

# DEBT COLLECTION

## Fair Debt Collection Acts

Debt collection continues to be a principal subject of many consumer complaints received by federal and state consumer protection agencies. The Fair Debt Collection Practices Act (FDCPA), which was passed in 1977, is one of several credit laws enforced by the Commission. Specifically, the FDCPA is intended to prevent abusive, deceptive, and unfair debt collection practices in the marketplace.

The Fair Debt Collection Practices Act (FDCPA) applies to those who collect debts owed to creditors for personal, family and household debts, including car loans, mortgages, charge accounts and money owed for medical bills. A debt collector is someone hired to collect money owed by you.

The federal law prohibits a debt collector from engaging in the following activities:

- Contact you at unreasonable times or places, for example, before 8AM or after 9 PM., unless you agree, or at work if you tell the debt collector your employer disapproves.
- Contact you after you write a letter to the collection agency telling them to stop, except to notify you if the debt collector or creditor intends to take some specific action.
- Contact your friends, relatives, employer or others, except to find out where you live and work, or tell such people that you owe money.
- Harass you by threatening to harm you or your reputation, use of profane language or repeated telephone calls.
- Make any false statement, including that you will be arrested.
- Threaten to have money deducted from your paycheck or to sue you, unless the collection agency or creditor actually intends to do so and it is legal to do so.

If you are contacted by a debt collector, you have a right to a written notice, sent within 5 days after you are first contacted, telling you the amount owed, the name of the creditor, and what action to take if you believe you do not owe the money.

If you do not owe the money or do not owe the amount claimed, contact the creditor in writing and send a copy to the debt collection agency with a letter telling them not to contact you.

If you do owe the money or part of it, contact the creditor to arrange for payment.

To file a complaint, contact either [Governor Pataki's New York State Consumer Protection Board](#) or the [Federal Trade Commission](#).

## Co-Signers

Car dealers and furniture and appliance retailers often require co-signers in connection with credit transactions for marginal income or subprime consumers. Frequently, the co-signer enters into the obligation without a full understanding of his or her potential liability, thinking he or she is merely acting as a reference for a friend or family member rather than as a legal guarantor.

As a guarantor or surety, the co-signer is fully responsible for payment on the debt regardless of who holds title or whether the creditor has exhausted or has even begun to assert its legal remedies against the consumer.<sup>1</sup> A 1983 addition to the General Obligations Law requires the creditor to give a co-signer a completed copy of the contract or other document describing the obligation. Prior to signing the contract, the co-signer must be given written disclosure, in at least 10-point type, attached to or part of the contract, explaining that:

- The co-signer is agreeing to pay the debt although he or she may not receive the goods or services.
- The co-signer may be sued on the obligation, even if the consumer is able to pay.
- The co-signer may also be liable for additional fees including finance and delinquency charges, attorney's fees, and court costs.<sup>2</sup>

A creditor's failure to comply with these requirements releases the co-signer as a guarantor. A Federal Trade Commission Rule prescribes a similar notice to co-signers and declares it a deceptive trade practice for a lender or seller to misrepresent or fail to inform a co-signer of the nature and extent of his or her liability.<sup>3</sup>

---

<sup>1</sup> See, N.Y. General Obligation Law § 15-701; N.Y. Uniform Commercial Code § 3-416.

<sup>2</sup> See, N.Y. General Obligations Law § 15-702.

<sup>3</sup> See, 16 CFR § 444.3.