

DEBT COLLECTION

What is Debt Collection?

When you owe a debt to a person or a business, that entity is called a creditor. The creditor can refer your account to a third party debt collector. Debt collectors collect debts on behalf of creditors. Many landlords use debt collection as a means of collecting unpaid rent, money owed for damage to the property, or other charges.

Debt collection for past due rent and eviction are separate legal actions. If you have past due rent, are still living in your rental unit, and the landlord sends a debt of past rent owed to a debt collector, you can still be evicted for failure to pay rent.

Debt Collectors are governed by a federal law called the Fair Debt Collection Practices Act which mandates that they do not engage in unfair or harassing collection procedures. Although many consumers are scared by debt collection tactics, protecting yourself is simple if you know the rules.

Recognize What Debt Collectors are Prohibited from Doing: Unfair Debt Collection Practices

The debt collector must follow federal law as to what are fair collection practices. The debt collector cannot be harassing or inappropriate. The following are some examples of things a debt collector cannot do:

- (1) Contact another person about your debt, unless the person is a co-signor on the debt (such as a guarantor or co-signor of a lease) or if the debt collector is trying to locate you and doesn't tell the other person that they are a debt collector.
- (2) Communicate with you at inconvenient times or locations (e.g. the middle of the night, in the hospital, etc.). The general rule is that they can contact you at home between the hours of 8:00 a.m. and 9:00 p.m. your local time.
- (3) Make obscene, derogatory, or insulting remarks.
- (4) Make harassing or abusive threats.
- (5) Publish your name.
- (6) Falsely represent the amount, character, or legal status of a debt.
- (7) Falsely state or imply a lawyer's involvement.
- (8) Threaten arrest, loss of child custody, or welfare benefits.
- (9) Threaten any illegal action.
- (10) Threaten any legal action that the debt collector has no intent of pursuing.
- (11) Fail to disclose in communications that it is from a debt collector. However, the big exception here is the outside of envelopes: the debt collector cannot indicate on the outside of envelopes that the communication is from a debt collector. Likewise, a debt collector cannot communicate through postcards.

What Must a Debt Collector Do?

The first oral and written communications from a debt collector must include a warning that they are attempting to collect a debt and any information will be used for that purpose. If a collector calls you, keep a record of all conversations, including the date and time, name of the caller, name of the company, and substance of the conversation.

Be cautious about disclosing any personal information about yourself or your finances, such as the name of your bank or employer. If the caller uses offensive language or tactics, demand that they speak politely, and end the conversation if they do not. Keep all written records, including notices, bills, letters, envelopes, and canceled checks or money orders.

Within five (5) days after you are contacted by a debt collector, the collector must send you a written notice telling you the amount of the debt, the name of the creditor to whom you owe the debt, and what action to take if you believe you do not owe the money. In addition, the notice must contain a prominent statement that if you dispute the debt the collector will investigate and verify that the debt is accurate, and that if you do not dispute the debt within 30 days the debt will be presumed valid by the debt collector; and a statement notifying you of your right to request the name and address of the original creditor.



How Can You Dispute Alleged Debt or Stop Debt Collection Practices?

If you don't believe that you owe all or part of the debt alleged, you should write a letter disputing that debt (or any portion of the debt) within 30 days of your receipt of the notice of the debt. Your letter may explain why you do not feel you owe the debt, and you should also request verification of this debt. Until the debt collector verifies your debt, s/he cannot continue to try to collect on it. However, once your debt is verified (and the verification sent to you), then the collection process can start again.

If you do not dispute the debt in writing within 30 days of your receiving notice of the debt, the creditor may presume that the debt is valid. However, a failure to dispute the debt in writing within 30 days cannot be used against you as an admission of liability in court.

You can stop all routine collection efforts, by sending a cease and desist letter to the debt collector. What this means is that once the debt collector receives the cease and desist letter, they will not be able to contact you in any form, except in very limited circumstances. If you decide to do this, send the letter certified mail return receipt requested and keep a copy of the letter for your records. Please note, that after you send the cease and desist letter, you can still be sued on the debt and your credit report may still show the debt as unpaid.

Unless you write a letter requesting that the debt collector stop contacting you regarding the debt, the debt collector will probably continue to contact you in an attempt to get you to agree to pay the debt. However, the bottom line is that the debt collector ultimately has three options:

(1) Report your debt to a credit agency.

See our packet entitled "Credit Reports" for more information.

(2) Sue you for the debt owed.

If this happens, you will have a chance to defend yourself in court and explain why you don't think you owe the debt. You can also bring all your counterclaims against the creditor. For instance, if your landlord is the creditor, you could bring counterclaims for anything arising out of your tenancy such as rent abatement for failure to make repairs, etc. It is best to seek legal advice if you are being sued.

(3) Have the creditor stop doing business with you.

This applies to cases where the creditor is a store or other business.

If you think you are being subjected to unfair debt collection practices, you should contact an attorney.

THIS INFORMATIONAL PACKET REFERS TO OHIO LAW AND DOES NOT CONSTITUTE LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, YOU MUST CONTACT AN ATTORNEY. THE LAW MAY HAVE CHANGED SINCE THE DATE OF THIS PUBLICATION. 12/07

LETTER DISPUTING DEBT

Date: _____
Debt Collection Company: _____
Debt Collector's Address: _____
City/State/Zip Code: _____
Attn: _____

Dear _____ (Debt Collector):

I am writing to dispute the bill you are attempting to collect regarding account number _____ - _____. I am disputing the debt because _____
_____ (state reason and attach any necessary documentation).

You have indicated that I owe _____ (dollar amount) to _____ (creditor). I am disputing _____ (dollar amount) as invalid, and request that you supply verification of the debt, pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692g(b). I am also asking that the creditor reinvestigate the debt.

While this alleged debt is being disputed all collection activity on this account should cease, until a copy of the verification of the debt, including but not limited to, a copy of the signed contract and complete statement of account including an itemization with a detailed explanation of the charges is sent to me.

Please be advised that your failure to comply with my requests could lead to liability under 15 U.S.C. § 1692k, under which I may be entitled to actual damages, court costs, attorney's fees, plus an additional damage amount not to exceed \$1,000.00.

Thank you for your prompt attention to this matter.

Sincerely,

Signature: _____
Name: _____
Address: _____

cc: copy retained for my records
copy to creditor

CEASE AND DESIST LETTER

Date: _____

Debt Collection Company: _____

Debt Collector's Address: _____

City/State/Zip Code: _____

Attn: _____

Dear _____ (Debt Collector):

I am writing to you regarding account number _____ - _____.

I am requesting that you cease communications with me regarding the disputed debt, in accordance with 15 U.S.C. § 1692c(c). I expect no further contact from you.

Please be advised that your failure to comply with my requests could lead to liability under 15 U.S.C. § 1692k, under which I may be entitled to actual damages, court costs, attorney's fees, plus an additional damage amount not to exceed \$1,000.00.

Thank you for your prompt attention to this matter.

Sincerely,

Signature: _____

Name: _____

Address: _____

cc: copy retained for my records
copy to creditor