

# PROTECT YOURSELF FROM DEBT COLLECTORS

The Best Strategies for Dealing with Collections



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## Learning how to deal with debt collectors

Having a debt fall into collections is stressful. It can bring up feelings of failure and hopelessness but keep your head up and know that you're not alone! In fact, about one in four Americans have a debt in collections, according to a 2019 report from the Federal Trade Commission (FTC).

What's more, that stress that debt in collections is causing you is only natural. Complaints about debt collectors top the FTC's list of top financial service complaints every year. Debt collectors can be highly aggressive and violate your legal rights trying to scare you into paying what you owe.

This guide can help you learn about your rights so you can recognize harassment when it happens. It will also teach you the **best strategies for dealing with debts in collections**, so you can take action and alleviate the stress as quickly as possible.

### Step 1: Know Your Rights!

## The Fair Debt Collections Practices Act (FDCPA)

The FDCPA is a federal law that protects consumers from abusive and threatening tactics by collectors. While a debt collector has a right to attempt to collect a debt that you owe, there are limits on what they can say and do.

- Collectors can only call between 8:00 am and 9:00 pm
- They must limit the number of calls they make to you on a single day
- If you tell a collector that you do not wish to receive calls on a certain day or time, they must honor that request

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## Debt collectors can't:

- Use abusive or profane language when speaking to you
- Threaten you with violence or physical harm
- Tell you that you are going to jail, make claims about warrants or arrests, or represent themselves as law enforcement
- Impersonate lawyer or agent of a government agency
- Falsify the amount you owe or the legal status of your debt
- Confiscate any property without a court order or threaten legal action unless such action is being taken
- Collect any amount greater than what's owed – in other words, collectors can't add fees or interest not outlined in your original contract agreement
- Put you on any kind of credit blacklist (there's no such thing)
- Make false or embellished statements on your credit reports
- Misrepresent that your debt would be waived or forgiven if you accept a settlement offer
- Disclose your debt to anyone without your consent, other than you, your spouse or your attorney
- Send you any communication meant to embarrass you, such as envelopes with graphics on the outside that you owe a debt
- Make you pay for collect calls or paid-on-delivery mail services



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- Deposit post-dated checks before the date listed
  - Hold you accountable for a debt that you did not authorize or agree to
  - Fail to honor a dispute or request to cease communication

**If a collector violates any of these rules, it's harassment!** You have a legal right to file a complaint with federal and state consumer protection agencies. In some cases, you may even be able to sue them in civil court for harassment.

## Step 2: Validate the debt

Debt collectors are also required by law to send you a **notice of debt** that outlines the debt you owe and their legal right to collect the debt. To collect any money, the collector must have complete information about you and the debt you owe.

**This notice must be sent within five days of their first contact with you.**

A notice of debt will include:

1. The name of the company seeking payment
2. The amount you owe

By law, it must also include three statements:

1. A statement that the debt is assumed valid unless you dispute it within 30 days
2. A statement that if you dispute the debt or request more information within 30 days, the collector must verify it by mail
3. A statement that if you request information about the original creditor within 30 days, the collector must provide it

***If you have not received this notice, request it immediately and take no further action until you receive it.***

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## Why is this notice of debt important?

The notice of debt will provide proof that:

1. You owe the debt
2. The company has a legal right to collect it

You can check the information provided versus your records, such as statements from the original creditor and your consumer credit report.



If you aren't sure where the debt is from, you must send a written debt validation letter **requesting verification** of the original creditor within 30 days. If you don't believe you owe the debt or you don't believe the collector has a legal right to collect, you can also **dispute the debt** by letter within that 30-day window.

## What happens next?

The collector must provide proof that it now legally owns the debt or has the legal right to collect on behalf of the original creditor.

- a. This should include documentation from the original creditor.
- b. You can also request the creditor's name and address, so you can contact them to confirm.

**If they cannot provide sufficient proof of everything required to validate the debt, then they have no legal right to collect.**

- If the debt is listed on your credit report, send a copy of the debt validation letter and other correspondence to the credit bureau, and request that the account be removed from your credit report

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- You can send a written cease and desist letter to the collector that you no longer wish to be contacted about this debt; they must immediately cease all contact

**If they can verify the debt is yours, then you need to decide what to do about it.**

## **Step 3: Deciding how to deal with a collection account**

Once a collector verifies a collection account and you know it's legitimate, it's up to you to decide what you want to do. You have options:

1. Pay the debt in full, either in a single lump-sum or on a payment plan
2. Negotiate a settlement for less than you owe
3. Ignore it

There are some important things to consider as you decide what to do:

- **A collector has a right to sue you in civil court.** If they win the lawsuit or if you don't show up, they can get a judgment against you, which can force you to repay the debt. Judgments can lead to things like wage garnishment
- **Every debt has a statute of limitations on collection.** Once a debt passes the statute of limitations in your state, the collector cannot bring a lawsuit against you. They can still attempt to collect, but you can simply send them a cease and desist letter and they must stop contacting you
- **A collection account will negatively affect your credit.** Collection accounts are in the public records section of your credit report. They remain for seven years from the date the original account first became delinquent

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- **The collection account stays on your report for seven years, even if you pay it.** Paying off a collection account will not remove it. The status of the account will be listed as ‘paid in full’ if you pay the full amount back. If you settle the debt for less than the full amount, it may show ‘paid as agreed’ but in most cases it will still show as a negative notation on your credit reports

## Deciding on a course of action

Your first step as you decide how to proceed should be to check how old the debt is.

### *If a collector contacts you about a debt that is past the statute of limitations*

In this case, then there is no legal harm in not paying. Simply write a letter telling them you no longer wish to be contacted about this debt. It should end any phone calls or further contact and since they can’t sue you in court, it will hopefully be the last thing you have to do to deal with it.

### *If the debt is within the statute of limitations*

In this case, think carefully about what you can afford to do given your budget and financial challenges. Ignoring a collection account can lead to a constant stream of phone calls, written communications, and even a lawsuit. Consider how close the debt is to the statute of limitations in your state.

If you’re in doubt or have questions, consult with an attorney. You may be able to get free legal counsel if you can’t afford an attorney through a legal aid society through your city or county.

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## Communicating with the collector

It's best to always communicate with a collector in writing. If the collector calls you on the phone, tell them that you wish to communicate by mail and to send you any correspondence by mail.

There are three reasons for this:

1. You will have a paper trail of correspondence showing what you and the collector discussed and agreed to in case you need it later.
2. Collectors are less likely to use any deceptive tactics in writing.
3. You avoid saying something that would allow the collector to **re-age** the debt.

### *What is re-aging?*

Re-aging is a tactic that collectors use to reset the clock on the statute of limitations for a debt. In some states, if you make any kind of verbal acknowledgment that you owe a debt OR you make a payment (even a partial one), it resets the clock on the statute of limitations. Now the collector has more time to harass you and even sue you in civil court.

Re-aging is not legal in all 50 states. You should check with your State Attorney General to understand specific policies on re-aging and other debt collection laws.

If you live in a state where it's legal to re-age your debt, you need to avoid doing anything that acknowledges that you owe the debt. Even just making a statement as innocent as, "I know I owe you the money, but I can't afford to pay anything right now," can reset the clock.

You should avoid speaking to the collector over the phone because you may say something in frustration that allows the collector to re-age the debt.



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## *Don't get tricked into verbal communication*

There are no laws that require you to speak on the phone to a collector. You can even hang up on a collector and you won't face legal action.

Realize that collectors will try and use a variety of tactics to get you on the phone. They may send you a letter telling you to "call them immediately." Don't bother. Just respond in writing.

## *Using certified mail*

It's also a good idea to send correspondence to collectors by certified mail, return receipt requested. This means you will get a notification when the collector receives your correspondence.

This can provide extra support if a collector tries to claim later that they never received your letter.

## *The power of cease and desist letter*

The FDCPA requires collectors to honor written requests to cease all contact. If you send a letter informing a collector that you no longer wish to receive any verbal or written contact regarding a debt, they must honor that request and stop contacting you.

Be aware that this will mean the only recourse for the collector will be to take you to court. This isn't an issue if the debt is past the statute of limitations. They can't sue you and they can't contact you either.



However, if the debt is still within the statute of limitations, the collector may decide that a lawsuit is the only option they have. Be prepared for a court summons. **If you receive a summons, don't ignore it!**

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You must respond to the summons and show up in court. If not, the court may enter a deficiency judgment against you. You can face wage garnishment and other damages. Consult with legal counsel immediately if you receive a summons. Look for free legal aid in your area if you can't hire an attorney.

## Negotiating repayment

If you can pay all or some of a debt that is in collections, it may be best to negotiate repayment with the collector. When done correctly, this can put an end to the stress of dealing with a debt collector. The trick is to take the right steps to ensure you properly take care of the debt.

1. First, check the debt validation letter to make sure the collector legally owns the debt.
  - a. If they do not, keep in mind that any negotiation needs to have the signoff of the original creditor.
  - b. Otherwise, you can make a settlement agreement with a collector, and then the original creditor can still come after you for the remaining balance.
2. Next, review your finances to determine what you can afford to pay and when. You have some options:
  - a. **Repay the balance in full in a single lump-sum**, which may be an option if you have funds in savings or from a tax refund.
  - b. **Set up a payment plan to pay off the balance in full**, but make sure the monthly payments work for your budget.
  - c. **Negotiate a settlement** where you agree to pay off a portion of what you owe, either in a lump sum or payment plan.

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3. Write a letter informing the collector that you wish to negotiate.
    - a. If they accept your offer, you can make arrangements for the payment(s).
    - b. If they make a counteroffer you can decide if it works for your budget.
  4. If you're working to reach a payment plan agreement or settlement offer, once an agreement is reached, the collector should draft a formal agreement outlining the terms.
  5. Both you and the collector (or the original creditor) should sign the agreement and both parties should get copies of the agreement.
  6. Once you have a signed agreement, you can arrange for payment.

### *Paying a debt collector*

Even repaying a debt collector can get complicated, especially if you're setting up a payment plan. Most collectors will try to get you to set up ACH direct debit, where they take money directly from your account.

ACH gives the collector access to your checking account to take money out. It can lead to overdrafts and over-payments where the collector takes more money than agreed.

Instead, the **best way to pay is by personal check that you send by certified mail**. This gives you proof of payment and proof of receipt.

Another option is to set up online bill pay through your financial institution. This avoids giving the collector access to your account but still allows you to make payments from the account.

You can also arrange repayment by debit card, prepaid card, or credit card, but these methods are not recommended, as you have little-to-no proof of payment. Also, if you are using a credit

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card, you end up with another debt to pay and now the debt will grow with interest charges if you don't pay it off quickly.

### *Tips for negotiating settlements*

As mentioned before, paying off a collection account in full will not remove it from your credit report. It will be noted as paid in full, but the collection account itself is negative information.

In many cases, negotiating a settlement for less than the full amount owed may be to your benefit, particularly if you are facing financial challenges.

These tips can help you negotiate effectively:

- Handle all negotiations by written letter and not over the phone
- Do not start any negotiation until the debt has been fully validated
- Make sure the debt is within the collection statute of limitations
- Keep in mind that the closer that the debt is to the statute of limitations expiring, the lower percentage you may be able to settle for
- If the debt has been sold to a third-party collector, they are more likely to settle for a lower percentage than the original creditor or an agency working on the creditor's behalf
- Start by determining what you can reasonably afford to pay and start the negotiation from there
- If you receive a settlement offer from a collector, respond in writing with a counteroffer to see if they will accept a lesser amount
- Be realistic. On average, debts are settled for 48% of the amount owed, according to the American Fair Credit Council



- Once you reach an agreed amount, don't make any payment until you have a signed settlement agreement – signed by you and the company that holds the debt
- If the debt is still held by the original creditor, the settlement agreement must be signed by them or they make come back to collect on the remaining balance



### ***A warning about zombie debt***

Zombie debt happens when a collection account that you thought you were done with comes back. You start receiving calls about an account again, often from a different collection agency than the one you dealt with before.

This happens because collection agencies buy and sell portfolios of collection accounts from each other. If you sent an agency a notice to cease contact or even if you paid the account off or it's past the statute of limitations, it may still get sold to another agency. Then that agency starts calling you and demanding payment.

Unfortunately, you need to go through the same steps that you went through with the prior agency. Check the statute of limitations, get a debt validation letter, and dispute the debt if it was already paid. Then check your credit report and dispute the collection account if it appears on your report. If the agency persists, send a letter stating you wish them to cease all contact.

This type of situation is why you want to keep thorough records of all correspondence and payments made. Even after you take care of the collection account, keep this information in case the zombie account comes up again.

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## Step 4: Filing complaints against a debt collector

If you believe that a debt collector has violated your rights according to the Fair Debt Collection Practices Act, you should file complaints against them. There are two agencies that you should contact:

1. The Consumer Financial Protection Bureau (CFPB)
2. Your state Attorney General's office

### Filing a complaint with the CFPB

The Consumer Financial Protection Bureau is the federal agency that handles consumer complaints about creditors and collection agencies. When you file a complaint with them, they will contact the creditor or collector directly and work to help you get a response that's fair in the eyes of the law.

Make sure to have as much information about the case and the history of dealing with the company as possible. Then go online to submit your complaint at [www.consumerfinance.gov/complaint](http://www.consumerfinance.gov/complaint).

### Filing a complaint with your state Attorney General

Many states have additional consumer protection laws that regulate debt collection practices. State Attorney Generals also can bring class-action lawsuits against agencies that show a history of abusive, harassing, and unlawful collection practices.

Each Attorney General's office has its own website with an online portal where you can submit complaints. You can find your state's website through [www.USA.gov](http://www.USA.gov).

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## Suing a collector for harassment

The Fair Debt Collection Practices Act also provides consumers a way to bring a lawsuit in civil court against a collector. You can collect both actual and statutory damages.

- **Actual damages** compensate you for any money you have lost dealing with a collector
- **Statutory damages** compensate you for non-monetary losses, such as emotional distress caused by excessively abusive tactics

If you have experienced excessive abusive practices or monetary losses as a result of collector harassment, and feel that you should be compensated, you have a legal right to pursue the matter in civil court. You should contact an attorney or find a legal aid society in your area to advise you.