

Five Tips to Stop Abusive Debt Collection Practices

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Older consumers who struggle to pay for basic necessities and meet other ongoing financial needs may fall into debt in the New Year. Generally older adults are carrying more debt, including credit card and student loan debt, into retirement than in past decades. One out of every two families headed by adults age 75 or older was in debt in 2016, more than double the rate from thirty years ago.¹ Although older adults are less likely than younger consumers to have debt end up in collection, complaints regarding debt collectors and collection practices are frequently among the top complaints of consumers in this age group.² Most often complaints center on the validity or amount of the debt, improper attempts to collect debt of deceased family members, and abusive communication, including threats to garnish federal benefits or wages, arrest, and criminal prosecution.³

The federal Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. § 1692, et seq., protects consumers from unfair and abusive collection practices. The FDCPA covers collection attorneys, debt buyers, and debt collection agencies collecting consumer debts.⁴ State debt collection statutes may apply similar protections where a creditor is collecting its debt.

Here are five practical tips that advocates working with older adults can remember to help protect their clients from abusive collection practices. Extensive discussions of each tip and sample letters are contained in the resources listed at the end of this article.

1. Obtain additional information about the collector and debt, and dispute invalid debts.

Consumers should verify the legitimacy of the collector before disclosing personal or financial information over the telephone or agreeing to make payments. They can obtain the collector's name and company information. In some states, they can check to see if the collector is licensed. If the consumer does not owe the debt, wants more information regarding the debt, or believes the amount owed is wrong, they may dispute the debt or request verification of the debt by sending a certified letter to the collector. If possible, this letter should be sent within 30 days of receiving the first written communication from the debt collector.

2. Inform collectors that all income and property are exempt. Federal and state law protects certain income and property from seizure. This includes Social Security, SSI, veterans' disability, unemployment, and workers' compensation benefits. Consumers whose income and assets are protected should ask collectors to stop collection on the debt because they are "judgment proof" and confirm the request in writing.

1 According to the Board of Governors of the Federal Reserve System, one out of every two families headed by adults age 75 or older was in debt in 2016, more than double the rate from 1989. Fed. Reserve Bd., 2016 Survey of *Consumer Finances Chartbook* (Sept. 20, 2017), at 837, available at federalreserve.gov/econres/files/BulletinCharts.pdf.

2 Consumer Financial Protection Bureau, *Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt*, at 25 (Jan. 2017), files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf. See also Consumer Financial Protection Bureau, *A Snapshot of Debt Collection Complaints Submitted by Older Consumers*, at 5 (Nov. 2014)(one third of complaints about older consumers are about debt collection).

3 See Consumer Financial Protection Bureau, *A Snapshot of Debt Collection Complaints Submitted by Older Consumers* (Nov. 2014).

4 Debt buyers purchase debt in bulk for pennies on the dollar and attempt to collect the debt, or resell the debt if unsuccessful. While the FDCPA does not cover creditors collecting on their own debt, some states have laws or regulations covering creditor collections.

3. **Stop debt collection communication and harassment.** The most direct strategy to stop collection harassment is to send a “stop contact” or “cease communication” letter. The collector will stop contacting the consumer except for a few contacts allowed by law. Even though the collector stops contacting the consumer, the debt is still owed and the collector may sue. Older adults should keep a careful record of telephone calls, letters, or other communication received after the letter is sent. This will be helpful if the consumer sues the debt collector or files a complaint. Complaints may be filed with the [Consumer Financial Protection Bureau](#) or state attorneys general.
4. **Sue the debt collector.** Consumers can sue for violations of the FDCPA and similar state laws. Under the FDCPA collectors are required to disclose that they are attempting to collect a debt, and send consumers a written notice with information on the debt. In addition, the FDCPA prohibits certain conduct, including, but not limited to:
 - » Communicating with consumers who mailed in a written cease communication request (some exceptions apply).
 - » Calling before 8:00 a.m. or after 9:00 p.m.
 - » Using obscene words, racial slurs, insulting remarks, or threats of violence.
 - » Stating that nonpayment will result in arrest, garnishment, or seizure of property or wages, unless such actions are lawful, and unless the collector fully intends to take such action.
 - » Creating the false impression that the collector is an affiliate or agent of the government.
5. **Consider filing for bankruptcy.** Consumers who are financially over-extended should consult a bankruptcy attorney to discuss whether bankruptcy is appropriate for them.

Consumers may also employ other strategies such as negotiating with the original creditor or collector for a discounted payoff. It is helpful to offer a lump sum payment. Whatever strategy is employed to reduce the amount or severity of the debt, if the collector files a lawsuit, it is important for the consumer to respond and file any necessary paperwork by the deadline and appear in court on the appropriate day to avoid a default judgment. Advocates can help older adults connect with legal assistance by finding a local legal program through the [Eldercare Locator](#). Legal assistance is important for helping older adults navigate the judicial process when filing for bankruptcy.

Additional Resources

- National Consumer Law Center: [Stopping Debt Collection Harassment](#), June 25, 2018
- NCLER: [Legal Basics: Debt Collection Protections for Older Consumers](#)
- National Consumer Law Center, *Collection Action* (4th ed. 2017).
- National Consumer Law Center, *Guide to Surviving Debt* (50th Ann. Ed.).
- Consumer Financial Protection Bureau, [5 Sample Letters to Send to Debt Collectors](#)

Please contact ConsultNCLER@acl.hhs.gov for free case consultation assistance. Sign up for our email list and access more resources at NCLER.acl.gov.