DAIGLE LAW OFFICE after hours June / July 2019 | Issue 6

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FAQs about Debt Collectors and the Fair Debt Collection Practices Act



Debt collectors can be relentless and sometimes abusive. But consumers are not without recourse when overzealous debt collectors call. A federal law called the Fair Debt Collection Practices Act regulates the debt collection business and gives consumers much-needed tools to keep debt collectors in line.

The FDCPA has three purposes:

- 1. To protect consumers from abusive debt collection practices.
- 2. To promotes fair debt collection practices.
- 3. To give consumers specific methods to determine whether a debt is valid and to dispute a debt they do not owe.

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HOW DOES THE FDCPA WORK?

The FDCPA sets guidelines for debt collectors that determine how they can legally collect debts, defines the rights of consumers when dealing with debt collectors, and creates strict penalties for debt collectors who violate these guidelines when engaging in debt collection.

WHAT DEBT COLLECTORS ARE COVERED BY THE FDPCA?

The FDCPA has a very broad definition of what a debt collector is. A debt collector is defined as any person who uses any type of instrumentality (phone calls, letters, emails, texts, etc.) in any business where their main purpose is to collect debts owed by another. It also applies to people who regularly collect or attempt to collect, directly or indirectly, debts owed, due to be owed, or asserted to be owed by another person.

WHAT DEBTS ARE COVERED BY THE FDCPA?

The FDCPA restricts its coverage to personal, family, or household transactions, such as credit cards, medical bills, car loans, mortgages, and student loans. Any debts owed by businesses or individuals for reasons related to their business are not included under the FDCPA.

WHAT METHODS MAY A DEBT COLLECTOR USE TO CONTACT ME?

Debt collectors are allowed to contact you by mail, telephone, email, and text message.

CAN A DEBT COLLECTOR CALL ME AT ALL HOURS OF THE DAY OR NIGHT?

Debt collectors are not allowed to contact you at "unusual" or "inconvenient" times. Generally, this means they are allowed to contact you from the hours of 8:00 am to 9:00 pm local time only. If you notify a debt collector that these times are inconvenient (e.g., because you work nights and sleep during the day), the creditor should adjust the calling schedule appropriately.

CAN A DEBT COLLECTOR CALL ME AT HOME OR AT WORK?

Yes, the debt collector can call you at home or at your Job. However, the debt collector may not call your place of employment if the debt collector knows or has reason to know your employer prohibits you from receiving the calls.

CAN I DO ANYTHING TO STOP A DEBT COLLECTOR FROM CONTACTING ME?

Yes, you can send written notice to the debt collector requesting the debt collector to cease all further communication with you regarding the alleged debt. You should send it by certified mail with a return receipt so you have proof the debt collector received it. On receipt of the written notice, the debt collector is legally required to stop all further communications with you with two exceptions. The debt collector can contact you to tell you the collector intends to file a lawsuit or pursue other collector can contact you to tell you that the collector efforts will be halted.

WHAT CAN I DO IF THE DEBT COLLECTOR CONTINUES TO CONTACT ME AFTER I HAVE NOTIFIED THE DEBT COLLECTOR IN WRITING TO STOP?

If the debt collector continues to call and attempting to collect a debt after you have sent a written notice to stop contacting you, you are entitled to sue the debt collector under the FDPCA and collect money for the debt collector's statutory violation.

HOW WILL I KNOW I AM SPEAKING TO A DEBT COLLECTOR?

In every communication with you, a debt collector must:

- 1. Identify himself or herself as a debt collector.
- 2. Tell you that any information obtained during the conversation will be used to assist the collection of the debt.

HOW WILL I KNOW THAT THE DEBT IS LEGITIMATE AND WHAT SHOULD I DO IF I BELIEVE IT ISN'T?

When the debt collector first contacts you or within 5 days thereafter, the debt collector must send you a written notice that states:

- 1. How much you owe.
- 2. The creditor's name.
- 3. Instructions on how to dispute the debt and obtain verification of it if you don't think it is yours.
- A statement that if you don't dispute the debt within 30 days, the debt collector will assume it is valid.

WHAT SHOULD I DO IF I DISPUTE THE DEBT (I.E. I BELIEVE I DON'T OWE IT)?

You should follow the instructions in the written notice from the debt collector. You can send a letter or email to the creditor or to the creditor's attorney disputing the validity of the debt. In addition, you should demand verification of the debt be sent to your address. The collector has 30 days from the date of the notice to provide you with information that proves the validity of the debt. The debt collector can send proof of the original contract, a court judgment, or recent bills to prove you owe the debt.

ARE THERE ANY RESTRICTIONS ON WHAT A DEBT COLLECTOR CAN DO OR SAY IN AN ATTEMPT TO COLLECT THE DEBT. FOR EXAMPLE, CAN A DEBT COLLECTOR HARASS ME, LIE TO ME, OR TRY TO TRICK ME OR INTIMIDATE ME TO GET ME TO PAY?

Debt collectors are prohibited from harassing you, making false or misleading statements, and using unfair practices to attempt to collect a debt. The FDCPA lists specific actions debt collectors are prohibited from taking. They may not:

- Continuously call you multiple times in a row with the intent to agitate, annoy, abuse or harass you.
- Contact you when the debt collector knows that you are represented by an attorney.
- Impersonate an attorney or law officer in an attempt to collect a debt.
- Misrepresent the debt or purposefully deceiving you.
- Place your name on a public list with negative connotations (such as a bad debt list).
- Try to collect more than what is actually owed on the debt.
- Threaten you with legal action or arrest for not paying the debt.
- Use abusive language and/or profanity while communicating with you in relation to collection of the debt.
- Report false information on your credit report.

CAN A DEBT COLLECTOR CALL MY FAMILY, FRIENDS, OR EMPLOYER TO TRY TO COLLECT A DEBT?

No. A debt collector is prohibited from communicating with other people, except your spouse or attorney, about your debt without your permission. While the debt collector can contact third parties to attempt to find your address or phone number, the debt collector cannot communicate about the actual debt. The debt collector must state that he or she is correcting or confirming your location and may identify the debt collection agency only if asked. When communicating with third parties by mail, the debt collector may not use a postcard and may not put anything on the envelope or letter that suggests the communication relates to a debt.

IF I OWE MORE THAN ONE DEBT TO THE SAME CREDITOR AND I WANT TO MAKE A PAYMENT, CAN I CHOOSE HOW MUCH MONEY IS APPLIED TO EACH DEBT?

Yes. When you owe multiple debts to the same creditor, you can specify how the money should be applied to each debt.

WHAT SHOULD I DO IF THE DEBT IS OLD? DO I STILL HAVE TO PAY IT?

Every state has a statute of limitations for the collection of a debt. Once the statute of limitations has run, the debt can no longer be collected. States can differ on the timelines or when the clock starts on the statute of limitations. Certain states only enforce the statute of limitations if you raise it as a defense to a lawsuit.

Other states don't start the clock on the statute of limitation until a payment is missed. Once that payment is missed, the statute of limitations begins. If you make another payment later on down the line, the statute of limitations may start to run again from the beginning.

You should check the law of the state that applies to your debt so you understand how the statute of limitations might apply to your debt. It could be the law of the state where you live; it also could be the state that has jurisdiction over the debt pursuant to the contract or other paperwork you signed about the debt.

CAN A DEBT COLLECTOR CONTACT ME ABOUT A DEBT THAT HAS EXPIRED BECAUSE THE STATUTE OF LIMITATIONS HAS RUN?

Yes, a debt collector can still contact you as the debt is still owed. However, the debt collector will be unable to collect if you choose not to pay because you know the claim is time-barred.

CAN A DEBT COLLECTOR GARNISH MY WAGES?

Yes, but the debt collector must first sue you and get a court judgment against you. Once the debt collector has obtained a judgment, the debt collector has the right to garnish your wages or take money from your bank account to satisfy the debt.

CAN MY FEDERAL BENEFITS BE GARNISHED?

Generally, the answer is no unless they are being garnished for debts related to alimony, child support, taxes, or student loans.

WHERE CAN I REPORT A DEBT COLLECTOR FOR

VIOLATING THE FDCPA?

You can report the debt collector who violates the FDCPA to the following agencies:

- 1. Federal Trade Commission.
- 2. State Attorney's Office.
- 3. Consumer Financial Protection Bureau.

CAN I DO ANYTHING ELSE OUTSIDE OF REPORTING A DEBT COLLECTOR FOR VIOLATING THE FDPCA?

Yes, you can sue the debt collector for violating the FDPCA. You must file suit within a year of the violation. The suit can be filed in state or federal court. If you suffered damages as a result of the violation, you can recover money to compensate you for those damages. In addition, you can recover up to \$1,000 and attorney's fees and court costs.

IF A DEBT COLLECTOR IS FOUND IN VIOLATION OF THE FDPCA, DO I STILL OWE THE DEBT?

Unfortunately, yes. The debt does not disappear despite the violations of law by the debt collector.



SUGAR KISS MELON GAZPACHO

Prep 20 Mins | Cook 10 Mins | Yield 6 Servings

A delicious and refreshing chilled melon and avocado gazpacho. A pomegranate, pepitas and feta cheese garnish balances the sweetness of the soup and provides texture and contrast.

INGREDIENTS

For Soup:

- 1 small shallot, peeled and halved
 1 clove garlic, peeled
 1 Sugar Kiss melon, seeded,
 peeled and cut into large chunks
 1/2 avocado
 1/2 cucumber peeled, seeded and
 cut into large chunks
 Juice from 1/2 lemon
 1 t kosher salt
 1/4 t white pepper
 2 T Spanish Sherry Vinegar
 1/4 cup good quality olive oil
- 2 1/2 ounces pepita seeds
 1 T olive oil
 1/2 t kosher salt
 1/2 t ground cumin
 1/2 t chile powder
 2 ounces crumbled feta

For Garnish:

cheese (optional) 1/2 cup pomegranate seeds



INSTRUCTIONS

For the Soup:

In a large food processor bowl, whirl shallot and garlic until finely minced. Add melon, avocado, cucumber, lemon juice, salt, pepper and vinegar. Whirl until smooth. While the processor is running, gradually add olive oil through the pour tube until incorporated. Taste and adjust seasonings. Refrigerate for at least an hour before serving.

For the Garnish:

Turn the oven on to 350 degrees. Spread the pepita seeds on a baking sheet and toss with olive oil and seasonings. Bake for about 10 minutes until they are golden, shaking them half way through. Store in an airtight container until ready to serve.

Serve the soup with a sprinkling of the seasoned pepitas, some crumbled feta and pomegranate seeds. You can add a drizzle of olive oil if you like.

MAKE IN ADVANCE

Gazpacho gets better with a little resting time so the flavors mellow. So if you have the time, make it a day in advance. I like to make a big batch and eat it all week long.

Simple Ways to get Maximum Value out of your next DOCTOR'S APPOINTMENT

Like almost everyone these days, doctors seem to be short on time. The average visit with a doctor lasts just 20 minutes; if the doctor is behind schedule, you may get even less time. It's no wonder that patients often go home frustrated with the "assembly line" treatment they received, and worried that their specific concerns weren't really heard or addressed.

While there is no easy fix for this common problem, there are some simple things you can do to exercise more control over the situation and ensure you get the maximum value out of the limited time you have with your doctor:

BEFORE YOU GO

1. Schedule the right kind of visit.

Although you may be a bit uncomfortable sharing personal information with the doctor's front office staff, it's important that you accurately convey the reason for your visit. Is it a follow-up to a previous visit? Are you dealing with a short-term, acute issue or a long-term, chronic issue? This information helps to ensure that you are scheduled for an appropriate amount of time. If you schedule your visit online, the same principles apply. Fill out all the scheduling forms and provide complete and accurate information so that you and the doctor's office have the same expectations for your visit. Don't schedule an appointment for a flu shot hoping you will also get a few (or twenty) minutes to talk to the doctor about your recent fatigue and mood swings.

2. Make two lists.

Make two lists to take with you to the appointment: a list of your symptoms and a list of your questions/concerns.

Symptom List

Write down all the symptoms that led you to call the doctor. Be as thorough and specific as you can. For example, if you're experiencing pain, your list should answer these questions: Where is the pain located? Does it radiate? What triggers the pain? What helps to alleviate the pain? When did it start? What is your pain level, on a scale of 1-10?

If your visit is for a chronic condition, consider keeping a "symptom diary" to share with your doctor. A symptom diary can take many forms – a notebook, a daily calendar, a spreadsheet, an electronic journal on your computer or your phone. Any format that allows you to regularly document how you're feeling, on good days as well as bad days, will serve as a symptom diary and will be immensely helpful to you in communicating with your doctor.

Questions/Concerns List

Jot down the questions you want the doctor to answer. Then, prioritize your list and format it into bullet points, to help you stay focused and on-track during your visit. If you are so inclined, you can take this one step further and convert your bullet-list into index cards, with one card for each bullet point. Then, during your appointment, you can write the answer to each question on the back of its card.

3. Know your personal and family health history.

Do any chronic conditions (e.g., diabetes, high blood pressure, heart disease) run in your family? Does your family have a history with a certain form of cancer? Are you allergic to any medications? This is important information for your doctor, so he or she is going to ask you about it. Be ready with an answer.

4. Know the names and dosages of all your medications.

Again, this is critical information for your doctor in making a diagnosis and devising a treatment plan. You can make a list of all your medications or bring your prescription bottles with you, but that can be cumbersome if you're taking several medications. The easiest thing to do is to take a photo of each prescription bottle. This will give the doctor all the information he or she needs. Remember that "medication" includes overthe-counter medications (e.g., ibuprofen) and vitamins and supplements. If you take any of these "medications" regularly, have that information ready.

5. Arrange for a relative or friend to accompany you.

This may not be necessary for all appointments, but if you are dealing with complicated medical issues or are nervous about visiting the doctor, having a friend or relative accompany you can be beneficial for both you and the physician. Your loved one can be a calming presence, helping to ease your anxiety. He or she also can advocate for you during the examination, asking questions you may have forgotten and ensuring that all your concerns are addressed.

ONCE YOU GET THERE

6. Have an honest conversation with the doctor. Begin by describing your symptoms. Use your list to refresh your memory; be specific and succinct; and use your own words (not medical terms you may have learned by Googling your symptoms).

Once you have described your symptoms, it's the doctor's turn to ask questions. Answer these questions honestly. Tell the doctor "the truth, the whole truth and nothing but the truth." If you hold something back because you are embarrassed or frightened, or because you think it's not important or you just want to wish it away, you may end up hurting yourself in the long run. Incomplete information can result in a missed diagnosis or, perhaps worse, the wrong diagnosis. If it's difficult for you to be open and forthcoming with your doctor, let your lists and/or your symptom diary and/or your advocate speak for you. Remember, too, that the doctor is bound by ethical rules of doctor-patient confidentiality. Whatever you tell the doctor in the examination room will stay in the examination room. (You might also take comfort in the fact that any experienced doctor will probably have seen and heard much worse than whatever is troubling you.)

7. Be open to the doctor's diagnosis/treatment plan.

You can find a great deal of valuable information online, but not all of it is current, accurate and reliable. If you did some preliminary medical research prior to your appointment, take care to distinguish your "symptoms" (e.g., fever, stiff neck, swollen glands) from a diagnosis (e.g., meningitis, strep throat, a bad cold) when discussing this with your doctor. Try saying something like, "I looked up my symptoms online and I'm worried that I have [diagnosis]. I've been experiencing [symptoms]. What do you think?" Follow up with, "Why do you think that?" or "What leads you to that conclusion?" Then, keep an open mind. When it comes to your diagnosis and treatment plan, trust the doctor in front of you over Dr. Google. If you have concerns, seek a second opinion from another physician or specialist.

8. Take notes.

The twenty minutes you spend with the doctor will pass quickly, and you are likely to be given a lot of information during that time. Take notes or, if you brought someone with you, have that person take notes. Notes will help you remember the doctor's diagnosis, treatment plan, and any special instructions.

9. Ask questions.

To effectively advocate for yourself, you will need to ask questions during the examination, in addition to the specific questions you wrote down and brought with you.

- If the doctor is using terms you don't understand, you have to speak up. You can say, "I'm sorry, but I'm not following you. Can you explain that one more time?" You can also try repeating the doctor's words, e.g., "You said 'slipped disc.' I don't understand what that means. Can you go over that one more time?" Another effective technique is to rephrase what the doctor said, e.g., "So what you're saying is Is that right?"
- If the doctor prescribes medication, don't just take your Rx slip and go. Ask questions like, "Why am I taking this medication?" "Are there any side-effects?" "Are there any alternatives to this medication?"

EASY,

COST-

EFFECTIVE

WAYS TO

MAKE YOUR

HOME MORE

We know what you're thinking—Earth is a huge planet with billions of people, so how can one person make a difference? While the idea of becoming a more environmentally-conscious person can certainly be daunting, there are plenty of changes you can make to your own home today to help make an impact. And while there are larger-scale projects that may not be as kind to your wallet (such as installing solar panels), don't worrythere are much easier, simpler, and more inexpensive ways to transform your home into an eco-friendly haven. Here are some great tips to help you get started on your environmental journey:

- Grow drought-friendly or native plants in your yard.
- If you have the space, create a compost pile to help reduce trash that ends up in landfills; simply pick a sunny spot in your yard, add all of your kitchen scraps (vegetables and fruits—no animal products) and water your pile every day.
- Nurture indoor house plants this helps improve the air quality in your home.
- When grocery shopping, try to avoid any products that include plastic in their packaging.
- Buy or make your own natural cleaning products (you can make your own by simply using vinegar!).
- Unplug all appliances when not in use, including your TV.
- Buy recycled toilet paper.
- Don't run the water while brushing your teeth (we're all guilty of it sometimes).
- Hang your clothes to dry.
- Keep your curtains open during the day and make natural light your friend.

- Speaking of light, try swapping out all of your lightbulbs for more energy-efficient LED bulbs (Bonus: you'll also save on your electricity bill).
- Upcycle as much as possible! Reuse and repurpose jars and other food containers - you can even get creative and upcycle food containers into planters for all those new air-purifying house plants! Pro-tip: Pinterest is a great resource for upcycling projects.
- Prefer sipping your iced tea through a drinking straw? Invest in reusable straws that can be used both at home and, if you want to go the extra mile, at restaurants, too.
- Try to buy used items as often as possible; become a regular at your local thrift stores, vintage shops, garage sales, and flea markets not only is this eco-friendly (and fun!), but it also helps save a great deal of money on items that you don't necessarily need to buy brand new.
- **Go paperless!** Tired of getting bills in the mail? Well, we can't do anything about the bills themselves (alas, you'll still have to pay them), but most companies do offer the option to go completely paperless and view your statements online.

It's true that no big change happens overnight, but **even the smallest actions can create a ripple effect** throughout the Earth's oceans and forests, leading us towards a more sustainable future. You've read this far down, which means you care about the planet—and that in and of itself is the first step to becoming a more environmentally-conscious person.