

DEBT COLLECTING: THE DO'S AND DON'TS OF COLLECTING MONEY

Prepared and Presented by Stephen B. Elggren

- A. FDCPA CONCERNS - i.e. WHY YOU WANT TO COMPLY
 1. Fines
 2. To whom does the FDCPA apply?
 - a) debt collector
 - b) consumer debt
 - c) consumer
 3. Definitions
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 5. Mini Miranda
 6. Cease & Desist
 7. Validation/Verification
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 10. Statute of Limitations

- B. COMMUNICATION WITH DEBTORS
 1. When in doubt treat as if FDCPA applies

- C. PAYMENT OPTIONS - PRE-SUIT
 1. Promissory Note & Confession of Judgment
 2. Wage Assignment
 3. Post-dated checks
 - a) notice to Debtor: not less than 3 days or more than 10 days

- D. SUIT
 1. Prejudgment payments
 - a) Stipulation with right to judgment
 - b) Stipulation with judgment now
 - c) Default - with or without notice

- E. POST JUDGMENT
 1. Garnishment
 - a) Wage
 - b) Bank
 - c) Accounts receivable
 2. Execution
 3. Debtor Examination/Order to Show Cause/Bench Warrant

- F. BANKRUPTCY
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 3. Chapter 11
 4. Section 523

A FDCPA CONCERNS

A-1 FINES

\$1,000 for each violation, plus attorney fees

A-2 TO WHOM DOES THE FDCPA APPLY?

A-3 DEFINITIONS

- a. Debt collector: one collecting a consumer debt for another
- b. Consumer debt: any obligation of a consumer to pay money owing out of a transaction with which the money, property, insurance or services are primarily for personal family or household purposes.
- c. Consumer: A natural person.

A-4 DEMAND LETTER LANGUAGE - A SAMPLE

The claim by the above-named creditor against you has been placed with this office for collection.

If there is some dispute or difficulty involved, please call us. Unless we can work out a settlement on this account, you can appreciate that we may have to take further action. Therefore, may we hear from you?

Unless you dispute this obligation, or any portion thereof, within thirty days after receipt of this notice, we will assume the obligation is valid. If you notify us in writing within thirty days that the above claim, or any portion thereof, is disputed, we will obtain verification of the claim or a copy of any judgment that may have been entered against you, if any, and will send you such verification or judgment.

Upon your written request within the above thirty day period, we will provide you with the name and address of the original creditor, if the original creditor is different from the current creditor.

This is an attempt to collect a debt or a subrogation claim by a debt collector and any information obtained will be used for that purpose.

A-5 MINI MIRANDA

This is an attempt to collect a debt by a debt collector, and any information obtained will be used for that purpose.

A-6 CEASE & DESIST

Does not prevent filing suit.

A-7 VALIDATION/VERIFICATION - DISPUTES ORAL OR WRITTEN

Validation means nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed, and providing the name and address of the original creditor by mail to the consumer. 15 U.S.C. §1692g (b)

Verification is intended to eliminate debt collectors from pursuing the wrong person or attempting to collect debts which the consumer has already paid.

A-8 VIOLATIONS

a. When Contacting Third Parties/Other People

- Debt collectors failing to identify themselves (only company name), or failing to state that collector is confirming or correcting locating information
- Debt collectors disclosing to third parties that debts are owed
- Contacting any person more than once, unless requested to do so by the third party
- Contacting debtor after knowing debtor is represented by an attorney

b. Prohibited Communication

- Calling Debtor before 8:00 a.m. or after 9:00 p.m., Debtor's time
- Contacting Debtor after Debtor is represented by an attorney (i.e. bankruptcy or any attorney)
- Calling place of employment after debt collector knows employer prohibits calls (after Debtor says, "do not call me at work")
- Contacting Debtor after Debtor, in writing, tells debt collector that Debtor is not going to pay the debt, or Debtor wants collector to cease communications

c. Harassment or Abuse

- Debt collectors harass, oppress, or abuse any person
- Threat of force or criminal means to harm Debtor or Debtor's property
- Using profane language
- Calling repeatedly
- Calling Debtor without disclosing identity ("I am a debt collector attempting to collect a debt")

d. False or Misleading Representations in Communication

- Attempting to collect more than is owed
- Implying debt collector is an attorney when it is not
- Threatening that the nonpayment will result in imprisonment, garnishment and attachment
- Threatening to take any action debt collector does not intend to take or otherwise lying

A-9 30 DAYS TO DISPUTE IN WRITING

- a. What if debtor disputes by calling only?

A-10 STATUTE OF LIMITATIONS

- a. 4 years on open accounts
- b. 6 years with contract

UCA 78B-2-309. Within six years --Mesne profits or real property --Instrument in writing

An action may be brought within six years:

- (1) for the mesne profits of real property;
- (2) upon any contract, obligation, or liability founded upon an instrument in writing, except those mentioned in Section 78B-2-311; and
- (3) to recover fire suppression costs or other damages caused by wildland fire

78B-2-104. Effect of absence from state.

If a cause of action accrues against a person while the person is out of the state, the action may be commenced within the term as limited by this chapter after his return to the state. If after a cause of action accrues the person departs from the state, the time of his absence is not part of the time limited for the commencement of the action.

- c. Tolling 78B-2-104

B. COMMUNICATIONS TO DEBTORS

- a. Do not leave phone messages!

C. PAYMENT OPTIONS - PRE-SUIT

C-1 PROMISSORY NOTE & CONFESSION OF JUDGMENT

C-2 WAGE ASSIGNMENT

C-3 DEFAULT - WITH OR WITHOUT NOTICE

D. SUIT

D-1 PREJUDGMENT PAYMENTS

- a. Stipulation with right to judgment
- b. Stipulation with judgment now
- c. Default - with or without notice

E. POST JUDGMENT

E-1 GARNISHMENT

- a. Wage
- b. Bank
- c. Accounts receivable

E-2 EXECUTION

E-3 DEBTOR EXAMINATION/ORDER TO SHOW CAUSE/BENCH WARRANT

- a. FDCPA notice on all communications even though not required in pleadings

F. BANKRUPTCY - AUTOMATIC STAY

F-1 CHAPTER 7

F-2 CHAPTER 13

F-3 CHAPTER 11

G-4 SECTION 523

- a. Objections to discharge
- b. Deadlines

