

DEBT COLLECTIONS

If you're behind in paying your bills, or a creditor's records mistakenly make it appear that you are, a debt collector may be contacting you. The Federal Trade Commission (FTC), the nation's consumer protection agency, enforces the Fair Debt Collection Practices Act (FDCPA), which prohibits debt collectors from using abusive, unfair, or deceptive practices to collect from you. Under the FDCPA, a debt collector is someone who regularly collects debts owed to others. This includes collection agencies, lawyers who collect debts on a regular basis, and companies that buy delinquent debts and then try to collect them. Here are some questions and answers about your rights under the Act.

What types of debts are covered?

The Act covers personal, family, and household debts, including money you owe on a personal credit card account, an auto loan, a medical bill, and your mortgage. The FDCPA doesn't cover debts you incurred to run a business.

Can a debt collector contact me any time or any place?

No. A debt collector may not contact you at inconvenient times or places, such as before 8 in the morning or after 9 at night, unless you agree to it. And collectors may not contact you at work if they're told (orally or in writing) that you're not allowed to get calls there.

Debt collectors can contact you by phone, letter, email or text message to collect a debt, as long as they follow the rules and disclose that they are debt collectors. No matter how they communicate with you, it's against the law for a debt collector to pretend to be someone else — like an attorney or government agency — or to harass, threaten or deceive you.

How can I stop a debt collector from contacting me?

If a collector contacts you about a debt, you may want to talk to them at least once to see if you can resolve the matter — even if you don't think you owe the debt, can't repay it immediately, or think that the collector is contacting you by mistake. If you decide after contacting the debt collector that you don't want the collector to contact you again, tell the collector — in writing — to stop contacting you. Here's how to do that:

Make a copy of your letter. Send the original by certified mail, and pay for a "return receipt" so you'll be able to document what the collector received. Once the collector receives your letter, they may not contact you again, with two exceptions: a collector can contact you to tell you there will be no further contact or to let you know that they or the creditor intend to take a specific action, like filing a lawsuit. Sending such a letter to a debt collector you owe money to does not get rid of the debt, but it should stop the contact. The creditor or the debt collector still can sue you to collect the debt.

SOUTH DAKOTA OFFICE OF ATTORNEY GENERAL

**CONSUMER
PROTECTION**

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This handout is for informational purposes and should not be construed as legal advice or as a policy of the South Dakota Attorney General. If you need advice on a particular issue, you should consult a private attorney or other experts.

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Can a debt collector contact anyone else about my debt?

If an attorney is representing you about the debt, the debt collector must contact the attorney, rather than you. If you don't have an attorney, a collector may contact other people – but only to find out your address, your home phone number, and where you work. Collectors usually are prohibited from contacting third parties more than once. Other than to obtain this location information about you, a debt collector generally is not permitted to discuss your debt with anyone other than you, your spouse, or your attorney.

What does the debt collector have to tell me about the debt?

Every collector must send you a written “validation notice” telling you how much money you owe within five days after they first contact you. This notice also must include the name of the creditor to whom you owe the money, and how to proceed if you don't think you owe the money.

Can a debt collector keep contacting me if I don't think I owe any money?

If you send the debt collector a letter stating that you don't owe any or all of the money, or asking for verification of the debt, that collector must stop contacting you. You have to send that letter within 30 days after you receive the validation notice. But a collector can begin contacting you again if it sends you written verification of the debt, like a copy of a bill for the amount you owe.

What practices are off limits for debt collectors?

Harassment. Debt collectors may not harass, oppress, or abuse you or any third parties they contact. For example, they may not:

- use threats of violence or harm;
- publish a list of names of people who refuse to pay their debts (but they can give this information to the credit reporting companies);
- use obscene or profane language; or
- repeatedly use the phone to annoy someone.

False statements. Debt collectors may not lie when they are trying to collect a debt. For example, they may not:

- falsely claim that they are attorneys or government representatives;
- falsely claim that you have committed a crime;
- falsely represent that they operate or work for a credit reporting company;
- misrepresent the amount you owe;
- indicate that papers they send you are legal forms if they aren't; or
- indicate that papers they send to you aren't legal forms if they are.

Debt collectors also are prohibited from saying that:

- you will be arrested if you don't pay your debt;
- they'll seize, garnish, attach, or sell your property or wages unless they are permitted by law to take the action and intend to do so; or
- legal action will be taken against you, if doing so would be illegal or if they don't intend to take the action.

Debt collectors may not:

- give false credit information about you to anyone, including a credit reporting company;
- send you anything that looks like an official document from a court or government agency if it isn't; or
- use a false company name.

Unfair practices. Debt collectors may not engage in unfair practices when they try to collect a debt. For example, they may not:

- try to collect any interest, fee, or other charge on top of the amount you owe unless the contract that created your debt – or your state law – allows the charge;
- deposit a post-dated check early;
- take or threaten to take your property unless it can be done legally; or
- contact you by postcard.

Can I control which debts my payments apply to?

Yes. If a debt collector is trying to collect more than one debt from you, the collector must apply any payment you make to the debt you select. Equally important, a debt collector may not apply a payment to a debt you don't think you owe.

Can a debt collector garnish my bank account or my wages?

If you don't pay a debt, a creditor or its debt collector generally can sue you to collect. If they win, the court will enter a judgment against you. The judgment states the amount of money you owe, and allows the creditor or collector to get a garnishment order against you, directing a third party, like your bank, to turn over funds from your account to pay the debt.

Wage garnishment happens when your employer withholds part of your compensation to pay your debts. Your wages usually can be garnished only as the result of a court order. Don't ignore a lawsuit summons. If you do, you lose the opportunity to fight a wage garnishment.

Can federal benefits be garnished?

Many federal benefits are exempt from garnishment, including:

- Social Security Benefits
- Supplemental Security Income (SSI) Benefits
- Veterans' Benefits
- Civil Service and Federal Retirement and Disability Benefits
- Military Annuities and Survivors' Benefits
- Federal Emergency Management Agency Federal Disaster Assistance

Federal benefits may be garnished under certain circumstances, including to pay delinquent taxes, alimony, child support, or student loans.

Do I have any recourse if I think a debt collector has violated the law?

You have the right to sue a collector in a state or federal court within one year from the date the law was violated. If you win, the judge can require the collector to pay you for any damages you can prove you suffered because of the illegal collection practices, like lost wages and medical bills. The judge can require the debt collector to pay you up to \$1,000, even if you can't prove that you suffered actual damages. You also can be

reimbursed for your attorney's fees and court costs. A group of people also may sue a debt collector as part of a class action lawsuit and recover money for damages up to \$500,000, or one percent of the collector's net worth, whichever amount is lower. Even if a debt collector violates the FDCPA in trying to collect a debt, the debt does not go away if you owe it.

What should I do if a debt collector sues me?

If a debt collector files a lawsuit against you to collect a debt, respond to the lawsuit, either personally or through your lawyer, by the date specified in the court papers to preserve your rights.

Where do I report a debt collector for an alleged violation?

Report any problems you have with a debt collector to the SD Office of Attorney General, Division of Consumer Protection www.consumer.sd.gov or 1-800-300-1986. You can also report this type of complaint to the [Federal Trade Commission](#), and the [Consumer Financial Protection Bureau](#).