

## DEBT COLLECTION CASE CHECKLIST

1. Does the consumer actually owe the debt?

Yes. **Proceed to Step #2.**

No. Advise regarding:

how to dispute debt with creditor;

right to dispute validity if reported to credit reporting agency; and/or

importance of filing an Answer if served a Complaint

2. Can the consumer pay the debt?

Yes. Advise regarding:

self help (request lower interest, payment plan - explain one-time payment benefit versus monthly payment plan, etc.)

advise which debts to pay first

refer to Lutheran Social Services (612-879-5358) or

Family Means (651-789-4014) for credit counseling

No. **Proceed to Step #3.**

3. Is the consumer collection-proof? Consult table below.

Yes. Advise to send letter to creditor if not served, Letter with proof of protected income if served. **Proceed to Step #4.**

No. Refer low-income clients for possible pro bono bankruptcy to Volunteer Lawyers Network (612-752-6677) or the University of Minnesota School of Law Bankruptcy Clinic (612-625-5515); refer others to private bar.

### INCOME EXEMPTIONS

<p><b>Social Security</b> (42 USCA §407), <b>SSI</b> (42 USCA §1383(d)(1)), <b>Railroad Retirement</b> (45 USCA §231m(a)), <b>Veteran's Benefits</b> (38 USCA §5301), <b>Civil Service Retirement Benefits</b> (5 USCA §8346), <b>Minnesota Supplemental Assistance (MSA), General Assistance (GA), Minnesota Family Investment Program (MFIP)</b> (Minn. Stat. §550.37, subd. 14), <b>PERA Pension</b> (Minn. Stat. §353.15, subd. 1), <b>Workman's Compensation</b> (Minn. Stat. §176.175, subd. 14), <b>Child Support</b></p>	<p>Complete protection as long as traceable to source. Advise client to send copy of bank statement showing source of funds if received by direct deposit, if no non-exempt deposits are shown on statement. If exempt funds are mixed with non-exempt funds, use First In First Out (FIFO) principle to determine if garnishment is proper.</p>
<p><b>Wages</b> (Minn. Stat. §§571.922; 550.136, subd. 3; and 550.37)</p>	<p>1. Generally, 40 times the federal minimum hourly wage times the number of work weeks in the pay period (approximately \$261 per week until 6/24/2009), protected in financial institution for 20 days. 2. If earned while client was recipient of a government benefit based on need, or during the six months after eligibility for benefit has terminated,</p>

	protected at source, and protected in financial institution for 60 days after deposit. 3. If earned during six months following incarceration, protected at source, and protected in financial institution for 60 days after deposit.
<b>Pensions, annuities, IRAs</b> (Minn. Stat. §550.37, subd. 24)	Aggregate present value up to \$63,000 protected, unless more is necessary for the support of the debtor and any spouse or dependent of the debtor.

**ASSETS**

<b>Homestead</b> (Minn. Stat. §510.01)	Equity value up to \$300,000 protected
<b>Automobile</b> (Minn. Stat. §550.37)	Modified for disability at cost of at least \$3150: Equity value up to \$42,000 protected. Unmodified: Equity value up to \$4200 protected
<b>Personal Goods</b> (Minn. Stat. §550.37)	Equity value up to \$9450 protected.
<b>Life Insurance Proceeds to Surviving Spouse</b> (Minn. Stat. §550.37)	Protected up to \$42,000, plus \$10, 500 for each additional dependent.
<b>Tools of Trade</b> (Minn. Stat. §550.37)	Protected up to value of \$5000.

4. Is the client being harassed? If so,

\_\_\_\_\_ Has debtor been served with Summons and Complaint, or has judgment been obtained?  
Advise debtor to send proof of exempt income with letter stating income and assets are exempt under law.

\_\_\_\_\_ Harassed otherwise by collection attorney, collection agency, or purchaser of debt?  
Assess for violations of Fair Debt Collection Protection Act:

**COMMON VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

**Validation**

1. Are there some communications where debt collector did not indicate they are from a debt collector?

\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692e(11)  
(FOTI v. NCO)  
(Minnesota Case: MARK v. JCC 0:09-cv-00100-ADM-SRN)

2. Did the debt collector fail to send the consumer a validation notice within five days of the initial communication, either written or oral?

\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692g

3. Does the validation notice fail to contain all the required information, including the current amount of the debt?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692g
4. Does any demand for payment overshadow, or create confusion about, the disclosure of the consumer rights in the validation notice or demand payment within the first 30 days (demand immediate payment)?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692g
5. Has the client failed to request validation? If so, request validation by certified mail.  
\_\_\_\_\_ Yes \_\_\_\_\_ No
6. If the consumer made a timely validation request (within the first 30 days of the initial communication from the debt collector), did the collector continue collection activities?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692g

**False or Misleading Representations**

7. Does the communication contain a false impression of the character, amount, or legal status of the alleged debt?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692e(2)
8. Does the communication give the false impression that any individual is an attorney or that any communication is from an attorney?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692e(3)
9. Does the communication threaten to take any action that cannot legally be taken or that is not intended to be taken (e.g. suit, harm to credit reputation)?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692e(5)
10. Does the communication give the false impression that the consumer committed any crime or other conduct in order to disgrace the consumer?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692e(7)
11. Has the debt collector used any other false, deceptive, or misleading representation or means in connection with the debt collection?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692e(10)

**Unfair Practices**

12. Does the debt collector attempt to collect any amount (including interest, attorney fees, collection costs or expenses) not authorized by the agreement creating the debt or permitted by law?

\_\_\_\_\_ Yes    \_\_\_\_\_ No                      15 U.S.C. §1692f(1)

13. Has the debt collector taken or threatened to unlawfully repossess or disable the consumer's property?

\_\_\_\_\_ Yes    \_\_\_\_\_ No                      15 U.S.C. §1692f(6)

14. Does the debt collector use any other unfair or unconscionable means to collect or attempt to collect the alleged debt (e.g., collecting time barred debts that are older than 6 years, filing suit without legal authority)?

\_\_\_\_\_ Yes    \_\_\_\_\_ No                      15 U.S.C. §1692f

**Harassment or Abuse**

15. Has the debt collector used or threatened the use of violence or other criminal means to harm the consumer or his/her property?

\_\_\_\_\_ Yes    \_\_\_\_\_ No                      15 U.S.C. §1692d(1)

16. Has the debt collector used profane language or other abusive language?

\_\_\_\_\_ Yes    \_\_\_\_\_ No                      15 U.S.C. §1692d(2)

17. Has the debt collector caused the phone to ring or engaged any person in telephone conversations repeatedly? (The telephone is hung up and collector calls back immediately?)

\_\_\_\_\_ Yes    \_\_\_\_\_ No                      15 U.S.C. §1692d(5)

18. Has the debt collector engaged in any other conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of the alleged debt?

\_\_\_\_\_ Yes    \_\_\_\_\_ No                      15 U.S.C. §1692d

19. Has the debt collector communicated with the consumer after it knows the consumer to be represented by an attorney?

\_\_\_\_\_ Yes    \_\_\_\_\_ No                      15 U.S.C. §1692c(a)(2)

20. Has the debt collector contacted the consumer's place of employment when the debt collector knows or has reason to know that the consumer's employer prohibits such communications (after the consumer told the debt collector to not call him/her at work)?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692c(a)(3)
21. Has the debt collector contacted the consumer after the consumer has notified the debt collector in writing that the consumer refuses to pay the debt or that the consumer wishes the debt collector to cease further communication?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692c(c)
22. In communications with persons other than the consumer, has the debt collector stated that the consumer owes any debt?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692b(2)
23. In communicating with persons other than the consumer, has the debt collector contacted that person more than once (unless requested to do so)?  
\_\_\_\_\_ Yes \_\_\_\_\_ No 15 U.S.C. §1692b(3)
24. Consult 15 U.S.C. §1692 et al of the Fair Debt Collection Practices Act for additional violations, or simply contact:

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