

The Collector Chronicle

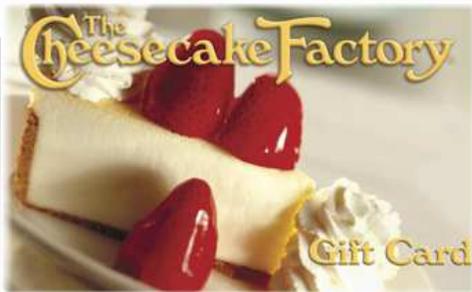
NORTH AMERICAN RECOVERY

October 2011

Utah's Collection Authority

LAST MONTH'S LUCKY WINNER

The lucky winner of our client prize for September is Physicians Group of Arizona in Phoenix. We work with Elisabeth Duhon and they have been using our agency since 2009. Congratulations!! We will be sending Elisabeth a gift certificate to The Cheesecake Factory.



THIS MONTH'S PRIZE

This month we're giving away a gift certificate to P.F. Chang's! Each client that assigns accounts in the month of October will be entered into a drawing. At the end of the month we'll draw a name, and if it's yours, you'll win the gift certificate!

***Don't miss out on your chance to win;
send new accounts in October!
Good luck!!***



THE FAIR DEBT COLLECTION PRACTICES ACT

BY DAVID J. SAXTON

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The opinions expressed herein are for informational purposes only. The author is not interpreting the law or giving legal advice. Please consult your attorney if you have questions about the FDCPA or any other legal matter.

The Fair Debt Collection Practices Act (FDCPA). What does it mean to you? Unless you're in the debt collection industry, probably nothing; however, if you're a bill collector you think about the FDCPA every day. You see, the Fair Debt Collection Practices Act (FDCPA) is the federal law that says what a bill collector can and can't do (with a greater emphasis on the *can't* part).

The FDCPA was passed in 1977 in an attempt to establish a code of conduct for bill collectors and level the playing field for those agencies who conducted themselves professionally. While the majority of collection agencies weren't harassing debtors, there were, and still are, a handful of less-than-reputable bill collectors who inflict a great amount of distress on debtors because of their unscrupulous methods. The FDCPA was created to give consumers a way to fight back if a bill collector didn't treat them with the respect they deserve.

Okay, so how does the FDCPA help consumers? Well, it sets guidelines collectors must follow. There are seven major sections:

- Acquisition of Location Information
- Communication Regarding Collections
- Harassment or Abuse
- False or Misleading Representations
- Unfair Practices
- Validation of a Debt
- Legal Action by a Debt Collector

Let's take a look at each section.

Acquisition of Location Information

Location information is defined as a debtor's home address, home phone number, and the name of their employer. This section governs the actions of a debt collector while "skiptracing." When a collector is speaking with someone other than the debtor (known as a third-party), the collector must refrain from telling that person about the bill and can only ask for location information. This helps preserve the debtor's privacy. This section also states if a debtor is represented by an attorney, the collector must talk to the attorney—not the debtor.

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Communication Regarding Collections

This section restricts collection calls to the hours between 8:00 A.M. and 9:00 P.M. (debtor's local time). It also says the collector cannot contact the consumer at any unusual time or place or a time or place known, or which should be known, to be inconvenient to the consumer.

This section addresses the biggest misconception most consumers have: collection calls at work. It says a consumer cannot be contacted *"at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication."* So, a collector **can** call a debtor at work unless he or she has reason to believe the employer prohibits such calls.

Another important part of this section deals with ceasing communication. *"If a consumer notifies a debt collector in writing that the consumer refuses to pay or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt."* This may sound like a great way for debtors to avoid dealing with collectors, but it's not. If a debtor tells us to "cease communication" we're not prevented from suing him or her, so that's what we do. We simply instruct our attorney to file a lawsuit and collect the account through the courts.

Harassment or Abuse

An interesting note about the FDCPA is it does not define "harassment." It does, however, provide a few examples of things that would be considered harassing or abusive. They are: (1) threatening violence; (2) using obscene or profane language; (3) causing the telephone to ring repeatedly or continuously with the intent to annoy, abuse, or harass.

False or Misleading Representations

This section essentially makes it against the law to lie. That may sound strange, but 35 years ago collectors would say or do almost anything when collecting a debt.

This section also says collectors must tell a

debtor: *"This is an attempt to collect a debt. Any information obtained will be used for that purpose."* on the first contact with the debtor. Then, on subsequent contacts, the collector must say: *"This is a communication from a debt collector."*

On the surface this doesn't seem like a big deal; however, it means that every single time we talk to a debtor we must repeat one of these phrases—even if we just spoke with the debtor five minutes ago. This has become known in the collection industry as reciting the Mini-Miranda. The Mini-Miranda must also be included on every letter and every copy of a document we send to a debtor.

Unfair Practices

This section defines certain things as unfair. For example, it says a collector cannot collect any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

Validation of a Debt

This section provides protection for both the consumer and the collector by ensuring the debtor is being held accountable for the correct amount and the collector is collecting from the right person.

Collectors are required to send a written notice to the consumer within five days of the initial contact notifying the consumer of the amount of the debt; the name of the creditor; their right to dispute the validity of the debt, or any portion thereof, within thirty days after receipt of the notice or the debt will be assumed to be valid by the debt collector; and if the consumer disputes the debt, the agency will provide verification of the debt.

Legal Action by a Debt Collector

This section defines the jurisdiction in which a collector can sue a debtor as: where he or she lives, where the agreement was signed, or where the debtor owns property.

Well, that about covers it. As long as a collector abides by these main points they will be okay. And since our entire staff continually receives training on the FDCPA, you can count on our collectors following the law when they work your accounts.



The *Collector Chronicle* is published monthly by NORTH AMERICAN RECOVERY for prospective and current clients. Please direct questions or comments to Dave Saxton at the address or number listed below. *Edited by Bryce Packham.*

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