

When Collection Agencies Behave Badly

By David Grossack, Esq. and David Friedman, Esq.

Debt collection messages can be aggravating. Regardless of whether you owe someone a debt, have a disputed debt, or are being contacted for no determinable reason, you do not have to tolerate harassment by debt collectors and creditors. Federal and state regulations grant you certain rights to protect yourself from unscrupulous debt collection practices. This article discusses the federal and state protections you have when others contact you to collect money owed for personal, family, and household debts such as credit cards account, medical and utility bills, and mortgages. Debts that arise from running a business are not discussed here since different laws and regulations apply.

Who Might Contact You?

There are two types of organizations that may try to contact you: creditors and debt collectors. A creditor is a person or company that lends you money. Examples of creditors include banks and credit card companies. A debt collector is someone who regularly collects the debts people owe to creditors. This may include collection agencies, debt collection attorneys, and companies that buy and then try to collect unpaid debts. The difference between creditors and debt collectors is important because debt collectors are held to higher legal standards of behavior than creditors.

What Protects You?

The Fair Debt Collection Practices Act (“FDCPA”) prohibits debt collectors from using abusive, unfair, or deceptive practices when attempting to collect money from you. The purpose of the statute is to permit reasonable collection efforts that promote repayment of legitimate debts while protecting you from debt collectors who engage in dishonest practices. The Fair Debt Collection Practices Act only protects you from the actions of debt collectors. Creditors trying to collect their own debts are not regulated by the FDCPA and may engage in the kinds of collection tactics the FDCPA prohibits.

To prevent creditors from abusing your rights, Massachusetts legislators and the Massachusetts Attorney General created laws and regulations to provide additional protection for you. These laws protect you from abuse, invasion of privacy, false or misleading statements, debt collection harassment, and other misbehavior by both debt collection agencies and creditors. Since numerous courts in Massachusetts have found that violations of the Fair Debt Collection Practices Act also violate Massachusetts laws, you may seek damages against debt collectors under both state and federal statutes.

What Must a Debt Collector or Creditor Do?

Debt collectors and creditors have certain obligations to you. When attempting to collect a debt or seek information necessary to collect a debt, certain rules must be followed. If a creditor or debt collector fails to follow these rules, they have violated your rights and may be sued.

Written Notice: A debt collector or creditor must send you written information regarding your debt within five days of contacting you. This written notification must include information

stating the amount of debt they believe you owe and the name of the creditor owning the debt. Without this notice, you would not know how much money the debt collector can claim or which creditor owns the debt. The notice must also state if you dispute the debt within thirty days, the debt collector must verify the debt and mail a copy of the verification to you. While verifying your debt, the debt collector may not contact you about the debt. Debt collectors are known to not send mandatory disputes or verification, ignore written disputes, or contact people while their debt was still being verified. This behavior is illegal and you may sue the debt collector for violating your rights.

Self-Identification: Debt collectors and creditors must identify the company or individual they represent. Many debt collectors contacting people do not provide this notice and may not even identify the name of their company to frustrate your ability to complain to the police, other government, or non-governmental organizations such as the Better Business Bureau. This is also illegal, and you can sue a debt collector for failing to provide sufficient identification.

What Must a Debt Collector or Creditor NOT Do

Creditors and debt collectors may not harass, oppress, or abuse you or anyone else they contact. The potentially illegal actions a debt collector may take are usually categorized as harassment, false statements, and unfair practices.

Harassment: Debt collectors and creditors may not engage in behavior considered to be harassment. While not a complete list of prohibited activities, debt collectors generally may not:

- Threaten you with violence or harm;
- Use obscene or profane language when contacting you;
- Call you repeatedly within short periods of time to annoy you;
- Call or visit your home outside the hours of 8 AM through 9 PM without your permission; or
- Publish a list of names of people who refuse to pay their debts

Massachusetts law states that a debt collector may not contact you more than twice per week in your home or more than twice a month anywhere else, including your workplace.

False Statements: Debt collectors may not make false statements to you or others regarding themselves, their activities, or your activities. Examples of prohibited statements include:

- Lying about the amount of money you owe;
- Lying about their identity, including the name of their company;
- Claiming documents they send you are legal forms if they aren't, or are not legal forms if they are;
- Saying you will be arrested if you don't pay your debt;
- Saying the debt collector will seize, garnish, attach, or sell your property or wages unless the action is not illegal and debt collector intends to do so;
- Saying legal action will be taken against you, unless the action is not illegal and debt collector intends to do so;
- False claiming that the debt collector is an attorney or government representative;
- False claiming that you have committed a crime;
- False claiming that the debt collector operates or works for a credit reporting company;

Unfair practices: Neither debt collectors nor creditors may not take other unfair actions when attempting to collect a debt from you. Such practices generally may include:

- Attempting to collect more money than you owe: The holder of your debt cannot collect any money in addition to the amount you owe, unless the charge is permitted by the contract you signed or by state law. Sample additional charges may include interest, investigation or attorney's fees, or other collection charges.

Many debtors have complained that creditors never provided them a final statement of their debts. Instead, the creditor would send their debt straight to debt collectors. The debt collectors would then attempt to charge the person additional collection costs. This is not a lawful practice. You should always require a final statement of your debts from a creditor, especially when the creditor is a hospital or other medical care provider as they are well known for engaging in this practice.

Another common unfair practice is for a creditor or debt collector to withdraw money from the debtor's bank accounts without the debtor's knowledge. Debt collectors can obtain your bank account number from previous checks you wrote, from bounced checks, or through other means either legal or fraudulent. Banks have permitted this practice in the past under the erroneous belief the debtor has authorized the transaction. You should carefully monitor your bank statements and make sure to dispute any unauthorized withdrawals immediately.

- Causing you additional expense: Neither debt collectors nor creditors may not impose additional expenses upon you outside of those permitted by your contract. Examples of such expenses may include long distance telephone calls, express mail charges, wire fees, or other similar charges. These costs do not include costs you might already need to incur, such as the cost of defending against their claims in court.
- Illegally threatening your property: A debt collector may not take or threaten to take your property unless it can be taken legally. You may need to consult with a lawyer to determine whether a debt collector's threats or confiscation of your property is illegal.
- Lying about what happens when your debt is transferred to another: A creditor or debt collector may sell or transfer your debt to another collection agency. However, the creditor or debt collector may not imply or threaten that such a transfer would change your legal rights or would cause you to be subjected to harsh, vindictive or abusive collection behavior.
- Publishing a list of defaulting debtors: A debt collector may not publically distribute a list of debtors who have not paid their debts. However, the debt collector or creditor may send such information to credit rating agencies, as long as the information is not false.
- Attempting early withdrawal of a post-dated check: Some people may write a check to a debt collector to be deposited a later date. This practice allows a debtor to deposit money in their bank account before the check becomes valid. A debt collector may nevertheless attempt to cash the check before the date specified. Such behavior may incur additional charges at your expense from a bounced check, and possibly cause other checks to be drawn on insufficient funds as well. This action is illegal. You can also defend yourself against this activity by notifying the bank that the check has been post-dated and should not accepted before the specified date.

- Withholding documents from you or your attorney: Massachusetts law requires a creditor to allow you or your attorney to inspect any document the creditor believes will prove you owe a debt. These documents may include account statements, credit card applications, credits and charges related to the debts, and other documents.

Who Can Be Contacted About Your Debt?

Many laws and regulations prevent creditors and debt collectors from disclose information about a debt they believe you owe to others. Creditors and debt collectors do have a right to contact you about debts they believe you owe. To do so, they may need to determine your current contact information by contacting other people. However, creditors and debt collectors cannot abuse this right by informing others that you may owe them a debt. This could happen by sending notice of your debt by postcard, mentioning your debt to someone other than you, your spouse, or your attorney, or lying about your debt to anyone. Such abuses of your rights may injure your feelings, your privacy, and potentially your ability to work and make purchases. A creditor or debt collector may contact:

- **You:** You may be contacted regarding your debt, as long as the contact does not harass you, make false statements to you, engage in unfair practices against you, or break any of the other laws created to protect your rights.
- **Your Attorney:** If a creditor or debt collector is informed that you are represented by an attorney, the creditor or debt collector may not contact anyone other than your attorney about the debt.
- **Your Spouse/Household:** Your spouse and anyone living in your home may be contacted in order to determine whether your contact information is current. The debt collector or creditor may discuss your debt with you or your spouse, but no one else in the household. It is illegal for a creditor or debt collector to mention your debt to your children, roommates, friends, or others in your household.
- **Your Friends or Neighbors:** People other than those living in your home may be contacted by a creditor or debt collection agent for your contact information if they reasonably believe their information is not current. However, the creditor or debt collector may not inform anyone it calls about your debt. A creditor or debt collector may also not call someone multiple times for your contact information.
- **Your Workplace:** A creditor or debt collector may contact your workplace, but usually require your permission to do so. Never give your permission to be contacted at your workplace if you do not wish to be contacted there. A creditor or debt collector cannot contact you at work if they have a reason to know your employer prohibits them from contacting you there. A creditor or debt collector cannot assume they have permission to contact you at work.
- **Credit Reporting Companies:** A creditor or debt collector may report true information to a credit reporting company. Providing false information to a credit reporting company is illegal.

Stopping the Calls

Just because a creditor or debt collector is able to call you and others does not mean you have no control over their actions. There are many things you can do to limit or stop their calls. You can:

- **Hire an Attorney:** If you notify a debt collector that you are represented by an attorney, they may only contact your attorney about your debt. Since the debt collector requires no further information regarding how to contact you, you do not need to worry about them contacting your spouse, household, neighbors, workplace, or others for your contact information.
- **Dispute the Debt:** A creditor or debt collector must send you a letter identifying the contactor, the owner of the debt, and the amount of the debt after contacting you. If you send them a letter stating that you do not owe any or all of the money claimed or asking for verification of the debt, the debt collector or creditor must stop contacting you until they provide you with written verification of the debt, usually a copy of the invoice or bill for the amount you owe.
- **Write a Letter:** If you refuse to pay a debt or do not want a debt collector or creditor to contact you again, you can stop their further communications to discuss your debt by sending them a letter. Your letter should identify who you are, the claim made against you, and state your desire not to be contacted again regarding the debt. Your letter should be short and polite. You may wish to confer with an attorney to make sure you avoid writing anything that might affect your rights.

Since the debt collector or creditor must observe your request upon receipt of the letter, you should send the letter by certified mail and request a receipt of delivery. This will let you know the debt collector or creditor received the letter and can no longer contact you. Make sure you keep a copy of the letter for yourself. After receiving your letter, the debt collector or creditor may only contact you to let you know they will not contact you again, or to notify you of a specific action taken that affects you. Such actions include when a lawsuit is filed to collect the debt. If the debt collector contacts you after they receive your letter for any other reason, they have broken the law and you may sue them.

If you do not want to be contacted at your workplace, it is important to notify the debt collector immediately. Telling a debt collector over the phone not to contact your workplace will prevent them from legally contacting your workplace for ten days. To permanently prevent a debt collector from contacting your workplace, you must write a letter to the debt collector. After your letter is received, the debt collector may only contact your workplace with your permission or following a court hearing to enforce a wage garnishment order.

Paying Your Debts

Creditors and debt collectors have significant power over how your debt is collected. While frustrating, a debt collector or creditor is not required to follow the same debt collection terms provided by the original lender before your late or missed payment. As long as they obey the contract, a creditor or debt collector is not required to accept partial payments, nor are they prohibited from accelerating payments or requiring larger installment payments.

Even so, you have some control over how the money you use to pay your debts is treated. If you owe multiple debts to one person or company, you can select which debt you will be paying. This prevents the person or organization receiving payment from keeping all debts active or using your money to pay debts you do not think you owe.

Being Sued to Collect Your Debts

A creditor or debt collector may file a lawsuit against you if you do not pay a debt. If this happens, you should consider hiring an attorney. An attorney can assert your rights and claims against a creditor or debtor and help prevent the creditor or debt collector from infringing upon your rights. Even if you chose not to hire an attorney, you should never ignore a legal summons to appear in court. A court hearing is when you must state all your claims and disputes regarding the debt, including the amount of money you actually owe. If a creditor or debt collector is successful in proving that you owe a debt and that you have not paid it within the permitted amount of time, the court will enter a judgment against you for the amount of the debt. The creditor or debt collector may use this court order to require payment of your debt from another party that has control over your funds. This could include a garnishment of your wages or other benefits.

Certain government-provided benefits may not be garnished except to pay delinquent taxes, alimony, child support, or student loans. These exempt benefits include Social Security Benefits, Supplemental Security Income (SSI) Benefits, Veterans' Benefits, Civil Service and Federal Retirement and Disability Benefits, Service Members' Pay, Military Annuities and Survivors' Benefits, Student Assistance, Railroad Retirement Benefits, Merchant Seamen Wages, Longshoremen's and Harbor Workers' Death and Disability Benefits, Foreign Service Retirement and Disability Benefits, Compensation for Injury, Death, or Detention of Employees of U.S. Contractors Outside the U.S., and Federal Emergency Management Agency Federal Disaster Assistance.

Suing Creditors or Debt Collectors

Creditors and debt collectors may break the law and violate your rights. When this happens, you have the right to sue them for damages in state or federal court. However, you may need to act quickly since you only have a limited time to file a lawsuit and your attorney will need time to prepare.

There are many claims you can make against debt collectors and creditors for violating your rights. You can sue debt collectors for a mandatory \$1000 plus all the injuries you received from their actions. Your injuries may include physical injuries caused by emotional distress, invasion of privacy, lost wages, and your payment of money you did not owe to the creditor. A debt collector may also have to pay you for the cost of hiring an attorney and going to court. Massachusetts law allows you to sue debt collectors or creditors who violate state laws. Massachusetts laws and regulations offer broader protection than the Fair Debt Collection Practices Act, and proof of a federal law violation is considered proof that state laws were also violated.

If you decide that you do not want to sue a creditor or debt collector but still believe your rights have been violated, you may report the creditor or debt collector to the Massachusetts Attorney General's Office or the Federal Trade Commission ("FTC"). While the FTC cannot take action against a creditor under the Fair Debt Collection Practices Act, the FTC may still prosecute creditors under the Federal Trade Commission Act.

Regardless of whether you decide to sue a creditor or debt collector for their actions, remember that illegal action by a creditor or debt collector does not mean that you no longer need to pay your debt, although it may provide a legal offset to the original claim.

This article only provides a broad overview of the laws and regulations concerning consumer debt collection activities. In practice, the rules are much more complicated. You may need the assistance of an attorney to protect your rights and make sure you are not cheated by a creditor or debt collector. The Law Offices of David Grossack is knowledgeable in this area and is available to help you protect your rights.

List of Resources and Other References

More about the Federal and State laws governing debt collection activities by debt collectors and creditors may be found through the sources below:

Commonwealth of Massachusetts Attorney General Regulations: Debt Collection Regulations, 940 C.M.R. 7.00, §§7.01-7.11.

(http://www.mass.gov/?pageID=cagoterminal&L=3&L0=Home&L1=Government&L2=AG's+Regulations&sid=Cago&b=terminalcontent&f=government_Regulations_940CMR7&csid=Cago)

Commonwealth of Massachusetts Division of Banks: Conduct of the Business of Debt Collectors and Loan Servicers, 209 CMR 18.00, §§18.01-18.24.

(http://www.mass.gov/?pageID=ocaterminal&L=6&L0=Home&L1=Business&L2=Banking+Industry+Services&L3=Banking+Legal+Resources&L4=Laws+%26+Regulations&L5=Division+of+Banks+Regulations&sid=Eoca&b=terminalcontent&f=dob_209cmr18&csid=Eoca)

Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*, (2006).

(<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre27.pdf>)

Federal Trade Commission (<http://www.ftc.gov>)

General Laws of Massachusetts: Collection Agencies, M.G.L. c. 93, §§ 24-28, 49

(<http://www.mass.gov/legis/laws/mgl/gl-93-toc.htm>)

Massachusetts Consumer Protection Act, M.G.L. c. 93A, s. 1 *et seq.*

(<http://www.mass.gov/legis/laws/mgl/gl-93a-toc.htm>)