

# The Fair Debt Collections Practices Act

If you currently owe money to a creditor, you may be getting calls from third-party debt collection agencies. However, you may be unaware that there is a law that regulates how these collection agencies may operate. The Fair Debt Collections Practices Act, or FDCPA, sets up rules for everything from how often a collection agency may contact you to what the collection agency representative may say to you. If a collection agency violates these rules, you could sue them for these violations and be rewarded a cash settlement. Here is a brief list of FDCPA rules.

## I. What is the Fair Debt Collections Practices Act (FDCPA)?

- a. The FDCPA is the federal law that governs the way third party debt collectors operate.
- b. The FDCPA only governs third party debt collectors. This means that only collection agencies and law firms that collect debt are governed by this law and NOT the original creditor such as Chase, MBNA, and Discover etc.
- c. Many states have their own laws that are similar to the FDCPA.

## II. What is considered a violation? *(This is just a short list of the major violations and is not intended to be exhaustive)*

- a. Threat of a lawsuit when there is no actual intent to sue at the time the threat is made.
  - i. There is case law that states that if the balance is so low and a lawsuit is not feasible then you can assume there is no intent to sue. Generally, this occurs when the debt is less than \$250.
  - ii. Also, if you are dealing with an out of state collection agency, generally you can assume that they do not have anyone licensed to practice law in your state. Therefore they can not legally file suit at the time the threat is made.
- b. Threats to take an action that cannot legally be taken.

**i.** Example: Threats to garnish a debtor's wages when the debtor lives in a state that does not allow wage garnishment.

**ii.** Example: Threats to seize a house or car when the debtor lives in a homestead state.

**iii.** Example: Threats to have debtor arrested for the debt.

**c.** Third party disclosure.

**i.** The only people to whom a debt collector can disclose the fact that the debtor owes money is the debtor, their spouse or their attorney.

**ii.** It is also a violation to leave a message on a voicemail or answering machine disclosing the fact that a debt is owed.

**d.** False representation or implication of attorney involvement.

**e.** Communication with a debtor after the collection agency has reason to believe that the debtor is represented by an attorney.

**f.** Communication with a debtor at their place of employment after the collection agency has reason to believe that such calls are not permitted.

**g.** Communication with a debtor before 8am and/or after 9pm.

**h.** Abuse on the phone, calling the debtor names, calling the debtor a liar, calling multiple times in a day (5 or more without the debtors consent) or just being generally harassing.

### **III. What type of recovery can you expect?**

**a.** A typical settlement is between \$1000 and \$5000 depending on the violation.

**b.** If the debtor has any actual damages then this will increase the settlement.

**c.** There is a 1 year statute of limitations on these types of cases. This means that if you have a claim against a collection agency, you must file your lawsuit within one year from the date the violation occurred.

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