

CONSUMER DEBT AND CO-SIGNING



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INTRODUCTION

This pamphlet is intended to provide a brief overview of the law and procedure which governs your rights regarding personal debt problems. It is not a fully comprehensive text and if you need more detailed information, we encourage you to contact legal counsel. If you need help in this area, don't immediately file for bankruptcy. The best option is Consumer Credit Counseling, which can help you work out a debt repayment plan. Their address is:

National Foundation for Consumer Credit Counseling
8611 2nd Avenue, Suite 100
Silver Spring, MD 20910
(301) 589-5600

FAIR DEBT COLLECTIONS PRACTICES ACT

The Fair Debt Collections Practices Act (FDCPA) prohibits certain methods of debt collection. This law only protects debtors from unfair practices; it does not erase any legitimate debts you owe. Here are some commonly asked questions and answers regarding your rights under the FDCPA.

Q. Is A Debt Collector The Same As A Creditor?

No, a debt collector is anyone, other than your creditor or your creditor's attorney, who regularly collects debts for others. Your creditors will typically contact you by phone or letter about delinquent payments. Once your payments are 30-60 days late, the creditor may turn your account over to its lawyer or collection agency. The lawyer or agency are often paid a commission on the amount of debt they are able to collect for the creditor.

Q. What Debts Are Covered?

Any obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services at issue are used primarily for personal family and household purposes.

Q. How Can A Debt Collector Contact Me?

In person, by mail, by telephone, or by telegram. However, you cannot be contacted at inconvenient or unusual times or places. "Convenient" is presumed to be between 8 a.m. and 9 p.m. at your location. You cannot be contacted at work if your employer (i.e.; military supervisor or commander) disapproves. If the debt collector knows that you are represented by an attorney, he cannot contact you directly.

Q. Can I Prevent A Debt Collector From Contacting Me?

You can stop future contact by writing a letter to the collection agency telling them to stop contacting you (be sure to include your account number and state that you demand they stop contacting you per the FDCPA). You can also accomplish this by telling them that you refuse to pay the debt. Once you have done this, the debt collector cannot contact you again except to notify you that they intend to invoke a specific remedy. This remedy must be one that the creditor or debt collector usually takes.

The debt collector also can't contact you if you send him a letter saying you do not owe the money within 30 days after you are first

contacted. However, he can begin collection actions again if you are sent proof of the debt, such as a copy of the bill.

Q. Can The Collector Notify Third Parties About My Debt?

Debt collectors can contact third parties for debt collection assistance only when: (1) the debtor has given prior consent directly to the collector; (2) the collector has obtained a court order permitting the contact; or (3) the contact is reasonably necessary to achieve a post-judgment judicial remedy.

Other than these circumstances, the collector is very limited in who he can contact about your debt. If you have an attorney, the collector cannot contact anyone but that attorney. If you do not have an attorney, the collector can contact other people but only to find out where you live or work. When contacting people for this purpose, the collector generally can only contact them once and he must identify himself and state that he is trying to confirm or correct your location. He must refrain from mentioning the debt and cannot tell anyone other than you and your attorney that you owe money.

Q. What Are The Responsibilities Of The Debt Collector?

Within 5 days of first contact, the debt collector must send you a written notice telling you the amount of money you owe, the name of the creditor you owe it to, and what to do if you don't feel you owe the debt.

Q. What Tactics Of The Debt Collector Are Prohibited?

Debt collectors cannot harass, oppress, or abuse any person. They cannot use threats of violence or harm to property or reputation, publish a list of consumers who refuse to pay their debts (except to a credit bureau), use obscene or profane language, repeatedly use the telephone to harass someone, telephone people without identifying themselves, or advertise your debts. Debt collectors cannot use any false, deceptive, or misleading representations when collecting a debt. They cannot falsely imply that they are an attorney or government representative, that you have committed a crime, that they operate or work for a credit bureau, misrepresent the amount of the debt, indicate that papers being sent are legal forms when they are not (and vice versa).

Collectors are prohibited from saying that you will be arrested if you do not pay your debt; that they will seize/garnish/attach/sell your property or wages unless the collector intends to do so and it is legal, or that actions will be taken against you that cannot legally be taken. Collectors cannot give false credit information about you to anyone, send you anything that looks like an official document that may be sent by a federal or state court or government or use any false name.

Debt collectors cannot use unfair or unconscionable means to collect any debt. For example, they cannot collect any amount greater than your debt unless allowed by law, deposit a post-dated check before the date on the check, make you accept collect calls or telegrams, take or threaten to take your property unless it can be done legally, contact you by postcard or put anything on an envelope other than the collector's name and address (even the name shouldn't be used if it shows that the letter is about debt collection).

Q. What Can I Do If A Collector Breaks The Law?

You have the right to sue the collector in a state or federal court within 1 year from the date of the violation. If you win, you may recover money from the damage you suffered. Court costs and attorney fees can also be recovered.

You can also contact state and federal agencies in addition to pursuing private action. A violation of the FDCPA is deemed to be an unfair and deceptive act or practice in violation of the Federal Trade Commission Act. Therefore, the FTC could pursue action. You can contact the main FTC office at <http://www.ftc.gov>. In addition, many states have their own debt collection laws. Check with your state Attorney General's office to determine your rights under state law.

BILLING ERRORS – SEE THE CONSUMER PROTECTION AND FRAUD LEGAL ASSISTANCE HANDOUT

FAIR CREDIT REPORTING ACT

An error on your credit report can keep you from being able to get the loan you want, buy a house, or obtain a credit card. Complete accuracy is needed because of the importance of these reports. The Fair Credit Reporting Act (FCRA/15 U.S.C. § 1681) is intended to protect consumers from having inaccurate information circulated, in order to protect the reputation of the consumer.

The FCRA requires credit reporting agencies to adopt reasonable procedures in obtaining information which is fair and equitable to the consumer with regard to the confidentiality, accuracy, relevancy, and proper utilization of this information. Reasonable procedures of credit reporting agencies to update records have been interpreted by courts to mean *what a reasonably prudent person would do under the circumstances*. The test the court uses involves balancing potential harm from the inaccuracy against the burden on the credit reporting agency of safeguarding against such inaccuracy. Therefore, a credit reporting agency is not strictly liable for the dissemination of any inaccurate information, but only must demonstrate a duty of *reasonable care*.

Practically speaking, you have a right under federal law to challenge items on your credit report. The credit bureau then has a reasonable period of time, usually interpreted as 30 days to decide whether that item should be removed. The credit reporting agency usually forwards the protest to the credit grantor. If the credit grantor reaffirms the information, the credit bureau almost always sides with the credit grantor.

There are three major credit bureaus - Equifax, TRW, and Trans Union - and they don't share information. So even if you correct an error with one, you will have to do the same for the other two. Therefore, we suggest you obtain a copy of all three credit reports six months before you apply for a home loan. An error on your credit report can take months to clean up. The credit reporting agencies are: Equifax Information Service - www.equifax.com; Trans Union - <http://www.transunion.com/>; and Experian - www.experian.com.

CO-SIGNING A LOAN

Co-signing a loan is serious business. Some studies show that ¾ of co-signers of finance company loans are asked to repay the loan. When you are asked to co-sign, you are being asked to take a risk that a professional lender will not take. Think about it. The lender would not need a co-signer if the borrower were a good risk.

If you do co-sign and your friend or relative misses a payment, the lender can collect from you right away without pursuing the borrower first. And the amount you owe may be increased—by late charges or by legal fees - if the lender decides to sue to collect. If the lender wins the case, he or she may be able to take your wages and property. Do not be pressured into co-signing. Consider your decision carefully—co-signing may not be a good idea.

Despite these risks, there may be times when you want to co-sign. Perhaps your son or daughter needs a first loan, or a close friend is facing repossession, court action, or otherwise needs help. Here are a few things to consider before you co-sign:

1. Be sure you can afford to pay the loan. If you are asked to pay and cannot, you could be sued or your credit record could be damaged.

2. Consider carefully before you pledge your property, automobile, or furniture to secure the loan. If the borrower defaults, you could lose these possessions.

3. Ask the lender to establish the specific amount of money that you might owe. The lender does not have to do this, but some will if asked. You may also be able to negotiate the specific terms of your debt. For example, you may agree to pay the principal balance on the loan, but not late charges, court costs, or attorney's fees. In this case, ask the lender to include a statement in the contract like this: "The co-signer will be responsible only for the principal balance on this loan at the time of default."

4. Ask the lender to agree, in writing, to notify you if the borrower misses a payment. Notification should come before a late charge is added, or before the loan is "accelerated" (when the whole loan must be repaid at once). This way you will have time to deal with the problem or make back payments without having to repay the whole amount.

5. Make sure you get copies of all important papers signed by the borrower: the loan contract; the Truth-in-Lending Disclosure Statement; and any warranties for products purchased if it is a credit sale. You may need these if there is a dispute between the borrower and the seller.

To ensure that co-signers are aware of the liability they may be incurring, the Federal Trade Commission requires that all co-signers be given the following notice:

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility. You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which may increase this amount. The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, the fact may become a part of your credit record.

However, this notice is not the contract that makes you liable for the debt.

BANKRUPTCY – SEE THE BANKRUPTCY LEGAL ASSISTANCE HANDOUT

Sources:

<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre18.shtm>;
<http://www.consumer.ftc.gov/articles/0215-cosigning-loan>.

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