

Debt Collection

“While creditors have an indisputable right to seek payment on outstanding debts, the law prohibits the use of fraudulent and abusive collection tactics. Unfortunately, many people don’t know these tactics are illegal and, therefore, don’t report them. This brochure will help you understand your rights under Texas law and federal law.”

“Although most debt collectors operate in an ethical manner, some resort to abusive or fraudulent tactics to collect on a past-due account. Tactics such as disturbing a debtor’s sleep, bothering a person at work, calling neighbors, and threatening violence are prohibited under both Texas law and Federal law.”

Texas Attorney General

If You Owe a Debt

A consumer having difficulty paying a debt can contact the creditor before the bill goes to a collector. Sometimes the creditor will refinance or otherwise modify the agreement rather than pay a debt collector. If not, the debtor has certain rights.

Don’t Pay Extra

It is unlawful for a debt collector to attempt to collect more than the amount originally agreed upon- whether the agreement was in writing or not. However, the debt may be increased by the addition of attorney’s fees, investigation fees, service fees, collection fees or other fees if a written contract authorizes the additional charges.

If You Disagree

If you dispute an item in the file a debt collector has on you, you should give the debt collector written notice. The debt collector must provide you with the necessary forms for the written notice, and must help you fill out the forms if you request it. The debt collector has 30 days after receiving your written request to determine whether or not the disputed item is correct. If it is incorrect, it must be corrected. The debt collector must notify anyone who has already received a report containing the incorrect item. If, at the end of 30 days, the debt collector has not been able to determine whether the item is correct or not, he or she must make the change you requested and notify anyone who received a report containing the incorrect item. If it is later determined that the item was correct after all, you must be notified and collection efforts may be continued.

Harassment is Prohibited

State law prohibits the use of harassment and abusive collection tactics. It is illegal for any debt collector to:

- threaten violence or other criminal acts;
- use profane or obscene language;
- falsely accuse the consumer of fraud or other crimes;
- threaten arrest of the consumer, or repossession or other seizure of property without proper court proceedings;
- use the telephone to harass debtors by calling anonymously or making repeated or continuous calls;
- make collect telephone calls without disclosing the true name of the caller before the charges are accepted.

Fraud and Deception are Illegal

The use of fraudulent or deceptive practices is also prohibited, including:

- using a false name or identification;
- misrepresenting the amount of the debt or its judicial status;

- sending documents to a debtor that falsely appear to be from a court or other official agency;
- failing to identify who holds the debt;
- misrepresenting the nature of the services rendered by the collection agency or the collector;
- falsely representing that the collector has information or something of value in order to discover information about the consumer.

Your Home and Wages are Protected

Some collectors will threaten to foreclose on homesteads or to garnish wages. In Texas, a homestead cannot be taken to pay a debt except for debts taken for the purchase of the home, for home improvements, for home equity loans or to pay court-ordered child support, back taxes, and defaulted student loans.

Violators Can be Punished

Violators of the Texas Debt Collection Act are subject to criminal and civil penalties. Consumers who think they have been harassed or deceived may seek injunctions and damages against the debt collectors.

These actions are also violations of the Texas Deceptive Trade

Practices/Consumer Protection Act which gives the Attorney General the authority to take action in the public interest.

Federal Law Regulates Collection Agencies

Texas statues cover actions by anyone trying to collect a consumer debt. The federal law-The Fair Debt Collection Practices Act-applies only to collectors working for professional debt collection agencies and attorneys hired to collect a debt.

It is similar to Texas law, but also prohibits:

- calls to work if the collector has reason to know the employer does not permit such calls
- calls before 8 a. m. or after 9 p. m. unless the collector knows such times are more convenient for the debtor;
- “unfair or unconscionable means to collect or attempt to collect a debt;”
- any conduct to harass, oppress, or abuse.

If you are being subjected to harassing, abusive, or fraudulent debt collection tactics by professional debt collectors, and you want to stop further contact with you, notify the collector in writing. Keep a copy of your letter and send the original to the debt collector by certified mail.

DEBT COLLECTION

Are You Being Harassed by Creditors?

Do They Have Rules to Follow?

Provided by

OFFICE OF THE CONSTABLE
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