



CONSUMER NEWS

SAN DIEGO CITY ATTORNEY'S OFFICE

Debt Collection

October 2010

Debt collection is a legal profession, yet there are those who engage in abusive tactics to collect debts. California has a law called the Rosenthal Fair Debt Collection Practices Act that prohibits abusive and deceptive collection practices.

THREATS ARE ILLEGAL:

Debt collectors are prohibited from using or threatening to use physical force or violence or using any criminal means to cause harm to the debtor or the reputation or property of the debtor.

Debt collectors cannot threaten a debtor that the failure to pay the debt will result in an accusation that the debtor has committed a crime when such an accusation would be false. Mere failure to pay a debt is not a crime.

Debt collectors cannot threaten to sell the debt to someone else and claim that this transfer of the debt will mean the debtor will lose a defense he/she would have to an action to collect the debt.

A debt collector is prohibited from threatening a debtor that failing to pay the debt may result in the arrest of the debtor, or the seizure, garnishment, or attachment of wages of the debtor unless such action is in fact contemplated by the debt collector and permitted by law. Debt collectors do not have the authority to make arrests. Only law enforcement officers may do so.

OTHER UNLAWFUL PRACTICES:

Debt collectors are prohibited from using obscene or profane language to collect a debt. They must disclose who they are when they call debtors and cannot call debtors collect or otherwise cause debtors to incur an expense for their communicating with the debtors. They cannot cause a telephone to ring repeatedly or continuously to annoy the person called.

Debt collectors cannot call a debtor or visit him/her with such frequency as to be unreasonable and to harass the debtor. Debt collectors cannot communicate with the debtor's employer about a

debt unless such a communication is necessary to the collection of the debt or if the debtor has consented to such a communication in writing.

Debt collectors are prohibited from communicating with the debtor's family members other than the debtor's spouse or the parents of a debtor who is a minor. Debt collectors cannot distribute "deadbeat lists" of debtors they claim have not paid a debt.

A debt collector cannot make false statements to collect a debt such as:

- Representing he/she is an attorney when he/she is not.
- Using phony attorney stationery.
- Claiming to be affiliated with a government agency or bonded when that is not true.
- Claiming the debtor will incur attorney's fees or other costs when those costs cannot be legally added to the debt.
- Claiming that the debt has been or will be referred to a consumer reporting.

agency when that is not true

- Claiming to be a credit reporting agency.
- Claiming a legal proceeding has been started when it has not.
- Trying to collect on a debt that has not actually been assigned to the debt collector for collection.

TIPS FOR DEALING WITH CALLS FROM DEBT COLLECTORS:

If you receive a call from a debt collector, you should take the following steps:

- Determine who is calling you and get the person's contact information.
- Determine what debt the person is calling about. Ask the collector to provide you a copy of any documents that support the claim for payment.
- If the debt is not yours, let the debtor know in writing and explain why the debt is not yours or is not owed.
- If you believe you owe the money and intend to pay it, be sure to contact the party to which you originally owed the debt in order to ensure that paying the debt collector will satisfy the debt.
- If you do not believe you owe the money, and do not want the collector to contact you by telephone, send the collector a letter advising him/her of this decision and demanding no further telephone contacts.
- If a debt collector engages in illegal conduct, you can sue the debt collector and you can report him/her to law enforcement.

A person who is wronged by a debt collector who engages in illegal practices may sue the collector for damages and, if the conduct is willful and knowing, for penalties of up to \$1000. Individuals can represent themselves in Small Claims Court when they seek damages or penalties not exceeding \$5000.

In addition, a debt collector who engages in illegal acts can be prosecuted. If you observe violations of these laws, contact the City Attorney's Consumer & Environmental Protection Unit to report the violations.

**San Diego
City Attorney's Office
Consumer and Environmental
Protection Unit
(619) 533-5600**

Newsletter written by Assistant City Attorney Tricia Pummill.

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Sources: Civil Code sections 1788-1788.33.

The information provided in this newsletter is intended to convey general information and is not intended to be relied upon as legal advice.

To report violations of consumer protection laws, call the City Attorney's Hotline at **(619) 533-5600**.