

“Respect for the rights of others means peace.”

These famous words of Mexican President Benito Juarez are both poetic and powerful. At times we may get caught up in the defense of others, but at the cost of our own rights. Knowing your consumer rights is the first step to security, both financially and peace of mind.

Many of us incur debts that for one reason or another we are unable to pay. When this occurs, it is important to know the process and procedure of the debt collection universe. To begin, let's discuss what a collector cannot do. It is illegal for a collector to abuse or harass you. A collector or collection attorney is not allowed to yell, scream, swear or verbally abuse you. Many collectors will threaten consumers with outlandish claims. For example, I have represented individuals that have been threatened to have their house sold, their pet stolen and even for them personally to be deported. These threats are despicable and illegal under the Fair Debt Collection Practices Act (FDCPA). The FDCPA is a federal law that protects consumers from abuse and harassment by collectors and collection attorneys. But to truly understand what a debt collector cannot do, we must know what they are legally capable of doing.

Let's look at the life of a debt. A debt is commonly sent to a debt collector three months after it is not paid. Debt collectors normally send debt collection letters to a consumer requesting payment of the debt. The letters may be accompanied by telephone calls from the debt collection agency. According to the FDCPA, after the initial communication – whether by telephone or mail – the debt collector must send a “validation notice.” The validation notice states that a consumer has the right to dispute the debt and request verification from the collector within 30 days from receiving the validation notice. Often, consumers do not dispute the debt or request verification, but that is a common mistake. A simple letter that states that you “dispute the debt and request verification” is all that is required and a collector must stop all collection efforts until the debt has been validated. It is illegal for a collector to send another letter or call a consumer on the telephone prior to verifying the debt. When a debt is verified, the next step is continued collection. Although you may receive several letters and telephone calls, frequently after three letters a collector may seek to resolve the matter in Court.

When a collector sues you in Court, you will be served with a Summons and Complaint either personally or by mail. Many people are confused by the Summons as it will not contain a court file number and, in fact, will commonly not be filed with the Court. Nonetheless, it is very important that you act quickly if you are served with a Summons and Complaint. A Summons generally is a one-page document that states that “you have 20 days not including the date of service to answer the Complaint.” This means that if you do not serve upon the debt collector an Answer that admits or denies each and every paragraph in the Complaint within 20 days, you will be in default and the collector will be able to obtain from the Court for a Default Judgment. If this happens, you will have a judgment against you which can negatively affect your credit report.

The next step in the collection process is for the consumer to be contacted by a collector and served with a request for disclosure of assets which requires you to send a financial disclosure statement stating where you work and the location of any bank accounts. If you are served with these documents, it is very important that you fill them out completely and return mail them to the collector. If you do not do so, the collector may file additional papers with the Court and have a warrant issued for your arrest. The next step is garnishment of your paycheck – up to 25% - and of your bank accounts. Frequently, consumers are alerted that the debt collector has a judgment against them when the bank informs them that their bank account is frozen. You have the right to claim that money is exempt from garnishment by filing an Exemption Notice listing the assets and/or income not subject to collection, such as social security, pensions or public benefits. The collector may disagree and may file an objection. If that happens, you must file a request for a hearing within 10 days or the collector may still collect the money. That is the life of a debt, in a nutshell.

There are many ways to resolve debt issues. As discussed earlier, any abuse or harassment is illegal and you can sue a debt collector without having to pay attorney fees. In many cases, the debt will become part of the settlement or even erased. But when there is no abuse or harassment, negotiation is usually the best tool. The best time to negotiate is with the original creditor or even with the debt collector, prior to receiving a Summons and Complaint. When you have debt collection issues, seek the advice of legal aid, Volunteer Lawyers Network or our law office, Martineau, Gonko & Vavreck. Remember, respect for the rights of others begins at home.