

Debt Collection Practices

The Fair Debt Collection Act (FDCPA) provides comprehensive protections for consumers against abusive practices by debt collectors and debt collection agencies. [15 U.S.C. § 1692 et seq.](#) Minnesota law also contains protections against abusive debt collection practices.

To Whom Does the FDCPA Apply?

The FDCPA generally applies to third party debt collectors, defined as persons which (1) use means of interstate commerce (e.g., the telephone or the mail) in a business whose main purpose is to collect debts; and (2) regularly collect debts owed to another (e.g., a third party). [15 U.S.C. § 1692a\(6\).](#)

The FDCPA does not apply to first party debt collectors – companies or individuals collecting their own debts (for example, a department store that contacts a consumer to collect a debt to that store.) [15 U.S.C. § 1692a\(6\).](#)

However, the FDCPA does apply to attorneys collecting debts for others. [Heintz v. Jenkins, 514 U.S. 291 \(1995\).](#)

Prohibited Practices

Among other things, the FDCPA prohibits a debt collection agency from:

Engaging in harassing, oppressive, or abusive conduct. Examples include use of profane or abusive language, repeated or continuous phone calls, or the use or threat of violence or criminal conduct. [15 U.S.C. §§ 1692d and 1692e.](#)

Using false, deceptive, or misleading statements or means in connection with the collection of any debt. [15 U.S.C. § 1692e.](#)

Threatening to take any action that cannot be legally taken or that is not intended to be taken, for example, if a debt collection agency threatens to sue a particular debtor if the agency never sues debtor or has no relation with a lawyer who is licensed to practice in the state where the debtor lives [15 U.S.C. § 1692e.](#)

Using unfair or unconscionable means to collect or attempt to collect any debt. [15 U.S.C. § 1692f.](#)

Threatening to repossess property if the debt collection agency cannot legally do so; for example, if the consumer owes on an unsecured credit card and the debt collector threatens to repossess the consumer's car. [15 U.S.C. § 1692f.](#)

Calling the debtor before 8:00 a.m. or after 9:00 p.m. (in the time zone where the consumer lives). [15 U.S.C. § 1692c.](#)

Calling a consumer if the debt collection agency knows the consumer is represented by a lawyer concerning the debt. [15 U.S.C. § 1692c.](#)

Calling a debtor's workplace if the debt collection agency knows that the employer prohibits such calls. [15 U.S.C. § 1692c](#).

Calling and telling friends, neighbors or relatives that the consumer owes money on a debt. [15 U.S.C. § 1692b](#).

When calling a friend, neighbor or relative, revealing that the call is from a collection agency, but refusing to reveal the name of the collection agency if expressly asked by the friend, neighbor or relative name of the collection agency if expressly asked. [15 U.S.C. § 1692b](#).

Failing to send written notice to the consumer, within five days of the initial contact, that the consumer has the right to dispute the debt. [15 U.S.C. § 1692g](#).

Contacting the consumer more than one additional time after the consumer notifies the collection agency in writing that he or she does not wish to be contacted again in connection with the debt. [15 U.S.C. § 1692c](#).

Remedies

Collectors who violate the FDCPA are liable to consumers or any other persons that have been victimized (e.g., friends, neighbors or relatives) for any actual damages caused as well as "statutory" damages of \$1,000 for a violation of the Act. [15 U.S.C. § 1692k\(a\)](#). However, claims must be brought within one year of the date the violation occurred; in other words, there is a one-year statute of limitations. [15 U.S.C. § 1692k\(d\)](#).

State Law

Minnesota also has a debt collection statute, requiring agencies collecting debts for others to obtain a license from the Minnesota Department of Commerce. [Minn. Stat. § 332.33 \(2008\)](#).

Out-of-state collectors may seek an exemption from the licensing requirement, but only if they:

1. are licensed in another state with substantially similar licensing requirements;
2. agree to be subject to the jurisdiction Minnesota courts; and
3. agree to comply with Minnesota's debt collections law. [Minn. Stat. § 332.335 \(2008\)](#).

Minnesota's debt collection law also prohibits many abusive practices, some of which are similar to the federal law, but some of which are unique to the state. See [Minn. Stat. § 332.27 \(2008\)](#).

In addition, Minnesota's debt collection protections – and, by incorporation, protections under the FDCPA – apply to first party payday lenders and non-exempt commercial tax preparers collecting their own debts as first party collectors. See [Minn. Stat. § 47.601, subd. 3](#) (payday lenders) and [Minn. Stat. § 270C.445, subd. 3](#) (commercial tax preparers).

*Prepared by: Ron Elwood, Staff Attorney, Legal Services Advocacy Project
Midtown Commons, Suite 101, 2324 University Avenue West, Saint Paul, MN 55114
651-222-3749 ext. 109*