

Legal Basics: Debt Collection Protections for Older Consumers

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National Consumer Law Center

The National Consumer Law Center uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults and people of color. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

Key Lessons

1. **Debt is a common challenge for older consumers.** In recent years, the percentage of older Americans who are in debt has increased as has the amount of indebtedness.
2. **Debt is a legal issue as well as a financial one.** The federal Fair Debt Collection Practices Act protects consumers from abusive practices by collection attorneys, debt buyers, and debt collection agencies who are collecting consumer debts.
3. **Attorneys can employ several strategies to assist clients dealing with different debt situations.** These strategies include learning more about or disputing the alleged debt, filing complaints about the debt collector, and ceasing collection communications.
4. **Federal and state laws protect certain income and property against debt collection.** Debt collectors may not be able to take SSI, Social Security, public assistance, veterans' disability, unemployment and workers' compensation benefits.

Debt and Types of Debt Collectors

Debt is a pervasive part of life in the United States. In 2016, one in three Americans with a credit report had at least one debt in collection, and the median debt in collection was \$1,450.¹ Although older consumers are less likely to have a debt in collection,² in recent years, the percentage of older adults who are in debt has increased³ as has the amount of indebtedness.⁴

A recent national survey of consumer experiences with debt collection found that nearly one in five respondents age 62 or older reported being contacted by a debt collector or creditor in the prior year.⁵ Of the older consumers who had been contacted about a debt, 59% cited an issue with a debt in collection, 40%

1 Urban Institute, Debt in America: An Interactive Map (Dec. 6, 2017), apps.urban.org/features/debt-interactive-map.

2 Breno Braga, et al., Urban Institute, Local Conditions and Debt in Collections (June 2016), urban.org/research/publication/local-conditions-and-debt-collections.

3 Fed. Reserve Bd., 2016 Survey of Consumer Finances Chartbook, at 837 (Sept. 20, 2017), federalreserve.gov/econres/files/BulletinCharts.pdf.

4 Meta Brown, Federal Reserve Bank of New York, The Graying of American Debt (Feb. 12, 2016), newyorkfed.org/medialibrary/media/newsevents/mediaadvisory/2016/Graying-of-American-Debt-02122016.pdf.

5 Consumer Financial Protection Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt, 17 (Jan. 2017), files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

disputed a debt, and 20% had been sued on a debt.⁶

Some of the parties commonly involved in debt collection include:

- **Collection Attorney:** Works in private law firms or in-house for other debt collectors and uses a variety of methods to collect debts, including filing lawsuits in state courts.
- **Debt Buyer:** Purchases portfolios of debt for pennies on the dollar, attempts to collect the debt in-house or by hiring debt collection agencies, and may resell the debt if collection is unsuccessful.
- **Debt Collection Agency:** Collects debts for debt buyers and original creditors and is typically paid a percentage of the amount collected.
- **Original Creditor:** Extends credit or provides goods or services on credit. If the consumer defaults on payment(s), original creditors may attempt to collect debts in-house, place the debts with a debt collection agency, or sell the debts to a debt buyer.

For example, once a consumer misses a payment on an account, the original creditor may first attempt to remind the consumer about the missed payment using in-house collection agents. If this is unsuccessful, the account may be transferred to a debt collection agency. After a period of time, the account will be sent back to the original creditor if collection efforts are unsuccessful. The original creditor may then place the account with another debt collection agency, send it to a collection attorney, or sell it to a debt buyer. Similarly, a debt buyer may attempt to collect the account itself, place it with a debt collection agency, send it to a collection attorney, or sell it to another debt buyer.

Special Considerations for Older Adults

Older adults may acquire debt for different reasons or use different repayment strategies than younger adults. For example, one study found that consumers 50 or older were more likely to have credit card debt related to car repair, home repairs, or because they helped pay the debts of relatives.⁷

Older adults may also be more likely to be subject to certain collection tactics such as efforts to collect the debt of a deceased family member⁸ or attempts to get seniors to make debt payments from exempt government benefits. Older adults may also be targets for financial fraud,⁹ including debt collection scams such as false claims that the consumer owes a debt on a loan that was never issued.¹⁰

Fair Debt Collection Practices Act

Debt is a legal issue as well as a financial one. The federal Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. §1692, et seq.) covers collection attorneys, debt buyers,¹¹ and debt collection agencies who are collecting consumer debts. While the FDCPA does not generally cover original creditors collecting their own debts, some states have laws or regulations covering creditor collections.

⁶ *Id.* at 25.

⁷ Amy Traud, Demos, In the Red: Older Americans and Credit Card Debt, AARP Public Policy Institute (Jan. 2013), available at: aarp.org/content/dam/aarp/research/public_policy_institute/security/2013/older-americans-and-credit-card-debt-AARP-ppi-sec.pdf.

⁸ *See*, Consumer Financial Protection Bureau, A snapshot of debt collection complaints submitted by older consumers (Nov. 2014). *See also*, Federal Trade Commission, Debts and Deceased Relatives (July 2011), available at: consumer.ftc.gov/articles/0081-debts-and-deceased-relatives.

⁹ *See, e.g.*, AARP, Fraud Watch Network, aarp.org/money/scams-fraud/fraud-watch-network.

¹⁰ *See, e.g.*, Federal Trade Commission, FTC Obtains Court Order Against Scheme that Sold Fake Payday Loan Debt Portfolios (Oct. 17, 2017).

¹¹ *See*, April Kuehnhoff, National Consumer Law Center, FDCPA Coverage of Debt Buyers: Implications of Supreme Court's June 12 Ruling in Henson (July 12, 2017), library.nclc.org/fdcpa-coverage-debt-buyers-implications-supreme-court%E2%80%99s-june-12-ruling-henson.

The FDCPA requires debt collectors to do certain things, including:

- Disclosing that they are debt collectors.
- Sending the consumer a written notice containing basic information about the debt.

The FDCPA also prohibits specific conduct by debt collectors, such as:

- Communicating with consumers who mail in written cease communication requests (some exceptions apply).
- Calling before 8:00 a.m. or after 9:00 p.m.
- Discussing the debt with (most) other people.
- Threatening or using violence.
- Using obscene language.
- Threatening to take action that cannot legally be taken.
- Collecting unauthorized amounts.
- Collecting before verification of debt is provided (where dispute was timely and in writing).
- Suing consumers far away from where they live or entered into the contract.

The FDCPA also contains the following general prohibitions:

- Harassing, oppressing, or abusing consumers.
- Using false, deceptive, or misleading representations.
- Using unfair or unconscionable means to collect a debt.

Strategies for Dealing with Debt

Every consumer's financial situation is different. The paragraphs below briefly discuss different strategies for dealing with debt. Different strategies will be appropriate in different situations.

Investigate the debt collector

- **Confirm that the debt collector is legitimate.** Ask for the caller's name, company, phone number, and business address. Ask if they are licensed in your state (not all states license debt collectors). Confirm the information before making any payments or providing sensitive personal information.¹²

Learn more about alleged debt(s)

- **Ask for more information about the alleged debt.** Frequently, consumers need more details about an alleged debt because, for example, they do not recognize the name of the debt collector or the amount being collected. Consumers can ask for more information by sending a letter to the debt collector.¹³ Send the letter by certified mail and keep a copy. If possible, send the letter within 30 days of first receiving a written notice from the debt collector.
- **Review credit reports.** Consumers can get a free copy of their credit report¹⁴ and dispute any incorrect information with the credit bureau and the debt collector. Reviewing credit reports also alerts consumers to the presence of other outstanding debts and is crucial for financial planning.

¹² See also, Consumer Financial Protection Bureau, How can I verify whether or not a debt collector is legitimate? (Aug. 14, 2017), consumerfinance.gov/ask-cfpb/how-can-i-verify-whether-or-not-a-debt-collector-is-legitimate-en-1699.

¹³ See, Consumer Financial Protection Bureau, Debt Collection, "5 sample letters to send debt collectors", consumerfinance.gov/consumer-tools/debt-collection (links are featured at the top of the page).

¹⁴ annualcreditreport.com

- **Consider filing for bankruptcy.** Bankruptcy is a powerful tool. Consumers with multiple debts may wish to consult a bankruptcy attorney to discuss whether this would be the best option for them.¹⁵

Dispute the debt or file a complaint

- **Dispute the alleged debt.** Consumers may disagree that they owe the debt because, for example, the debt collector contacted the wrong person, they never had an account with the original creditor, or they believe the amount is wrong. Consumers can dispute the debt by sending a letter to the debt collector.¹⁶ Send the letter by certified mail and keep a copy. If possible, send the letter within 30 days of first receiving a written notice from the debt collector.
- **File a complaint about the collector.** Consumers can submit complaints about debt collectors to the Consumer Financial Protection Bureau¹⁷ or the state's Attorney General. The Consumer Financial Protection Bureau forwards a copy of the complaint to the company and works to get a response for the consumer.

Stop collection harassment

- **Stop debt collection communications.** By writing a letter to the collector to tell it to stop all contact, consumers can stop all but a few contacts allowed by law.¹⁸ Send the letter by certified mail and keep a copy. Note that collectors may still be able to sue to collect the alleged debt.
- **Sue the debt collector.** If collectors break consumer protection laws like the Fair Debt Collection Practices Act in their attempts to collect a debt, consumers can sue them. (See below for information regarding organizations that provide legal assistance.)

Communicate with the debt collector

- **Tell the collector if all income and property are exempt.** Federal and state laws protect certain income and property from garnishment.¹⁹ For example, collectors may not be able to take SSI, Social Security, public assistance, veterans' disability, unemployment, and workers' compensation benefits. "Judgment proof" consumers should tell debt collectors if these types of benefits are their only source of income and ask them to stop collection on the debt.
- **Negotiate with the collector.** If the debt has not yet been transferred to a debt collection agency or sold to a debt buyer, the consumer may be able to reach an agreement with the original creditor that prevents additional debt collection. Alternatively, it may be possible to negotiate a discount with a debt collector or debt buyer. Typically, greater discounts are available for lump sum payment than for monthly payment plans.

Raise legal defenses in court

- **Respond to any collection lawsuits.** If the consumer is sued, it is important to file any necessary response in court by the deadline and appear in court on the appropriate day to avoid default judgments and raise any defenses or counterclaims. The consumer may have legal defenses to the alleged debt and may wish to consult with an attorney about the lawsuit. (See below for information regarding organizations that provide legal assistance.)

15 For more information on bankruptcy protections for older consumers, see: ncler.acl.gov/pdf/NCLER-Legal-Basics-Bankruptcy-Protections-for-Older-Consumers.pdf.

16 See, *supra*, n.13 "5 sample letters to send debt collectors."

17 consumerfinance.gov/complaint or 855-411-2372.

18 See, *supra*, n.13 "5 sample letters to send debt collectors."

19 See, *e.g.*, Federal Trade Commission, Garnishing Federal Benefits, consumer.ftc.gov/articles/0114-garnishing-federal-benefits.

Conclusion

Debts are frequently the result of illness, injury, death of a provider, divorce, or job loss. A financial crisis can happen to anyone, but it should not define someone's life. Regardless of the reason for accruing the debt, consumer protection laws like the Fair Debt Collection Practices Act exist to protect consumers from abusive collection practices.

Additional Resources

- **Federal Law**
 - » Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq.)
- **Federal Agencies**
 - » Consumer Financial Protection Bureau
 - Consumer Complaints: consumerfinance.gov/complaint
 - Debt Collection: consumerfinance.gov/consumer-tools/debt-collection
 - Sample Letters: consumerfinance.gov/ask-cfpb/what-should-i-do-when-a-debt-collector-contacts-me-en-1695
 - » Federal Trade Commission
 - Dealing with Debt: consumer.ftc.gov/topics/dealing-debt
 - Debts and Deceased Relatives: consumer.ftc.gov/articles/0081-debts-and-deceased-relatives
 - Garnishing Federal Benefits: consumer.ftc.gov/articles/0114-garnishing-federal-benefits
- **State Agencies**
 - » State Attorneys General may have resources about debt collection, including details about any additional state law protections.
 - » Some states also have licensing requirements for debt collectors and may publish lists of licensed debt collectors in your state.
- **Legal Assistance**
 - » American Bar Association, Free Legal Help: americanbar.org/groups/legal_services/flh-home/flh-free-legal-help.html
 - » Legal Services Corporation, Find Legal Aid: lsc.gov/what-legal-aid/find-legal-aid
 - » National Association of Consumer Advocates, Find an Attorney: consumeradvocates.org/find-an-attorney
 - » National Association of Consumer Bankruptcy Attorneys, Find an Attorney: network.nacba.org/advanced-search
- **Advocacy Organizations**
 - » Center for Responsible Lending, Debt Collection & Settlement: responsiblelending.org/issues/debt-collection-settlement
 - » Consumer Action, Debt Collection Publications: consumer-action.org/publications/list/C428
 - » National Association of Consumer Advocates, Debt Collection: consumeradvocates.org/for-consumers/debt-collection

- » National Consumer Law Center, Debt Collection: nclc.org/issues/debt-collection.html
- **National Consumer Law Center Publications**
 - » Brochures for Older Consumers: nclc.org/for-consumers/brochures-for-older-consumers.html
 - » Collection Actions: library.nclc.org/ca
 - » Fair Debt Collection: library.nclc.org/FDC
 - » Guide to Surviving Debt: library.nclc.org/node/184511

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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