, it's important to know your rights. The FTC enforces the [Fair Debt Collection Practices Act \(FDCPA\)](#). This act makes it illegal for debt collectors to use abusive, unfair, or deceptive practices when they collect debts. The FDCPA does not apply to all types of debt. For example, business and agricultural debt are not covered by the FDCPA. Your credit card debt, auto loans, medical bills, student loans, mortgage, and other household debts are covered by the FDCPA.

## Can a debt collector contact me anytime or any place?

A debt collector will likely contact you at any time or place and through a variety of ways, including phone calls, letters, emails and text messages. Under the FDCPA, debt collectors cannot contact you at inconvenient places and times. Debt collectors should not contact you before 8:00AM or after 9:00PM. You must exercise your rights by instructing the collector **IN WRITING** as to how you may be contacted. This includes letting them know you cannot be contacted at work.

## How can I stop a debt collector from contacting me?

If you tell the debt collector **IN WRITING** to stop contacting you, the debt collector cannot contact you again outside formal legal proceedings. For example, such as filing a lawsuit against you or informing you they are selling your debt. Send a letter to the debt collector with "return receipt requested" and make sure to keep a copy for yourself. If a debt collector continues to contact you after they received your letter asking them to stop, you may have a legal case against them.

Sending this letter will not erase your debt. The debt collector can still sue to collect the money they say you owe. **DO NOT IGNORE ANY LETTERS REGARDING LAWSUITS!** If you get anything in the mail or are served with anything that appears

to be a lawsuit, contact a lawyer right away.

Keep in mind, this rule only applies to debt collectors and attorneys who are collecting debts for creditors. This rule does not apply to the original creditor.

## **Can a debt collector contact anyone else about my debt?**

In most instances, a debt collector can only contact you. A collector can also contact anyone else named responsible for the debt. For example, if you had a parent, partner or spouse co-sign on a loan, the debt collector can contact that person, too.

If you have an attorney assisting you with the debt collection, the debt collector should only be contacting your attorney.

## **What does it mean to be judgement proof?**

Even if a debt collector sues you and gets a judgment against you, you have nothing that the debt collector could take to satisfy the judgment. Usually this means that your income and assets are exempt from collection. The debt collector can still sue you and get a judgment against you, but they would not be able to take anything from you. Many creditors and debt collectors will insist on getting a judgment against you even if you are judgment proof. They do this in case your income situation changes because you go back to work, win the lottery, or inherit money.

If a judgment is entered against you and you are served with an information subpoena, you must respond to it even if you have nothing the debt collector can take. If you are judgment proof, you may be able to negotiate a lower settlement with the debt collectors or see if they will forgive the debt. There may be tax implications for any debts that are forgiven.

## **Can a debt collector keep contacting me if I don't think I owe any money?**

Debt collectors have a certain number of years they can sue you and win to collect a debt. It's called the statute of limitations and it usually begins when you fail to make a payment on a debt. In South Dakota, the statute of limitations is six years. **If a**

**debt collector attempts to collect a debt that is older than what is permitted under state law, you may be able to sue them.**

## **What are debt collectors not allowed to do?**

Debt collectors cannot:

- Threaten you with physical harm or harass you
- Attempt to collect a debt from a relative or friend who is not listed on the debt
- Lie to you about the amount you owe or who they are (some may claim to work for the government or say they are attorneys when they are not)
- Claim you will be arrested or sued if they have no intent to do so.
- Try to collect interest or garnish your wages unless the original contract you signed allows them to.
- Deposit a post-dated check early

## **Can I control which debts my payments apply to?**

To a point. For example, if you owe child support, you may be required to pay that first before any other debt. Outside of child support, you should be able to control what debts you pay and how you pay them. This is true unless there is a contract or court order that requires you to pay a certain debt before others.

## **Can a debt collector take money from my bank account or my wages?**

The debt collector must first sue you and receive a judgment from a court that says it can take money from your paycheck to pay the debt. This is called a garnishment. In most cases, the first **\$2,496** or less of your bank account is exempt from collection. If you *only have exempt income* in your bank account (such as Social Security, SSI, child support, public assistance, etc.) the first **\$2,850** is exempt from collection. If you have both exempt and non-exempt income in your account (such as money from your work and Social Security income), the lower limit applies. Remember, a creditor or debt collector cannot freeze your bank account unless they get a judgment against you.

## **Wage Garnishment**

Your wages can only be garnished if the debt collector sues you for the debt and wins. The court will then order a judgment against you to pay back the debt. There are limitations on what a debt collector can take from you. As of January 2018, if you make less than \$312 per week after taxes are taken out, your wages cannot be garnished. Generally, the debt collector can only take 10% of your paycheck. If the debt collector gets a judgment against you and attempts to garnish your wages, you will be served with a paper called a Notice of Income Execution. This notice will give you the chance to set up payments before the garnishment takes place. Only one creditor can garnish your wages at a time. If you owe money for back child support or a government debt, more money can be taken from your paycheck.

## **Can federal benefits be garnished?**

Yes, but typically only by the state where you live to satisfy child support obligations. Private persons and entities cannot garnish your federal benefits (VA, Social Security, SSI, SSDI). You may lose your ability to make claims or counterclaims against those who do so unless you can prove the funds being garnished are from programs that are exempt and are not mixed in an account with money that is not exempt from collection.

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