

The Fair Debt Collection Practices Act was enacted to balance the debt collector's legitimate right to repayment with the debtor's right to be free from abusive, unfair, and deceptive collection tactics. The law applies only to professional debt collectors and lawyers, which the act defines as persons who are engaged primarily in collecting debts owed to someone else. The act covers personal debts such as mortgages, medical bills, credit card debt, auto loans, and rent-to-own furniture debts, but not business debt.

Locating the Consumer

Debt collectors may ask other people about a consumer's address, phone number, or place of work. Collectors cannot say they work for a debt collection agency unless specifically asked, and cannot indicate that the consumer owes a debt. Collectors cannot communicate by postcard, and any communication they do send cannot indicate that they are in the debt collection business or that the communication relates to the collection of a debt.

Communication About the Debt

In the section of the law dealing with communications about the debt, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator. Debt collectors may not communicate with a consumer about collection of a debt at any unusual time or place, or at a time or place inconvenient to the consumer. A convenient time is ordinarily assumed to be between 8 a.m. and 9 p.m., unless the collectors obtained the consumer's prior consent or a court order. Debt collectors are prohibited from contacting consumers at their place of employment if they know or have reason to believe that the consumer's employer prohibits its employees from such communications.

Once a debt collector knows the consumer is represented by an attorney about the debt, the debt collector

must not communicate with anyone other than the attorney, unless the attorney fails to respond within a reasonable period of time to the collector's communication.

The only third parties a debt collector may communicate with (other than for locating the consumer) are the consumer's lawyer, a consumer reporting agency, the creditor, the creditor's attorney, and the debt collector's own attorney. Communications with other persons are permitted only if the consumer consents, if a court permits such communication, or if communication is necessary to enforce a judgment already granted by a court.

Disputes

If the consumer disputes the debt or requests the name of the original creditor, the debt collector must stop further collection action until verification of the debt has been obtained or the consumer has been provided with the original creditor's name and address.

Consumers have the right to notify a debt collector in writing that they are disputing the debt, refusing to pay the debt, and/or terminating any communication with the collector. To do this, consumers are advised to make a copy of their letter and send the letter by certified mail with a return receipt confirmation. If the consumer does this, the collector is not to communicate with the consumer any further except under the following circumstances:

1. To inform the consumer that the debt collector is giving up further efforts to communicate.
2. To notify the consumer about the creditor's plan to take a specific action, such as filing a lawsuit.

Harassment, Unfair Practices, and False Statements

The law prohibits debt collectors from using harassment, unfair practices, or false statements in the collection of a debt.

¹ Family Resource Management Specialist, Department of Extension Home Economics, New Mexico State University, Las Cruces.

Harassment includes:

- Using or threatening the use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- Publishing a list of names of persons who refuse to settle their debts, except to credit reporting agencies or companies.
- Using obscene or profane language.
- Using the telephone to annoy the consumer or his or her family.

Unfair practices include:

- Depositing a post-dated check early.
- Contacting consumers by postcard.
- Attempting to collect interest payment, fees, or other charges, unless stipulated in the contract or state law.
- Taking away or threatening to take the consumer's property, unless done legally.

False statements include:

- Debt collectors falsely claiming that they are attorneys or government representatives.
- Falsely implying that consumers have committed a crime that leads to arrest or imprisonment.
- Debt collectors falsely indicating that they own or work for a consumer reporting agency.
- Misrepresenting the amount of debt.
- Knowingly providing false information about the legal nature of related forms and other paperwork.

How to Complain About Violation of Fair Debt Collection Practices

The Federal Trade Commission is responsible for enforcing the Fair Debt Collection Practices Act. In New Mexico, the Attorney General's Office is responsible for the state law regarding fair debt collection practices. If you feel that debt collectors have violated the Fair Debt Collection Practices Act, please contact the New Mexico Attorney General's Office or the Federal Trade Commission.

The Consumer Protection Division Attorney General's Office

P.O. Drawer 1508
Santa Fe, NM 87504
505-827-6060
Toll free: 1-800-678-1508
Fax: 505-827-6685

Federal Trade Commission

Telephone: 1-877-FTC-HELP (382-4357)
TTY: 1-866-653-4261

Besides reporting to these agencies, consumers have the right to sue debt collectors in a state or federal court one year from the date when the violation occurred. In addition to the actual loss, the court may award up to \$1,000 in additional damages, costs, and attorney's fees. However, if the consumer is found to have brought the suit in bad faith, he or she may have to pay the collector's attorney's fees.

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